

**IN RE: PAMELA HARRIS-DALEY****NO. BD-2015-002****S.J.C. Order of Term Suspension entered by Justice Lenk on August 26, 2015, with an effective date of September 25, 2015.<sup>1</sup>****Page Down to View Memorandum of Decision**

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<sup>1</sup> The complete Order of the Court is available by contacting the Clerk of the Supreme Judicial Court for Suffolk County.

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPREME JUDICIAL COURT  
FOR SUFFOLK COUNTY  
NO. BD-2015-002

IN RE: PAMELA HARRIS-DALEY

MEMORANDUM OF DECISION

This matter came before me on an information filed by the Board of Bar Overseers (board) pursuant to S.J.C. Rule 4:01, § 8(6). Adopting the report of the hearing committee, the board recommended that the respondent be suspended from the practice of law in the Commonwealth for one year and one day, thus requiring the respondent to apply for reinstatement after the term of suspension has expired. See S.J.C. Rule 4:01, § 18(1)(b), (2)(c). At a hearing before me, the respondent stated that she did not challenge the findings of fact reported by the hearing committee and adopted by the board. She argued only that her disciplinary violations warranted a lesser sanction. The sanction proposed by the respondent is a six-month suspension, imposed nunc pro tunc to an unspecified date;

which would, in practical effect, leave the respondent's practice of law uninterrupted.

For the reasons discussed below, I conclude that the appropriate sanction is a suspension from the practice of law for a period of six months, to commence thirty days after the issuance of the order of suspension. See S.J.C. Rule 4:01, § 17(3).

Board's findings. The hearing committee and the board found that the respondent, in two separate and unrelated incidents, engaged in intentional misrepresentations. In the first incident, the respondent was retained by parents whose high-school-aged son was alleged to have participated in a fistfight. A hearing to determine whether the son would be expelled from school or suspended for an extended period was scheduled to be held before the high school principal. The respondent telephoned the principal to reschedule the hearing. During their conversation, the respondent insisted on presenting her clients' view of the case, over the principal's protestations, until the principal ended the call without rescheduling the hearing. The respondent then mailed a letter to the superintendent of schools and the school committee, stating falsely (as the board found) that the principal had called her a "bitch" and a "trickster," and had expressed bias against her clients' son. The letter demanded that the

principal be replaced as the officer to conduct the suspension hearing. Ultimately, the superintendent presided over the hearing. The board determined that the respondent's conduct violated Mass. R. Prof. C. 4.1(a) (making false statement to third person), 8.4(c) (conduct involving dishonesty, fraud, deceit, or misrepresentation), and 8.4(h) (other conduct that adversely reflects on fitness to practice law).

The second incident occurred during the course of the respondent's representation of a party to divorce proceedings. The respondent had sparred with opposing counsel, who was relatively inexperienced, in oral and written communications. At a hearing in the Probate and Family Court, the respondent filed a motion to withdraw from the representation, stating falsely (the board found) that opposing counsel had pushed her and grabbed her arm in the court room vestibule. The board determined that this conduct violated Mass. R. Prof. C. 3.3(a)(1) (making false statement to tribunal), 8.4(c), and 8.4(h).

In aggravation, the board considered that the respondent engaged in more than one instance of misconduct; the respondent's substantial experience in the practice of law; her failure to acknowledge the wrongfulness of her actions; her lack of candor in the disciplinary proceedings (by denying the allegations against her); and the harm caused to the legal

system by the respondent's actions. The board noted also that the respondent previously had entered into a "diversion agreement" requiring her, in lieu of disciplinary action, to undergo anger management counseling. The board did not accord significant weight, in mitigation, to the respondent's good reputation in the legal community, or to the fact that her misconduct occurred in the course of zealous representation of her clients. In all, the board concluded that the appropriate sanction would be a suspension from the practice of law for one year and one day, thus requiring the respondent to apply for reinstatement. See S.J.C. Rule 4:01, § 18(1)(b), (2)(c).

Discussion. The most important consideration in attorney discipline cases is "the effect upon, and perception of, the public and the bar." Matter of Crossen, 450 Mass. 533, 573 (2008), quoting Matter of Finnerty, 418 Mass. 831, 829 (1994). The sanction imposed should not be "markedly disparate from judgments in comparable cases." Matter of Foley, 439 Mass. 324, 333 (2003), quoting Matter of Finn, 433 Mass. 418, 422-423 (2001). Still, "[e]ach case must be decided on its own merits and every offending attorney must receive the disposition most appropriate in the circumstances." Matter of Pudlo, 460 Mass. 400, 404 (2011), quoting Matter of Crossen, supra. The board's recommendation on the appropriate sanction is accorded

"substantial deference." Matter of Crossen, supra, quoting Matter of Griffith, 440 Mass. 500, 507 (2003).

Notwithstanding the requisite deference to the board's recommendation, I conclude that a suspension from the practice of law for one year and one day would be markedly disparate from sanctions imposed in comparable cases. The board's analysis rests largely on Matter of McCarthy, 416 Mass. 423 (1993), and Matter of Neitlich, 413 Mass. 416 (1992), two cases in which attorneys were suspended for one year (without the additional day recommended here). The attorneys in each of those cases perpetrated fraud on a court in connection with the merits of the dispute before it. In Matter of Neitlich, supra at 416-419, the attorney represented a husband in post-divorce proceedings, initiated by the wife, in order to obtain security for the husband's alimony obligations. In those proceedings, the attorney deliberately misrepresented to the judge and to opposing counsel that a transaction he proposed to carry out for his client involved only one purchase and sale agreement; the attorney concealed an additional agreement involving additional funds. The attorney in Matter of McCarthy, supra at 424-426, represented parties in eviction proceedings. He elicited false sworn testimony, introduced misleading documents into evidence, and made false assertions in his cross-examination of a witness,

all in order to persuade the judge that a petition to partition a disputed property had been filed, when in fact it had not.

By contrast, the respondent's misrepresentations, both in her letter concerning the high school principal and in her motion before the Probate and Family Court, concerned matters tangential to the merits of the proceedings: the particular officer to preside at the suspension hearing, and the respondent's wish to withdraw from representation. In addition, "generally absent from this case[] is the presence of any evident financial motive for the attorney's misconduct." Matter of Leahy, 28 Mass. Att'y Discipline Rep. 529, 535 (2012), and cases cited.<sup>1</sup> That is not to say that deliberate falsehoods by an attorney may be condoned, particularly (though not only) when directed at a tribunal. Such acts warrant significant disciplinary action. Nonetheless, the respondent's relatively peripheral and non-venal misrepresentations posed less of a threat to the integrity of "[a]n effective judicial system," Matter of McCarthy, 416 Mass. at 431, than did the conduct in the cases relied upon by the board.

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<sup>1</sup> The respondent asserts that she undertook representation of the parents and child in the first incident pro bono. She states also that, in the aftermath of her withdrawal from representation in the second incident, the charges that her client had accrued were waived.

Where an attorney's misrepresentations represent something less than a full-blown "fraud on a tribunal," lighter sanctions typically have been deemed appropriate. See, e.g., Matter of Finnerty, 418 Mass. 821 (1994) (six-month suspension for misrepresentations concerning attorney's assets in attorney's own divorce proceedings); Matter of Surprenant, 27 Mass. Att'y Discipline Rep. 855 (2011) (six-month suspension for falsely certifying client's awareness of court documents); Matter of Smoot, 26 Mass. Att'y Discipline Rep. 631 (2010) (six-month suspension, three of them suspended, for misrepresenting that motion had been served on opposing party); Matter of Guinane, 20 Mass. Att'y Discipline Rep. 191 (2004) (one-month suspension for signing client's name to affidavit without client's knowledge); Matter of Shuman, 17 Mass. Att'y Discipline Rep. 510 (2001) (six-month suspension for falsely identifying expert witness and describing his expected testimony); Matter of Long, 16 Mass. Att'y Discipline Rep. 250 (2000) (ninety-day suspension for, in part, misrepresenting that attorney was appearing in another court in order to obtain continuance); Matter of Dolan, 10 Mass. Att'y Discipline Rep. 59 (1994) (public censure and two years of probation for misrepresenting scope of attorney's authority to settle). The respondent's actions are more closely comparable to the forms of misconduct in these cases.

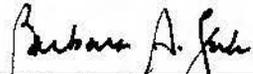
I note that, in some instances, the offending attorney in the cases cited received a substantially less severe sanction than a six-month suspension. A similarly mild sanction would not be appropriate here, nor would it be appropriate for the respondent's suspension to run, as she proposes, from a date early enough to avoid interruption of her practice. As noted, the board identified several aggravating factors which support its recommendation. Of particular significance is the fact that the respondent engaged in misrepresentations in two unrelated matters. See Matter of Hoicka, 442 Mass. 1004, 1006 (2004). The board was concerned also that the respondent did not accept responsibility for her misdeeds over the course of the disciplinary proceedings. See Matter of Eisenhower, 426 Mass. 448, 456 (1998), and cases cited.

Taking into account the totality of the circumstances, I conclude that a six-month suspension from the practice of law is "the disposition most appropriate" here. See Matter of Pudlo, 460 Mass. at 404, quoting Matter of Crossen, 450 Mass. at 573. This sanction will best "protect the public and deter other attorneys from the same behavior." Matter of Crossen, *supra*, quoting Matter of Concemi, 422 Mass. 326, 329 (1996). As

discussed, it is also most consonant with the sanctions imposed in comparable cases.<sup>2</sup> See Matter of Foley, 439 Mass. at 333.

An order shall enter suspending the respondent from the practice of law in the Commonwealth for a term of six months.

By the Court



Barbara A. Denk  
Associate Justice

Entered: August 26, 2015

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<sup>2</sup> Bar counsel reiterated at the hearing before me that sanctions are being sought against the respondent only on the basis of her misrepresentations, and not in connection with any ancillary behavior on her part. That being said, however, the factual findings of the hearing committee and the board leave the impression that the respondent's misrepresentations were at least partly the product of issues with anger management. The respondent and the bar would be best served if, in the course of the suspension imposed on her, the respondent continues to address these issues, as she apparently began to do in connection with the diversion agreement referenced earlier.