<u>IN RE: WILLIAM P. CORBETT, JR.</u>

NO. BD-2016-075

S.J.C. Judgment of Disbarment entered by Justice Botsford on March 15, 2017.[1]

Page Down to View Memorandum of Decision

[1] The complete order of the Court is available by contacting the Clerk of the Supreme Judicial Court for Suffolk County.

RECEIVED
3/17/2017 2:18:30 PM
BD-2016-075
MAURA S. DOYLE, CLERK
SUPREME JUDICIAL COURT
THE COUNTY OF SUFFOLK

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS.

SUPREME JUDICIAL COURT
FOR SUFFOLK COUNTY
DOCKET NO. BD-2016-075

IN RE: WILLIAM P. CORBETT

MEMORANDUM OF DECISION

The Board of Bar Overseers (board), adopting the recommendation of a hearing committee, has filed an information pursuant to S.J.C. Rule 4:01, § 8 (6), recommending the disbarment of the respondent, William P. Corbett. Before the board, the respondent challenged various factual findings, especially concerning credibility, and legal conclusions of the board. HIs principal challenge, however, was to the appropriateness of the recommended sanction. At the hearing before me, the recommended sanction was again the respondent's point of focus. His position is that although he converted funds belonging to two clients and caused deprivation for both, he made restitution of all the funds that were the subject of the charged misconduct before the disciplinary hearing, that he was remorseful, and that there were mitigating circumstances that should have been taken into account. I conclude that that disbarment is the appropriate discipline to impose.

Background. The background facts set out here are taken from the hearing committee's report and the memorandum of the board that followed; the board adopted all of the hearing committee's factual findings.

The respondent became a member of the Massachusetts bar in 1992. At all times relevant to this case, the respondent maintained a solo law practice north of Boston. Bar counsel

filed a petition for discipline against the respondent on August 7, 2014. The petition contained five counts. The most serious counts (counts two, three and four) concerned the respondent's handling of matters for two different clients. The remaining two counts concerned (1) failure to keep required records of the respondent's handling of funds and failure to provide the required accountings, and (2) failure to cooperate with bar counsel's investigation, violation of the resulting order of administrative suspension, and misrepresentations to bar counsel during the investigation. The following summarizes the hearing committee's (and therefore the board's) findings; I concentrate on the findings relating to the two clients.

Count Two: Connie Siegel-Dennis retained the respondent in July, 2008, to seek recovery for injuries sustained in a motor vehicle accident. There were different parts of the case that settled at different times. In August, 2011, the respondent received $500,000 in a settlement of part of the case on Siegel-Dennis's behalf, and she received $200,000 of this amount, net of the respondent's fee and expenses and also net of $36,085.93, which represented an agreed-upon amount that the respondent could hold as an expense retainer. By March, 2012, the respondent had misused almost all of the expense retainer, transferring the funds at different times to his operating account and spending them on matters unrelated to the client. The respondent was administratively suspended in March, 2013, for failure to provide records to bar counsel, and he was required as a consequence to withdraw from all representations and to return unearned funds. However, he neither informed Siegel-Dennis of his withdrawal nor refunded the expense retainer. After Siegel-Dennis learned of the respondent's suspension from a court where he had failed to appear on her behalf, she demanded an accounting and a refund, which was not forthcoming. The hearing committee found, and the board agreed, that deprivation occurred not later than her demand. The respondent repaid to Siegel-Dennis the $36,085.93, with interest, in

or around February, 2015, six months after bar counsel filed the underlying petition for discipline. The respondent acknowledged, and the hearing committee and board found, that the respondent's misuse of the expense retainer was knowing and intentional.

The board concluded, in relation to Count II, that the respondent had violated Mass. R. Prof. C. 1.15(b) (hold trust funds separate from lawyer's personal funds), by failing to keep Siegel-Dennis's funds segregated in a trust fund; rule 1.15 (c) (prompt notice and delivery of trust funds to persons entitled to receive), by failing to pay promptly her the funds due following his suspension and Siegel-Dennis's demand; rule 1.15 (f) (1) (C) (no negative balances in individual client ledger) by authorizing distributions that caused negative balances; and, by intentionally misusing Siegel-Dennis's funds, rule 8.4 (c) (proscribing dishonesty, deceit, fraud or misrepresentation), and rule 8.4 (h) (other conduct reflecting adversely on fitness to practice).

Count Three: In August, 2012, the respondent received a settlement check for $50,000, representing the settlement of another, related claim of Siegel-Dennis's. The respondent deposited the money in his IOLTA account, but then withdrew his fee from the total without notifying Siegel-Dennis of the withdrawal or providing the necessary accounting. The respondent owed his client approximately $33,333.33 out of the total settlement, but by September 6, 2012, he held only $23,339.28 in his IOLTA account. The respondent did not inform his client of the settlement. Rather, she later learned the information from the insurer, and consequently demanded her portion from the respondent. The respondent gave his client a false reason as to why he had not yet paid her the money. Meanwhile, the respondent used Siegel-Dennis's portion of the settlement funds for his own purposes after transferring the funds from his IOLTA account to his operating account. Siegel-Dennis repeatedly demanded payment; the respondent did not respond. He did, however, continue to transfer funds from his IOLTA

account, so that as of October 4, 2012, there was only a balance of $5.95 left in that account. In response to another demand for payment, the respondent replied to Siegel-Dennis that he had sent her a check that was post-dated October 26, 2012. When his client complained she had not received the check as of October 27, on or about October 30, 2012, the respondent sent a replacement check for $33,333.33, drawn on his IOLTA account, although he knew that there were insufficient funds in the account to cover it. Thereafter, belatedly, the respondent asked Siegel-Dennis to wait before cashing the check, but she had already deposited it. The bank dishonored the check on account of insufficient funds. More demands for payment from Siegel-Dennis to the respondent followed. Around December 10, 2012, the respondent deposited into his operating account a settlement check for $50,000 for an unrelated client (see summary of Count Four, infra), and on or about December 12, the respondent paid Siegel-Dennis the $33,333.33 she was owed by drawing a check on his operating account. The hearing committee, and the board, found deprivation in the respondent's delay in paying his client her share of the settlement, and that, as the respondent acknowledged, the misuse of these settlement funds was knowing and intentional.

Based on these findings, the board concluded that the respondent's conduct violated Mass. R Prof. C. 8.4(c) and (h), by intentionally misusing client funds; rule 8.4 (c) as well by intentionally making false and misleading statements to Siegel-Dennis; rule 1.15 (b) (1), by failing to keep client funds segregated in a trust account; rule 1.15 (c), by failing promptly to pay Siege-Dennis the funds due to her; rule 1.15 (d) (accounting due on withdrawal for fees from trust account) by failing to provide Siegel-Dennis, on or before the date the respondent withdrew funds for his fee, an itemized bill for services rendered, notice of amount withdrawn, statement of balance of client's funds in the account; rule 1.15 (f) (1) (C), by authorizing distributions that

caused negative balances in individual client matters; Mass. R. Prof. C. 1.4 (communicate with client), by failing to keep Siegel-Dennis updated on her case status.

Count Four: Douglas Nystedt retained the respondent to represent him in connection with his late brother's estate; Nystedt believed there was malfeasance on the part of the estate fiduciary then handling the estate. The respondent and Nystedt executed a contingent fee agreement, providing that the respondent would receive 33.33 % of the recovery, plus expenses. Early on, the respondent achieved some successes vis-à-vis the estate fiduciary, some funds were collected and the respondent delivered the appropriate amount of those funds, net his fee, to Nystedt.

In late October, 2012, the respondent settled some of the remaining claims against the fiduciary for $50,000. The respondent asked Nystedt, and Nystedt agreed, that after the respondent took his fee and reimbursement for expenses, Nystedt would lend the respondent all of the remaining settlement funds except for $15,000 that the respondent agreed he would pay Nystedt immediately. The respondent then took his fee out of the settlement funds, but did not provide his client with the required accounting. The respondent also did not pay Nystedt at that time the $15,000 he had agreed to pay immediately. Instead, by December 19, 2012, the respondent had misused not less than $5,800 and up to the entire amount of the $15,000 of these settlement funds.[1] On December 19, the respondent wired $7,500 to Nystedt – *i.e.*, one-half of what he had agreed earlier to pay immediately – using funds he had been able to borrow from another person, but did not pay more to Nystedt because he had used the remaining funds he could borrow to buy Christmas presents for his family as well as personal items. In February,

[1] The respondent used these funds as part of the funds he ultimately paid to his client Siegel-Dennis on or about December 12, 2012, for her share of the $50,000 settlement funds that he had received on her behalf. (See discussion of Count Three, supra.)

2013, responding to a written demand from Nystedt for an accounting and immediate payment of all outstanding amounts owed – an amount that totaled over $100,000 because of other funds the respondent had borrowed from Nystedt – the respondent sent a check for $7,500 to Nystedt and asked him to wait to deposit it until the respondent contacted him, which the respondent never did. (There were insufficient funds to cover the check.) Ultimately, the respondent paid Nystedt the remaining $7,500 that he had promised to pay in 2012 on July 13, 2015, almost a year after this disciplinary proceeding had commenced. The hearing committee and the board found that the respondent's delay in paying Nystedt caused deprivation.

The respondent has not repaid Nystedt the $18,333.33 he borrowed from Nystedt's $50,000 settlement that the respondent had received in October, 2012,[2] or the other loans from Nystedt.[3] The respondent offered, as justification for not doing so, that having been fired by Nystedt, he was still entitled to be compensated under principles of quantum meruit for the unpaid services he had performed, and this entitlement justified his withholding any payment to Nystedt that would otherwise be due. The respondent's proffered rationale did not persuade either the hearing committee or the board that the nonpayment was justified. The hearing committee and the board also found that the respondent, without excuse, failed to return Nystedt's files to him, thereby prejudicing the ability of successor counsel to pursue any remaining claims in the matter relating to Nystedt's brother's estate.

---

[2] Net of the respondent's fee and expenses, Nystedt's share of the $50,000 was $33,333.33. The $15,000 that the respondent was supposed to pay Nystedt in the fall of 2012, plus the $18,333.33 that Nystedt agreed the respondent could borrow, together make up Nystedt's share of $33,333.33.

[3] As the respondent points out, the other loans were not directly the subject of any of the counts in the petition for discipline, but the board concluded, rejecting the respondent's contrary argument, that he had ample notice that the other loans were at least tangentially in play in this proceeding. The record supports the board's conclusion.

The hearing committee and the board concluded that the respondent, by his conduct, had violated Mass. R. Prof. C. 8.4 (c) and (h), by intentionally misusing client funds; rule 8.4 (c) also by falsely promising to pay Nystedt $15,000 from the settlement amount when the respondent planned to use the money himself and look for other funds to repay Nystedt; rule 1.15 (b) (1), by failing to keep client funds segregated in a trust account; rule 1.15 (c), by failing promptly to pay Nystedt the funds that were due; 1.15 (d), by failing to deliver to Nystedt an itemized bill for his services rendered, written notice of the amount withdrawn, and the balance of client funds remaining; and rule 1.16 (e), by failing to return Nystedt's files as requested.

The hearing committee and the board also concluded that the two remaining counts of the petition for discipline had been proved: a count charging the respondent with failing to perform the three-way reconciliation of his trust accounts at least every sixty days, in violation of Mass. R. Prof. C. 1.15 (f) (1) (E); and a count charging that the respondent failed to cooperate with bar counsel's investigation, by failing to provide documents requested and thereby triggering his administrative suspension, and by providing false statements in responding to bar counsel's requests for information, in violation of: Mass. R. Prof. C. 8.1 (b) (failure to disclose facts necessary to avoid misimpression and failure to comply with demand for information in connection with a disciplinary matter); rule 8.4 (d) (conduct prejudicial to administration of justice); rule 8.4 (g) (failure to cooperate with bar counsel by knowingly failing without good cause to respond to bar counsel's requests for information during course of investigation); rule 8.1 (a) (knowingly false statement of material fact in connection with disciplinary investigation); rules 8.1 (b), 8.4 (c), and 8.4 (h), by intentionally making false statements in a letter to bar counsel in connection with an investigation; and S.J.C. Rule 4:01, §§ 3 & 17, and Mass. R. Prof.

C. 3.4 (c) (knowing disobedience to rules of tribunal), and rule 8.4 (d), by his intentional failure without good cause to comply with the order of administrative suspension.

Mitigation. In his testimony at the hearing, the respondent acknowledged his acts of misconduct, including his intentional use of his clients' funds and the deprivation that his clients had suffered, and testified that he was regretful and remorseful about his actions. Although the hearing committee did not all agree that the respondent's testimony about the underlying events and actions was not credible, they were unanimous in not crediting his expressions of remorse about his conduct and its effect on his clients. In its memorandum of decision, the board considered the respondent's arguments challenging the hearing committee's credibility determinations at length and rejected the challenges, concluding that there was no inconsistency in the hearing committee's lack of unanimity about the credibility of the respondent's testimony about the underlying facts of the case on the one hand, and their complete agreement, on the other hand, that the respondent's testimony about his remorse for his actions was not credible. Accordingly, like the hearing committee, the board did not find the respondent's acknowledgement of wrongdoing and claimed remorse to be a mitigating circumstance.

The respondent also presented in mitigation at the disciplinary hearing an expert psychiatric witness, Martin Kelly, M.D., who testified that at all relevant times, the respondent was suffering from a major depressive disorder and attention deficit hyperactivity disorder (ADHD), and that these disorders played a key causative role in the respondent's misconduct. The hearing committee did not find the causal connection Dr. Kelly presented to be persuasive, concluding that the respondent's psychological condition "may have contributed to his circumstances, [but was] not persuasive in mitigation of his intentional and dishonest conduct." In particular, the hearing committee concluded:

> "We do credit and find that the respondent's personal issues and the resulting depression, mental lethargy, and general inability to focus on detail played a substantial role in the course of his legal career, and we do credit the testimony of his forensic expert [Dr. Kelly] that his conditions thereby set the ground conditions for his misconduct. Still, we find that the various forms of the respondent's intentional misconduct – including his serial misuse of client funds, his misrepresentations to his clients, and his misrepresentations in response to bar counsel's inquiries – were too calculated and deliberate for the disabilities of depression and ADHD to have had a substantially contributing role. That misconduct instead demonstrates a relatively clear and calculating respondent, aware of his misdeeds, attempting to disguise his wrongdoing" (footnote omitted).

The board accepted and adopted the hearing committee's conclusion.

The board also accepted and adopted the hearing committee's recommendation that disbarment was the appropriate sanction for the respondent's misconduct. Where, as here, a lawyer has both intentionally misused client funds and deprivation to the client(s) has resulted, indefinite suspension or disbarment is the presumptive level of discipline. *E.g.*, Matter of Schoepfer, 426 Mass. 183, 187 (1997). The board acknowledged that where, also as here, the lawyer has made full restitution to the clients, indefinite suspension rather than disbarment is generally the level of discipline imposed, but determined that the facts here supported disbarment. The board pointed to the respondent's "feigned remorse" and unwillingness to accept full responsibility for his intentional misconduct, as well as his delay in repaying his clients, as cutting against restitution being a reason for the lesser discipline of indefinite suspension.

Discussion. In the hearing before me on this matter, the respondent emphasized his remorse and his acceptance of the fact that he deserved a significant sanction, and I understand his position to be that this state of mind, combined with the restitution that he made to both Siegel-Dennis and Nystedt, warrant lesser discipline than disbarment and even – as he argued to the board – lesser discipline than indefinite suspension. However, I respect the hearing

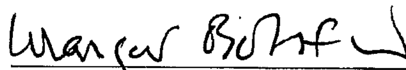
committee's role as the sole judge of the credibility of witnesses appearing before the committee, see S.J.C. Rule 4:01, § 8 (4), and am persuaded by the reasons the board discussed in its memorandum of decision as to why the committee's credibility judgments should be accepted. Having accepted them, I cannot agree with the respondent that his claim of remorse should play a positive role in determining the appropriate level of discipline. Nor can I agree, contrary to the hearing committee's finding, that the disabilities of a major depressive disorder and ADHD played a significantly causative role in all the respondent's misconduct, including his dissembling to his clients and to bar counsel and, in the hearing committee's and the board's view, refusal truly to accept responsibility for all the actions he took that were injurious to his clients as well as violative of our professional conduct rules.

As all parties here as well as the board and hearing committee have recognized, the presumptive sanction for a lawyer who has converted client funds with deprivation resulting, even if the deprivation is temporary, is disbarment or indefinite suspension. Matter of Schoepfer, 426 Mass. at 187; Matter of the Discipline of an Attorney, 392 Mass. 827, 836-837 (1984). In relation to these two sanctions, a lawyer's successful efforts to make restitution to a client whose funds the lawyer has misused is an important factor that generally supports an indefinite suspension. See Matter of LiBassi, 449 Mass. 1014, 1017 (2007) (court generally considers whether restitution has been made in choosing between disbarment and indefinite suspension). See also Matter of Bryan, 411 Mass. 288, 292 (1991) (absence of restitution is factor in choosing between disbarment and indefinite suspension). But in this case, as summarized above, the board concluded that aggravating factors – the respondent's lack of credible remorse, his ultimate refusal to accept responsibility, his delay in paying the restitution to his clients, and his conduct in relation to the loans he had obtained from Nystedt – justified

disbarment. The board's recommendations, although not binding, are entitled to deference. See, *e.g.*, Matter of Finneran, 455 Mass. 722, 730 (2010). Moreover, as the hearing committee concluded, the respondent also (1) violated his duties with respect to cooperating with bar counsel's investigation, by persistently failing to provide properly requested records, providing less than truthful information to bar counsel, and failing to comply in anything like a timely way the obligations attendant with being administratively suspended, including notifying his clients of that status; and (2) failed to comply with his obligation to return client files to Nystedt in circumstances that the hearing committee and the board suggested may well have caused the client actual prejudice. These are, in my view, additional aggravating factors that appropriately are weighed in the balance, and they support the board's judgment that disbarment rather than indefinite suspension or something less is the appropriate discipline to impose. See Matter of Haese, 468 Mass. 1002, 1008 (2014).

ORDER

For the foregoing reasons, it is **ORDERED** that a judgment of disbarment of the respondent William P. Corbett enter.



Margot Botsford
Associate Justice

Dated: March 15, 2017