COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS.

SUPREME JUDICIAL COURT
FOR SUFFOLK COUNTY
NO: BD-2023-108

IN RE: James A. McLaughlin

ORDER OF TERM SUSPENSION

This matter came before the Court, Georges J., on an Information and Record of Proceedings pursuant to S.J.C. Rule 4:01, §8(6), with the Recommendation and Vote of the Board of Bar Overseers (Board) filed by the Board on December 1, 2023. After a hearing was held on January 17, 2024, attended by the parties, and in accordance with the Memorandum of Decision dated July 8, 2024;

It is ORDERED that:

1. James A. McLaughlin is hereby suspended from the practice of law in the Commonwealth of Massachusetts for a period of three (3) months. In accordance with S.J.C. Rule 4:01, §17(3), the suspension shall be effective thirty days after the date of the entry of this Order. The lawyer, after the entry of this Order, shall not accept any new retainer or engage as a lawyer for another in any new case or legal matter

of any nature. During the period between the entry date of this Order and its effective date, however, the lawyer may wind up and complete, on behalf of any client, all matters which were pending on the entry date.

It is FURTHER ORDERED that:

2. Within fourteen (14) days of the date of entry of this Order, the lawyer shall:

a) file a notice of withdrawal as of the effective date of the suspension with every court, agency, or tribunal before which a matter is pending, together with a copy of the notices sent pursuant to paragraphs 2(c) and 2(d) of this Order, the client's or clients' places of residence, and the case caption and docket number of the client's or clients' proceedings;

b) resign as of the effective date of the suspension all appointments as guardian, executor, administrator, trustee, attorney-in-fact, or other fiduciary, attaching to the resignation a copy of the notices sent to the wards, heirs, or beneficiaries pursuant to paragraphs 2(c) and 2(d) of this Order, the place of residence of the wards, heirs, or beneficiaries, and the case caption and docket number of the proceedings, if any;

c) provide notice to all clients and to all wards, heirs, and beneficiaries that the lawyer has been

suspended; that he is disqualified from acting as a lawyer after the effective date of the suspension; and that, if not represented by co-counsel, the client, ward, heir, or beneficiary should act promptly to substitute another lawyer or fiduciary or to seek legal advice elsewhere, calling attention to any urgency arising from the circumstances of the case;

d) provide notice to counsel for all parties (or, in the absence of counsel, the parties) in pending matters that the lawyer has been suspended and, as a consequence, is disqualified from acting as a lawyer after the effective date of the suspension;

e) make available to all clients being represented in pending matters any papers or other property to which they are entitled, calling attention to any urgency for obtaining the papers or other property;

f) refund any part of any fees paid in advance that have not been earned; and

g) close every IOLTA, client, trust or other fiduciary account and properly disburse or otherwise transfer all client and fiduciary funds in his possession, custody or control.

All notices required by this paragraph shall be served by certified mail, return receipt requested, in a form approved by

the Board.

3. Within twenty-one (21) days after the date of entry of this Order, the lawyer shall file with the Office of the Bar Counsel an affidavit certifying that the lawyer has fully complied with the provisions of this Order and with bar disciplinary rules. Appended to the affidavit of compliance shall be:

a) a copy of each form of notice, the names and addresses of the clients, wards, heirs, beneficiaries, attorneys, courts and agencies to which notices were sent, and all return receipts or returned mail received up to the date of the affidavit. Supplemental affidavits shall be filed covering subsequent return receipts and returned mail. Such names and addresses of clients shall remain confidential unless otherwise requested in writing by the lawyer or ordered by the court;

b) a schedule showing the location, title and account number of every bank account designated as an IOLTA, client, trust or other fiduciary account and of every account in which the lawyer holds or held as of the entry date of this Order any client, trust or fiduciary funds;

c) a schedule describing the lawyer's disposition of all client and fiduciary funds in the lawyer's possession, custody or control as of the entry date of this Order or

thereafter;

d) such proof of the proper distribution of such funds and the closing of such accounts as has been requested by the bar counsel, including copies of checks and other instruments;

e) a list of all other state, federal and administrative jurisdictions to which the lawyer is admitted to practice;

f) the residence or other street address where communications to the lawyer may thereafter be directed; and

g) any and all bar registration cards issued to the lawyer by the Board of Bar Overseers.

The lawyer shall retain copies of all notices sent and shall maintain complete records of the steps taken to comply with the notice requirements of S.J.C. Rule 4:01, § 17.

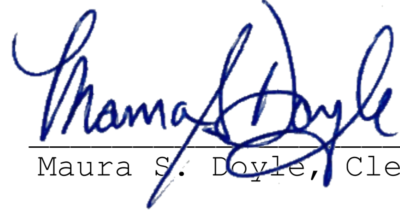
4. Within twenty-one (21) days after the entry date of this Order, the lawyer shall file with the Clerk of the Supreme Judicial Court for Suffolk County:

a) a copy of the affidavit of compliance required by paragraph 3 of this Order;

b) a list of all other state, federal and administrative jurisdictions to which the lawyer is admitted to practice; and

c) the residence or other street address where communications to the lawyer may thereafter be directed.

By the Court, (Georges J.)



Maura S. Doyle, Clerk

Dated: July 8, 2024

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPREME JUDICIAL COURT
FOR SUFFOLK COUNTY
NO: BD-2023-0108

IN RE: JAMES A. MCLAUGHLIN

MEMORANDUM OF DECISION

This matter came before me on an Information filed by bar counsel concerning attorney James A. McLaughlin. The charges contained within the Information stem from McLaughlin's conduct in the course of representing Cheryl Bullock, and later, the personal representative of Bullock's estate. I held a hearing on this matter on January 17, 2024, and invited the parties to submit post-hearing briefing. For the reasons that follow, and after having thoroughly reviewed the record before me, I conclude that McLaughlin should be suspended from the practice of law for three months.

Procedural background.

On June 29, 2021, bar counsel filed a two-count petition for discipline with the Board of Bar Overseers (board) against McLaughlin. Count one alleged that McLaughlin failed to communicate, in writing, the scope of his representation or the rate or basis of the fee to be charged to Bullock, in violation of Mass. R. Prof. C. 1.5 (b). Count one further alleged that McLaughlin failed to diligently represent Bullock, in violation of Mass. R. Prof. C. 1.3, failed to carry out her lawful instructions regarding a property in Scituate, in violation of Mass. R. Prof. C. 1.2 (a), and failed to adequately communicate with and advise Bullock of the steps necessary to devise this property in accord with her wishes, in violation of Mass. R. Prof. C. 1.4 (a)(2) and

(b). Count two alleged that McLaughlin provided representation to the personal representative of Bullock's estate, notwithstanding his own conflict of interest, in violation of Mass. R. Prof. C. 1.7 (a)(2) and (b). Count two also alleged that McLaughlin failed to explain the matter to the extent reasonably necessary to permit the personal representative to make informed decisions regarding her representation by McLaughlin, in violation of Rule 1.4 (b).

A hearing committee of the Board of Bar Overseers (board) held a three-day evidentiary hearing on this matter in 2022, at which McLaughlin was represented by counsel. In closing arguments, bar counsel recommended a nine-month suspension, but later revised this recommendation downward to a three-month suspension in bar counsel's post-hearing filing. The hearing committee subsequently issued a report in which it made detailed findings of fact, including specific credibility determinations, and concluded that bar counsel had proved each of the charged violations. The hearing committee further found that there were no factors in mitigation of McLaughlin's misconduct and several factors in aggravation. These aggravating factors included McLaughlin's prior discipline, his apparent lack of remorse or understanding of the nature of his misconduct, and his lack of candor, as well as the harm that resulted from his misconduct and the vulnerability of the client harmed. Based on these findings, the hearing committee recommended that McLaughlin be suspended from the practice of law for six months.

Thereafter, McLaughlin appealed to the board. On appeal, bar counsel advocated for the hearing committee's recommendation of a six-month suspension. In a memorandum issued on October 10, 2023, the board unanimously affirmed the hearing committee's findings and legal conclusions, but disagreed as to the appropriate sanction. A majority of the board recommended that McLaughlin be suspended for three months, while three dissenting members asserted that a six-month suspension was more appropriate. Thereafter, bar counsel filed the Information and record of proceedings in this court.

Facts.

Pursuant to S.J.C. Rule 4.01, § 8 (6), "subsidiary facts found by the Board and contained in its report filed with the Information shall be upheld if supported by substantial evidence, upon consideration of the record, or such portions as may be cited by the parties." In making this assessment, I "review the entire record and consider whatever detracts from the weight of the board's conclusion," but will not disturb findings supported by substantial evidence, "even if [I] would have come to a different conclusion if considering the matter de novo." Matter of Segal, 430 Mass. 359, 364 (1999). Within this context, "'[s]ubstantial evidence' means such evidence as a reasonable mind might accept as adequate to support a conclusion." Id., quoting G. L. c. 30A, § 1 (6). Moreover, the hearing committee is "the sole judge of the credibility of the witnesses" who testified at the hearing, and its "credibility determinations will not be rejected unless it can be said with certainty that a finding was wholly inconsistent with another implicit finding" (quotations, brackets, and citations omitted). Matter of Murray, 455 Mass. 872, 880 (2010). As discussed supra, the board adopted the hearing committee's findings of fact. After carefully reviewing the record, I conclude that most, but not all, of those findings are supported by substantial evidence.

a. Background preceding respondent's misconduct.

The respondent's representation of Cheryl Bullock arose out of issues concerning a beach-front property in Scituate (Scituate Property or Property). Bullock had inherited the Property from her mother, who died testate in 1999. The mother's will named Bullock as the personal representative and beneficiary of the entire estate, including the Scituate Property. However, the mother's will was not probated in the years following her death. Thus, while ownership of the Scituate Property passed to Bullock in 1999, that change in ownership was

never formally recorded, and Bullock's late-mother remained the record owner of the Property.

In August 2014, Bullock was diagnosed with terminal pancreatic cancer at the age of fifty-three. Shortly thereafter, she drafted her own will. The terms of the will bequeathed various assets to certain named beneficiaries and provided for the residue of Bullock's estate to be divided equally among four charities. Bullock wanted close family friends, the McNeils, to inherit the Scituate Property upon her own death, and her will specified that Michael and Deborah McNeil were to inherit Bullock's personal belongings within the Property. The will was silent as to the Scituate Property itself, however, as Bullock wished to place the Property into a trust (McGrail Family Trust II) that she had established, which named members of the McNeil family as beneficiaries.

Bullock could not transfer title for the Scituate Property into McGrail Family Trust II until she became the record owner of the Property. In order to accomplish this, Bullock needed to probate her mother's will. The Scituate Property was also "registered land," a legal status that imposes additional prerequisites to transferring title. As a result, once Bullock's mother's will was admitted to probate and the estate inventory filed in the Probate Court, she would need to file a Subsequent Complaint for Certificate after Death (S-Petition) in the Land Court, along with certified copies of filings from the probate matter. The Land Court would then need to allow the S-Petition and issue a new certificate of title for the Scituate Property in Bullock's name. At that point, Bullock would become the record owner of the Scituate Property, and thus able to convey the deed for the Property to McGrail Family Trust II. As detailed below, Bullock hired the respondent to complete these sequential legal maneuvers.

b. <u>Respondent's representation of Bullock</u>.

On March 26, 2015, Bullock retained McLaughlin and informed him of her cancer

diagnosis. Although McLaughlin did not draft an engagement letter, the hearing committee found that he was hired for the purpose of completing the above-mentioned tasks, i.e., (1) probating Bullock's mother's will, (2) transferring title to the Scituate Property into Bullock's name, and (3) placing the Scituate Property into trust. This finding is amply supported by substantial evidence. McLaughlin does not dispute that he was hired to complete the first two tasks, and Bullock sent him a memorandum on March 30, 2015, that explicitly referenced her desire to have the third task (i.e., placing the Scituate Property into trust) completed as well. In the memorandum, Bullock identified McGrail Family Trust II as "the trust that I want the [Scituate Property] to be transferred into," attached documentation on the trust, and informed McLaughlin that the trust had never been recorded. Indeed, despite McLaughlin characterizing this as "additional work" beyond what Bullock had discussed at their initial meeting (an assertion that the hearing committed discredited), he went on to concede, "I never had a conversation with [Bullock] about retaining me separate [sic] for the trust. I just thought I would do it." During his testimony, McLaughlin also acknowledged that Bullock was relying on him to transfer the Scituate Property into trust for the benefit of the McNeils.

At the time of their first meeting, Bullock believed that a prior attorney had previously begun, but never finished, the probating of her mother's will. Upon visiting the Middlesex Probate and Family Court (Middlesex Probate Court), however, McLaughlin was unable to find any record of a previous probate petition being filed. He proceeded to file a Petition for Formal Probate of the mother's estate (original probate petition) himself. McLaughlin attached a copy of the mother's will to the petition, as the original will could not be located. In filling out the petition form, McLaughlin initially checked certain boxes that he later blacked out, including a checkbox indicating that a personal representative had already been appointed, and one stating that the original will was in the possession of the court or accompanied the petition.

McLaughlin submitted this filing to the Middlesex Probate Court on March 30, 2015. At the time, he was aware that the Middlesex Probate Court was short-staffed and that delays were not unusual.

In late June, McLaughlin prepared the S-Petition for the Plymouth Land Court and sent it to Bullock for her signature, in anticipation of the probate petition being allowed. However, in a letter dated August 12, 2015, McLaughlin was informed that the probate petition had been rejected.[1] The letter did not specify the reason for the rejection, beyond observing that a petition may be rejected where the "case require[s] additional information," and noting that the Middlesex Probate Court could not "reach out on an individual basis" to identify any such deficiencies due to staffing shortages. Shortly thereafter, McLaughlin visited the Middlesex Probate Court to inquiry as to the reason for the rejection. He spoke with a clerk who told him to submit an affidavit from Bullock to authenticate the copy of the will that McLaughlin had filed, along with a motion to amend the original probate petition.[2] At the time McLaughlin

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[1] The Board's memorandum of decision contains an assertion that "the record contains no evidence of work by the respondent in the probate court" between the time he filed the original probate petition on March 30th and the letter of rejection on August 12th. This is not stated as a factual finding, but mentioned in the board's legal conclusions concerning Count One. Nonetheless, I note that such a finding would not be supported by substantial evidence because the record does contain evidence of some minimal activity by McLaughlin in this period — specifically, McLaughlin's submission of the Return of Citation to the Middlesex Probate Court in April 2015; a handwritten billing slip, dated June 24, 2015, that states McLaughlin "[c]heck[ed] with clerk at Middlesex Probate re allowance of will"; a handwritten billing slip, dated July, 31, 2015, that references McLaughlin's "discussion with Probate Clerk re: allowance of will"; and an email from McLaughlin to Bullock on August 3, 2015, referencing the aforementioned July 31st discussion.

[2] The board went on to characterize McLaughlin's omission of an authenticating affidavit from the original probate petition as a failure to comply with the Massachusetts Uniform Probate Court (MUPC). The board principally relied upon a secondary source, 21 Mass. Prac., Probate Law and Practice, § 22:23 (3d ed), which references pre-MUPC common law as to lost wills, in support of this characterization. Given that the respondent was not charged with a violation of Mass. R. Prof. C. 1.1 (competence), and that the hearing committee did not formally consider the charge, either on the merits or in aggravation, I need not consider the basis or accuracy of this

received these instructions, and as indicated, he was aware that delays in the Middlesex Probate Court were not unusual and that his client was suffering from terminal cancer. However, as detailed below, he did not act with alacrity to follow the instructions he received from the clerk.

After the original probate petition was rejected, Bullock sent the first in a series of emails to McLaughlin about her deteriorating health, and the increased urgency of completing the title transfer before her death.[3] Specifically, on September 14, 2015, she asked for a status update on the probate process, noting that she "remain[ed] very sick" and that, "[a]s you know I am anxious to finalize this." Despite this urgent plea, McLaughlin did not send Bullock an affidavit to sign until the end of September, a full month and a half later, and two weeks after receiving Bullock's email. Moreover, he told Bullock that signing the affidavit "should finalize the probate process," without apprising her that further delay may well be possible. Indeed, as Bullock's health continued to decline over the ensuing months, McLaughlin failed to inform her that it might not be possible to complete the transfer of the Scituate Property into trust before her death, or to suggest alternative options for conveying the Property for the benefit of the McNeils.[4]

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characterization by the board.

[3] The board's memorandum states that "[t]he record contains not a scintilla of evidence that the respondent replied to any of his dying client's desperate communications." This finding is not supported by substantial evidence; as the board's memorandum elsewhere recognizes, McLaughlin responded to some, though certainly not all, of Bullock's emails.

[4] Although McLaughlin contends that he did advise Bullock that she could leave the Scituate Property to the McNeils in her will, there was substantial evidence to support the board's finding that he did not do so. As an initial matter, the hearing committee discredited McLaughlin's testimony on this point, and there was nothing else in the record supporting his claim. See Matter of Zankowski, 487 Mass. 140, 147 (2021); Matter of Daniels, 23 Mass. Att'y Disc. R. 102, 113 (2007) (respondent's argument as to sufficiency of evidence "fails to the extent it relies on her own testimony, which the committee was not required to credit even if uncontradicted"). More to the point, this was "not a case in which the hearing committee's findings rested on mere disbelief of the respondent's testimony." Zankowski, supra at 148.

On the morning of October 6, 2015, Bullock emailed McLaughlin again, stating that he should have received her signed affidavit the day before, and informing him that she had landed back in the hospital. Bullock's email went on to ask, "[c]an this paperwork be fast tracked in any way so we can get to land court? Whatever you can do to finalize ASAP would be wonderful." Bullock also requested that McLaughlin "keep [her] updated" as to the status. McLaughlin responded that he would "take care of it," without elaborating further. He waited another three days, until the end of the week, to file the motion to amend, along with a revised Petition for Formal Probate (revised probate petition) and Bullock's signed affidavit, in Middlesex Probate Court. On October 29, 2015, Bullock sent McLaughlin an email reflecting that she had not received further status updates and wished to know how much work remained. Bullock asked "[w]hat is going on with probate process and land court[?] I signed affidavits weeks ago," and emphasized that "[t]his all needs to get resolved immediately" because she could not "hold on much longer."

McLaughlin responded the following day, on Friday, October 30th, tersely stating that he "checked with the [probate] court again on Thursday" and would "follow up again." He did not acknowledge Bullock's question about the pending work to be completed in the Land Court. Bullock sent a reply stating that "[t]his is taking way to [sic] long based on our original meetings in March. You said three months and it has been 7-8 [months]. I know stuff if [sic] out [of] your hands but I am loosing [sic] steam quick and have been through the ringer. Please please finalize today." As previously indicated, numerous additional steps were necessary to "finalize" the transfer of the Scituate Property into trust, even after the probate process was completed.

Rather, as outlined below, Bullock sent McLaughlin a series of increasingly urgent messages that plainly support the finding that she was not advised of other options, or even made aware that she needed to consider alternatives, to ensure that the Scituate Property was conveyed for the benefit of the McNeils before her death.

Yet McLaughlin did not reply to Bullock's email to clarify that the transfer could not be finalized that day, let alone to inform her that it may not be possible to complete these additional steps before her death. Indeed, he did not reply at all.

After nearly three more weeks of inactivity from the Middlesex Probate Court, Bullock emailed McLaughlin again on November 18, 2015. She stated that she had "been in the hospital and rehab for 3 weeks now and counting," and went on to ask, "[c]an't you explain to the court how sick I am????? What is the time frame to finalize? Can't you push this more? am [sic] beyond aggravated with this situation as I am so sick." McLaughlin testified that this email "prompted [him] to go in [to Middlesex Probate Court] two days later and get the will allowed." Specifically, he met with the assistant judicial case manager, whom he had known for many years, and reviewed the file with her on November 20, 2015. The assistant judicial case manager reportedly asked McLaughlin to add language to his motion to amend, and indicated that the will would be admitted to probate that day.

Later that morning, McLaughlin informed Bullock that the probate petition had been allowed. As discussed, in order to transfer title for the Scituate Property into trust, McLaughlin still needed to wait for the issuance of a probate inventory form and file the estate inventory, obtain certified copies of various filings from the Middlesex Probate Court, file the S-Petition in the Land Court, wait for the Land Court to issue a new certificate of title, arrange for Bullock to sign a deed conveying the Scituate Property to McGrail Family Trust II, and record the trust. Yet, despite the amount of work remaining and his awareness of Bullock's rapidly declining health, McLaughlin again failed to inform her that it may not be possible to complete all of these sequential tasks before her death. To the contrary, upon informing Bullock that her mother's will had been admitted to probate, McLaughlin stated that he would "receive the [probate] court documents next week and immediately file with the land court to change the deed. It should be

very quick to change the title."

On December 14, 2015, Bullock emailed McLaughlin once again, telling him that she was "fading quickly and have basically 24 hour care now." She went on to ask whether the Land Court had allowed the S-Petition yet, and whether she needed to sign "quit claim stuff," urging McLaughlin, "I need this finalized like last week… I can't leave a mess for my friend. What is [sic] status? Please let [sic] make sure everything is wrapped up and into the trust . . . Overnight anything to me.. Please let's put this to bed! Please respond ASAP!!!!" McLaughlin did not immediately respond, but filed the estate inventory in the Middlesex Probate Court a few days later, followed by the S-Petition in the Land Court. On December 21, 2014, a full week after receiving Bullock's urgent email, McLaughlin finally chose to reply. Once again, McLaughlin failed to advise Bullock of the unlikelihood of being able to complete the remaining steps necessary to place the Scituate Property into trust before her death. To the contrary, McLaughlin stated that "[e]verything has been filed with the Land court. I believe that we are done." By telling Bullock that he believed they were "done," McLaughlin falsely implied that the process was complete, and that she would not need to sign a deed to convey the Scituate Property to the trust, or have the trust recorded, once the S-Petition was allowed.

Bullock responded immediately, asking "[w]hen will we know for sure??? And when will it be out tiny [sic] trust for Mike and Deb McNeil?" McLaughlin never replied. Two and a half weeks later, on January 7, 2016, Bullock passed away. The S-Petition would not be acted upon until March 24, 2016, when the Land Court (unaware of Bullock's death) ordered the issuance of a new certificate of title in Bullock's name. Because the S-Petition was not allowed before Bullock's death, title to the Scituate Property was never properly transferred to her name. Further still, because Bullock was not able to convey the Scituate Property to McGrail Family Trust II before her death, the Property fell within the residue of her estate. As a result, the

Scituate Property was designated for distribution to the four charities named as residuary beneficiaries in Bullock's will, rather than the McNeils.

c. Respondent's representation of personal representative of Bullock's estate.

Following Bullock's death, the person who had been designated as the personal representative of her estate, Lisa Wyman, contacted McLaughlin and asked that he represent her in that capacity. McLaughlin agreed, and filed Bullock's will for formal probate in July 2016. Wyman, a friend of Bullock, was aware that Bullock had intended to devise the Scituate Property to the McNeils. McLaughlin informed Wyman that the Scituate Property would instead pass to the residuary beneficiaries named in Bullock's will, rather than the McNeils, but omitted any mention of a possible error on his part. Rather, upon meeting with Wyman, McLaughlin noted that "there was a problem with the drafting of the Will," and advised her that "the Will was insufficient to transfer the Scituate [Property]."

On September 22, 2016, Deborah and Michael McNeil each filed an affidavit of objections to the petition for formal probate of Bullock's will. In their affidavits, the McNeils explicitly stated that Bullock had instructed McLaughlin to transfer title to the Scituate Property into trust, and that he had failed to do so before her death. Additionally, on December 1, 2016, the McNeils filed a complaint in equity in the Plymouth Probate & Family Court (Plymouth Probate Court) against Wyman, in her capacity as personal representative of Bullock's estate. The complaint sought to impose a constructive trust on the Scituate Property, as well as a declaration that the Property belonged to McGrail Family Trust II. McLaughlin filed an answer to the equity complaint on behalf of Bullock's estate.

The hearing committee found that there was a significant risk that McLaughlin's representation of Bullock's estate would be materially limited by his own personal interest in

minimizing his responsibility for failing to effectuate the transfer of the Scituate Property into trust. This finding is amply supported by the record. The McNeils' affidavits go into great detail about McLaughlin's representation of Bullock, and include quotes from the above-referenced emails that starkly illustrate McLaughlin's failure to adequately communicate with Bullock, as well as his affirmative misrepresentations about the status of the Scituate Property. In these circumstances, where McLaughlin's conduct was directly placed at issue, it is readily apparent that his own personal interests would materially limit his ability to represent the personal representative of Bullock's estate. Indeed, this is borne out by the various steps McLaughlin took to minimize his role in the failed transfer from others, including Wyman. Notably, McLaughlin chose not to inform Wyman when he received a letter from the McNeils' attorney that pointed out the conflict of interest, noted his status as a potential witness in the equity complaint case, and threatened him with a malpractice complaint. Additionally, when McLaughlin informed the four residuary beneficiaries of the McNeils' affidavits of objections, he falsely stated that the basis for the McNeils' objections was an allegation that Bullock's will "contains an error." To the contrary, the McNeils alleged that Bullock intentionally omitted the Scituate Property from the will, that she had intended to convey the Property to McGrail Family Trust II, and that McLaughlin had failed to accomplish that task before her death. Yet McLaughlin failed to disclose any of the allegations concerning his own conduct in his letter to the residuary beneficiaries.

The four residuary beneficiaries ultimately reached a settlement agreement with the McNeils, wherein the McNeils agreed to pay the charities $106,500 to purchase the Scituate Property. In June 2018, Wyman terminated McLaughlin, who charged Bullock's estate at least $29,069 in legal fees, including for time spent defending Bullock's estate against the McNeils. For their part, the McNeils brought a lawsuit for legal malpractice against McLaughlin, and the

case was settled for approximately $40,000. Wyman filed a malpractice suit against McLaughlin as well, on behalf of Bullock's estate, though the case had not yet been resolved as of the filing of bar counsel's petition.[5]

Violations of the Rules of Professional Conduct.

Based on the foregoing facts, the hearing committee and the board each determined that bar counsel had proven that McLaughlin violated numerous Rules of Professional Conduct as charged in the petition. I agree with that assessment, as follows.

As to Count One, McLaughlin violated Rule 1.5(b)[6] by failing to provide Bullock with a fee agreement, or otherwise communicate to her, in writing, the scope of his representation and the basis or rate of the fee to be charged. Indeed, McLaughlin's violation of this rule is perhaps best illustrated by his efforts to dispute the scope of his representation before the hearing committee and on appeal. Had McLaughlin memorialized this information in writing, as required by Rule 1.5(b), it is unlikely that the issue would have become such a point of contention.

Also as to Count One, McLaughlin violated Rule 1.4(a)(2)[7] and (b)[8] by failing to reasonably and adequately communicate and consult with Bullock about the means of achieving

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[5] The board's memorandum of decision misstates that Wyman's lawsuit "is pending," rather than what the hearing committee actually found — that the lawsuit was pending as of the date of McLaughlin's answer to the petition for discipline.

[6] In relevant part, "Except as provided in paragraph (b)(2), the scope of the representation and the basis or rate of the fee and expenses for which the client will be responsible shall be communicated to the client in writing before or within a reasonable time after commencing the representation . . . ."

[7] In relevant part, "A lawyer shall . . . reasonably consult with the client about the means by which the client's objectives are to be accomplished . . . ."

[8] "A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation."

her objective, and violated Rule 1.2(a)[9] by failing to seek that objective through reasonably available means. While McLaughlin emphasizes that he was not retained to revise Bullock's will, he was retained for the purpose of conveying the Scituate Property for the benefit of the McNeils. Though Bullock wished to accomplish this objective through specific means (i.e., by placing the Scituate Property into trust), McLaughlin was required to adequately inform her as to the status and feasibility of achieving her objective through those means. Rule 1.4, comment [3], [5]. Further, as Rule 1.2 recognizes, a client will normally defer to her lawyer's "special knowledge and skill" about the appropriate means to accomplish her objective. Rule 1.2, comment [2]. Thus, when it appeared unlikely that the original plan of placing the Scituate Property into trust could be completed before Bullock succumb to her cancer, McLaughlin had a duty to explore other legal options, such as by devising the Property through Bullock's will. Yet McLaughlin did not explore other options, let alone present them for Bullock's consideration. Indeed, McLaughlin did not adequately communicate with Bullock even as to the status of accomplishing her objective through the original plan. As detailed supra, he ignored multiple emails from Bullock requesting updates, and went so far as to deliberately mislead her about the status and work remaining. Most notably, in response to Bullock's December 14th email asking whether she still needed to sign a quitclaim deed to place the Scituate Property into trust, McLaughlin falsely asserted, "I believe that we are done," despite knowing that title had not been transferred into trust, and that a deed would be necessary to effectuate such a transfer.

Finally, as to Count One, McLaughlin also violated Rule 1.3[10] through his course of

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[9] In relevant part, "A lawyer shall seek the lawful objectives of his or her client through reasonably available means permitted by law and these Rules."

[10] "A lawyer shall act with reasonable diligence and promptness in representing a client.

conduct following the notice of rejection from the Middlesex Probate Court in August 2015. It took McLaughlin nearly two months to file a motion to amend the original probate petition, notwithstanding the fact that preparing the filing involved a minimal amount of work, or that time was of the essence in light of his client's terminal diagnosis. Even then, that motion remained pending for another six weeks; all the while, Bullock continued to send McLaughlin increasingly desperate emails about her deteriorating health and the urgency of finalizing the transfer of the Scituate Property. It was only Bullock's November 18th email (containing yet another urgent plea) that finally, in McLaughlin's own words, "prompted [him] to go in [to the Middlesex Probate Court] two days later and get the will allowed," by speaking with the assistant judicial case manager. McLaughlin did not take this step until more than three months had passed since the rejection of the original probate petition. Nor did he explore other options in the interim to achieve Bullock's objectives, despite the increasing likelihood that Bullock would pass away before the S-Petition could be filed and allowed. Given his client's impending death, McLaughlin's dilatory behavior and inaction plainly constituted a failure to act with reasonable diligence and promptness in representing Bullock. See Rule 1.3 comment [1], [3].[11]

As to Count Two, McLaughlin violated Rule 1.7(a)[12] by providing representation to Wyman, the personal representative of Bullock's estate, despite a significant risk that such

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The lawyer should represent a client zealously within the bounds of the law."

[11] Because I conclude that bar counsel proved this charge on the basis of McLaughlin's conduct following the rejection of the original probate petition, I do not address whether his failure to do more in the months preceding that rejection violated Rule 1.3 as well. See Matter of Shaughnessy, 21 Mass. Att'y Disc. R. 588, 589 (2005).

[12] In relevant part, "Except as provided in paragraph (b), a lawyer shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if . . . there is a significant risk that the representation of one or more clients will be materially limited . . . by a personal interest of the lawyer." The citation to Rule 7.1(a) that appears on page twenty-one of the board's memorandum is an apparent typographic error.

representation would be materially limited by McLaughlin's personal interest in minimizing his role in failing to transfer the Scituate Property into trust before Bullock's death. McLaughlin also violated Rule 1.4(b) by failing to inform Wyman of this conflict of interest.

Factors in mitigation and aggravation.

Here, no factors were asserted or found in mitigation of McLaughlin's misconduct. At the same time, the hearing committee properly found several factors in aggravation. First, McLaughlin had substantial experience in the practice of law, having been admitted to the bar in 1977. See Matter of Moran, 479 Mass. 1016, 1022 (2018). Second, McLaughlin was previously admonished in 2017 for entering into a business transaction with clients where he acted as a real estate broker, while simultaneously representing the sellers, in violation of Mass. R. Prof. C. 1.8(a). See Matter of Murray, 455 Mass. 872, 883 (2010).[13] Third, McLaughlin failed to acknowledge the wrongfulness of his misconduct and appeared to lack remorse. See Matter of Moran, supra at 1023. Fourth, McLaughlin's misconduct resulted in harm to the McNeils, who ultimately had to pay $106,500 to obtain the Scituate Property that Bullock intended for them to inherit. See Matter of Pike, 408 Mass. 740, 745 (1990). Fifth, Bullock was a vulnerable client who was dying of cancer. Matter of Moran, supra.[14]

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[13] Contrary to the respondent's contention below, prior discipline need not involve the same misconduct to constitute an aggravating factor. See Matter of Murray, 455 Mass. at 883. Nor must I disregard prior discipline where the underlying misconduct occurred subsequent to the misconduct at issue here. See Matter of Karahalis, 429 Mass. 121, 124 n.5 (1999) (noting that, because primary consideration in bar discipline matters is "the effect on and the perception of the public and the bar[,] . . . it is appropriate to consider the respondent's disciplinary record in determining the appropriate sanction to be imposed without regard to when the infractions occurred").

[14] In addition, the hearing committee found that the discredited portions of McLaughlin's testimony demonstrated a lack of candor, but the board declined to consider this as a factor in aggravation. The hearing committee also indicated that McLaughlin had violated Rule 1.1 (competence), a charge which was not contained within the petition for discipline, and noted that uncharged misconduct may be considered as a factor in aggravation. The hearing committee

Appropriate sanction.

In assessing the appropriate sanction, my review "is de novo, but tempered with substantial deference to the board's recommendation" (citation omitted). Matter of Jackman, 444 Mass. 1013, 1013 (2005). This entails a determination as to whether the recommended "sanction is markedly disparate from those ordinarily entered by the various single justices in similar cases, recognizing that each case must be decided on its own merits and every offending attorney must receive the disposition most appropriate in the circumstances" (quotations, citations, and brackets omitted). Matter of Pudlo, 460 Mass. 400, 404 (2011). Additionally, because the court's "primary concern in bar discipline cases is the effect upon, and perception of, the public and the bar," I must consider "what measure of discipline is necessary to protect the public and deter other attorneys from the same behavior" (quotations and citation omitted). Matter of Laroche-St. Fleur, 490 Mass. 1020, 1023-1024 (2022). Upon reviewing McLaughlin's misconduct and the aggravating factors discussed supra, I agree with the board that a three-month suspension is most appropriate.

Pursuant to Matter of Kane, 13 Mass. Att'y Disc. R. 321 (1997), the appropriate sanction in cases of attorney neglect turns upon whether the neglect caused harm, and whether the neglect spanned multiple matters. Cases of neglect that cause "little or no actual or potential injury to a client or others" generally result in an admonition, absent aggravating and mitigating factors. Id. at 327. By contrast, cases of neglect that cause "serious injury or potentially serious injury to a client or others" typically warrant a public reprimand, and those that further involve "repeated failures to act with reasonable diligence," or "a pattern of neglect," warrant a suspension. Id. at 327-328. That said, I recognize that, in practice, "[a]ttorneys found to have neglected client matters, causing harm to their clients, in conjunction with other misconduct, have received somewhat varying sanctions." Matter of Anderson, 33 Mass. Att'y Disc. R. 8, 11

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went on to clarify, however, that this conclusion did not affect its sanction recommendation.

(2017), and cases cited.

In consideration of the Kane factors, I conclude that a suspension is appropriate. Here, McLaughlin's neglect was limited to a single matter, but his misconduct was not. As detailed above, he not only neglected his duties to Bullock, but also failed to effectuate her wishes or even counsel her on alternative options, resulting in a fair amount of time, expense, and aggravation to the intended beneficiaries of the Scituate Property. See Matter of Lansky, 22 Mass. Att'y Disc. R. 446, 450-451 (2006) (concluding that respondent's neglect and conflict of interest in probate matter required term of suspension where it caused "substantial harm" to estate and beneficiaries). Moreover, a number of the aggravating factors contemplated in Kane are present. See Matter of Kane, 13 Mass. Att'y Disc. R. at 328 (aggravating factors include refusal to acknowledge wrongful nature of conduct and prior discipline). Indeed, McLaughlin's violation of Rule 1.4 (a)(2) and (b), is itself an aggravating factor under Kane, and counsels in favor of imposing a suspension. See id. See also Matter of O'Reilly, 26 Mass. Att'y Disc. R. 470, 475-476 (2010), and cases cited (concluding that "[a] suspension for some period of time for neglect concealed by misrepresentations to the client is the appropriate sanction," where attorney made three separate misrepresentations that "went to the status of the case itself" in violation of Rule 1.4 [a] and [b]).

The appropriate length of suspension presents a somewhat closer question. This case does not implicate the type of severe, additional misconduct that has resulted in terms of suspension approaching or exceeding one year. See, e.g., id. at 476-477 (one-year-and-one-day suspension where respondent engaged in "egregious and pervasive misrepresentations to the client" to conceal neglect, as well as intentional misuse and commingling of client funds without deprivation); Matter of Daniels, 23 Mass. Att'y Disc. R. at 102, 116-117 (nine-month suspension where respondent's neglect and misrepresentations were accompanied by intentional misuse

without deprivation and negligent misuse and commingling of client funds with deprivation); Matter of Anderson, 33 Mass. Att'y Disc. R. 8, 11-12 (2017) (one-year-and-one-day suspension for neglect spanning multiple years, across at least four unrelated client matters, that resulted in significant harm to clients, where respondent did not cooperate, or even respond to bar counsel). However, as the board's split decision demonstrates, respondents who have engaged in more analogous misconduct have received shorter suspensions of varying lengths. See Matter of Brunelle, 29 Mass. Att'y Disc. R. 62, 63-64 (2013) (six-month suspension, stayed for two years on conditions, for repeatedly failing to file responsive pleadings over course of year and failing to keep client accurately informed of case status, where respondent had prior reprimand and misconduct caused client's suit to be dismissed); Matter of Lansky, 22 Mass. Att'y Disc. R. at 446, 449, 451 (six-month suspension for respondent's neglect across two probate matters, where respondent had undisclosed conflict of interest in one matter, and misconduct resulted in tax penalty of over $40,000); Matter of Kydd, 25 Mass. Att'y Disc. R. 341, 341, 345-346 (2009) (three-month suspension, stayed for one year on condition, where respondent engaged in repeated acts of neglect, in single probate matter, resulting in insufficient estate funds to pay taxes owed, and where respondent made misrepresentation to beneficiary); Matter of Hodgdon, 23 Mass. Att'y Disc. R. 295, 298-300 (2007) (three-month suspension, with conditions, for neglect across two matters, where misconduct involved failing to conclude administration of estate, failing to respond to client inquiries or turn over client files, and failing to provide timely accounting and refund retainer balance).

On balance, however, I conclude that a three-month suspension is appropriate in the circumstances of this case. In Matter of Lansky, 22 Mass. Att'y Disc. R. at 446-447, 449, 451, a single justice determined that a six-month suspension was appropriate where the respondent's neglect and conflict of interest in one estate matter spanned an eight-year period, harmed estate

and beneficiaries, and was accompanied by neglect in a second estate matter, as well as a violation of Rule 1.15(e) (trust account violations). Here, while the respondent's misconduct undoubtedly resulted in harm to the McNeils, his neglect was more limited in duration and did not involve a failure to deposit client funds. At the same time, I recognize that while this case is somewhat similar to Matter of Kydd, 25 Mass. Att'y Disc. R. at 341, which also involved repeated instances of neglect in a probate matter, along with misrepresentation to an estate beneficiary, it features none of the mitigating factors that were present there. See id. at 341, 343, 345 (concluding that misconduct was "on the borderline to that which might be appropriately sanctioned by a public reprimand" where misconduct was result of inexperience in probate law, beneficiaries were not harmed, and respondent used personal funds to satisfy unpaid taxes of estate). However, Matter of Kydd did not result in an outright suspension of three months. Rather, the single justice concluded that a stay of the respondent's suspension for a period of one year, conditioned upon the closure of a Federal tax matter that arose from the respondent's neglect, was warranted. See id. at 346. In so ruling, the single justice observed that, absent such mitigating factors, an outright suspension of three months would likely have been appropriate. See id. at 341, 345. Given that no such mitigating factors are present here, I conclude that McLaughlin should be suspended for a period of three months, with no stay of suspension.

Conclusion.

In sum, bar counsel has proven all of the violations charged. For the reasons discussed above, the respondent is suspended from the practice of law for a period of three months.

So ordered.

Serge Georges, Jr.
Serge Georges, Jr.
Associate Justice

Entered: July 8, 2024