

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS.

SUPREME JUDICIAL COURT
FOR SUFFOLK COUNTY
NO: BD-2021-034

IN RE: ERWIN ROSENBERG

JUDGMENT OF DISBARMENT

This matter came before the Court, Gaziano, J., on a Petition for Reciprocal Discipline pursuant to S.J.C. Rule 4:01 § 16 and the orders entered in the Florida Supreme Court filed by the Office of Bar Counsel on May 25, 2021. In accordance with the Memorandum of Decision dated December 8, 2021;

It is ORDERED and ADJUDGED that:

1. ERWIN ROSENBERG is hereby disbarred from the practice of law in the Commonwealth effective immediately upon the entry of this Judgment, and the lawyer's name is forthwith stricken from the Roll of Attorneys.

It is FURTHER ORDERED that:

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

a) file a notice of withdrawal as of the effective date of the disbarment 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 Judgment, the client's or clients' place 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 disbarment 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 Judgment, 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 disbarred; that he is disqualified from acting as a lawyer after the effective date of the disbarment; 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 disbarred and, as a consequence,

is disqualified from acting as a lawyer after the effective date of the disbarment;

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 Judgment, 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 Judgment 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 Judgment 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 Judgment 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 Judgment, 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 Judgment;

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.

The lawyer may not petition for reinstatement to the practice of law in the Commonwealth of Massachusetts until three (3) months prior to the expiration of at least eight (8) years from the effective date of this judgment. Reinstatement to the bar of the Commonwealth of Massachusetts shall not be contingent upon his reinstatement to the Florida bar, or to reinstatement

after reciprocal discipline with respect to that disbarment in any other jurisdiction.

By the Court, (Gaziano, J.)

/s/ Maura S. Doyle

Maura S. Doyle, Clerk

Entered: December 15, 2021

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPREME JUDICIAL COURT
FOR SUFFOLK COUNTY
NO. BD-2021-034

IN RE: ERWIN ROSENBERG

MEMORANDUM OF DECISION

This matter came before me on bar counsel's petition for reciprocal discipline pursuant to S.J.C. Rule 4:01, § 16, recommending that the respondent be reciprocally disbarred from the practice of law in the Commonwealth. In May of 2015, the respondent was suspended from the practice of law in Florida for one year, with conditions for reinstatement, after he repeatedly did not comply with court orders to produce documents, raised objections which already had been overruled, and refused to pay attorney's fees that he had been ordered to pay. In April of 2016, the respondent was held in contempt of the suspension order for continuing to practice law while suspended, and subsequently was disbarred for that reason. In June of 2017, the respondent was held in contempt of the disbarment order, because he had been continuing to practice law while disbarred. Consequently, the disbarment was ordered to be permanent. The

respondent did not notify bar counsel or the Board of Bar Overseers of the suspension and disbarment orders within ten days of their issuance, in violation of S.J.C. Rule 4:01, § 16(6).

In response to bar counsel's petition for reciprocal discipline, the respondent argued, inter alia, that the imposition of reciprocal discipline would violate Federal antitrust law and the First Amendment to the United States Constitution. The respondent pursued these arguments at a hearing before me on October 12, 2021, and in multiple documents filed after the hearing, with respect to these proceedings and related proceedings in New York concerning the respondent's license to practice in that State. Having carefully considered the record, the parties' filings, and the arguments at the hearing, I conclude that the appropriate discipline in this case is that the respondent be disbarred from the practice of law in the Commonwealth.

1. Background and disciplinary proceedings in Florida. In 1997, the respondent was admitted to the practice of law in the Commonwealth. In 1999, he also was admitted to the practice of law in Florida. The facts of the disciplinary actions in Florida are taken from decisions of the Florida Supreme Court.

The disciplinary proceedings against the respondent in Florida resulted in three Florida Supreme Court orders of

escalating severity, including a 2015 order of suspension, a 2016 order of disbarment, and a 2017 order of permanent disbarment.

On May 28, 2015, the Florida Supreme Court suspended the respondent from the practice of law in Florida for one year, with reinstatement dependent upon a number of conditions.¹ The suspension was ordered following disciplinary proceedings initiated because of the respondent's refusal to comply with multiple court orders to produce documents while he was representing several defendant businesses from March 2006 through July 2007; the initial discovery requests had been made before the respondent began representation in the case. As a result of the respondent's repeated noncompliance after numerous motions, oppositions, hearings, and repeated orders to produce the requested discovery, in June of 2007, a Florida circuit court judge sanctioned the defendants (the respondent's clients). At a hearing on a motion to compel in July of 2007, the judge granted the plaintiffs' sixth motion to compel production; the court also ordered an evidentiary hearing to consider whether the respondent had engaged in bad faith conduct

¹ These conditions included addressing what the referee described as "whatever underlying psychological or emotional issues may exist which appear to interfere with [the respondent's] ability to objectively evaluate facts, precedents, and court orders," and paying the sanctions imposed by the court for the respondent's refusal to comply with certain discovery orders.

deserving of sanctions. On July 30, 2007, the respondent withdrew as counsel for the defendants.

At an evidentiary hearing in August of 2007 on a circuit court judge's order that the respondent show cause why he should not be sanctioned for bad faith conduct, the respondent declined to testify on his own behalf, but the plaintiffs called him as an adverse witness. On September 14, 2007, the motion judge concluded that the respondent had engaged in bad faith conduct; the judge emphasized that "[t]he most egregious bad faith action which [the respondent] committed was re-stating . . . the same objections which this Court already had overruled, without [the respondent] taking any further action to comply with Plaintiffs' requests for production or with this Court's orders." The judge then ordered the respondent to pay the plaintiffs' attorney's fees for the costs of all of the motions to compel after the respondent appeared in the case. The Fourth District Court of Appeals affirmed the order. Throughout the course of the subsequent disciplinary proceedings, the respondent continued not to pay any of the attorney's fees awarded.

In October of 2013, the Florida Bar filed a complaint against the respondent, alleging that he engaged in misconduct under the Rules Regulating the Florida Bar. The respondent filed a motion for summary judgment; the Florida Bar filed a response in opposition and a cross-motion for summary judgment.

The referee² considered these filings and granted the Bar's cross-motion for summary judgment. The referee then recommended that the Florida Supreme Court find the respondent had engaged in three violations of the Rules Regulating the Florida Bar, including Rule 4-1.1 (a lawyer shall provide competent representation to a client); Rule 4-3.4(d) (a lawyer shall not in pretrial procedure intentionally fail to comply with legally proper discovery request by opposing party); and Rule 4-8.4(d) (a lawyer shall not engage in conduct in connection with practice of law that is prejudicial to administration of justice).

After weighing both aggravating and mitigating factors,³ the referee recommended a ninety-one-day suspension, with conditions for reinstatement;⁴ the Florida Supreme Court agreed with the

² Florida county and circuit court judges serve as "referees," and preside over disciplinary actions in Florida, making findings and then recommending sanctions to the Florida Supreme Court.

³ In aggravation, the referee noted the respondent's multiple offenses and multiple instances of the same offense; his refusal to acknowledge the wrongful nature of his conduct; his substantial experience in the practice of law; and his failure to pay any portion of the attorney's fees awarded. In mitigation, the respondent had no prior disciplinary history and already had been given a monetary sanction for his bad faith conduct.

⁴ The two conditions were demonstrating rehabilitation by addressing the "psychological or emotional issues" noted in the first referee's disciplinary order, and paying the sanctions imposed by the circuit court judge in his September 2007 order.

referee as to the violations and the conditions of reinstatement, but imposed a one-year suspension. In increasing the harshness of the sanction so significantly, the court commented that, "the Court has moved toward imposing stronger sanctions for unethical and unprofessional conduct."

On December 3, 2015, the Florida Bar filed a petition for contempt and an order to show cause, alleging that the respondent had not notified his clients of his suspension, and was continuing to represent clients in Florida in violation of the order of suspension. The respondent did not respond to the allegations, and, on April 15, 2016, the Florida Supreme Court held the respondent in contempt and disbarred him from the practice of law in Florida; under Florida's disciplinary rules, an attorney who has been disbarred may seek readmission to the bar after a minimum period of five years, unless the court orders a longer period before the attorney may seek readmission, or orders permanent disbarment. On June 12, 2017, the Florida Bar filed a petition for contempt and order to show cause, alleging that the respondent had continued to practice law despite the order of disbarment. The respondent again did not respond, and, on September 25, 2017, the Florida Supreme Court held the respondent in contempt of the disbarment order and ordered that his disbarment be made permanent.

2. Disciplinary proceedings in Massachusetts.

On May 25, 2021, bar counsel filed a petition for reciprocal discipline pursuant to S.J.C. Rule 4:01, § 16, recommending that the respondent be disbarred from the practice of law in the Commonwealth. Since bar counsel commenced the petition, the respondent has filed a number of motions arguing, inter alia, that the imposition of reciprocal discipline violates Federal antitrust law and the First Amendment.

"A final adjudication in another jurisdiction that a lawyer has been guilty of misconduct . . . may be treated as establishing the misconduct for purposes of a disciplinary proceeding in the Commonwealth." S.J.C. Rule 4:01, § 16(5).

"The judgment of suspension or disbarment shall be conclusive evidence of the misconduct unless . . . the procedure in the other jurisdiction did not provide reasonable notice or opportunity to be heard or there was significant infirmity of proof establishing the misconduct." S.J.C. Rule 4:02, § 16(3).

Although he did not respond to the motions for contempt that resulted in his disbarment and subsequently his permanent disbarment, the respondent does not argue that the Florida Supreme Court failed to provide him with reasonable notice or that he lacked the opportunity to be heard. The respondent also does not challenge any of the asserted actions or the discipline imposed based on the merits of that misconduct. Accordingly, I accept the judgments of suspension and disbarment as conclusive

evidence of the respondent's misconduct in Florida. Thus, the remaining question before me is the appropriate sanction to be imposed in Massachusetts.

For the reasons set forth below, I conclude that the respondent's Federal claims are unavailing, and disbarment in Massachusetts is the appropriate sanction in this case. Accordingly, a judgement shall enter disbarring the respondent from the practice of law in the Commonwealth.

3. Appropriate sanction. This court "generally give[s] effect to the disciplinary decisions of another jurisdiction without undertaking the often difficult and protracted task of redoing the inquiry which has already been concluded there." Matter of Lebbos, 423 Mass. 753, 755 (1996), cert denied, 520 U.S. 1275 (1997). Reciprocal discipline, however, is not automatic. Id. I "may impose the identical discipline unless (a) the imposition of the same discipline would result in grave injustice; (b) the misconduct established does not justify the same result in this Commonwealth; or (c) the misconduct established is not adequately sanctioned by the same discipline in this Commonwealth." S.J.C. Rule 4:01, § 16(3). The task is "to mete out the sanction appropriate for this jurisdiction," Matter of Steinberg, 488 Mass. 1024, 1025 (2007), such that the sanction "is not markedly disparate from that ordered in comparable cases," Matter of Kersey, 444 Mass. 65, 70 (2005),

regardless whether it "exceeds, equals, or falls short of the discipline imposed in [the other] jurisdiction." Matter of Watt, 430 Mass. 232, 234 (1999).

Here, the Florida Supreme Court issued three disciplinary orders of escalating severity, including an order of suspension, an order of disbarment, and an order of permanent disbarment, all based on the underlying conduct of repeatedly failing to comply with discovery orders and orders to pay attorneys' fees incurred by the respondent's own clients. In addition to the repeated failures to comply, the relevant misconduct includes the defendant's continuing to practice law despite the 2015 order of suspension, and his ongoing refusal to obey court orders by failing to comply with the order of disbarment and instead continuing to practice law in Florida. The respondent does not challenge the referee's findings as to his actions or the specific discipline imposed at each stage of the proceedings in Florida, nor does he suggest an appropriate sanction under the Massachusetts rules of attorney discipline. He does, however, challenge the authority of a single justice of this court to order his disbarment.

The respondent maintains that Federal antitrust law precludes a single justice of this court from ordering his disbarment. While his theory is somewhat unclear, the respondent appears to contend that his exclusion from the legal

profession constitutes a "group boycott" and, therefore, is an unreasonable restraint of trade, in violation of the Sherman Antitrust Act of 1890. Assuming that the respondent has articulated a cognizable antitrust injury, the United States Supreme Court has long recognized that "the regulation of the activities of the bar is at the core of the State's power to protect the public." Bates v. State Bar of Ariz., 433 U.S. 350, 361 (1977). See Goldfarb v. Virginia State Bar, 421 U.S. 773, 792-793 (1975) ("The interest of the States in regulating lawyers is especially great since lawyers are essential to the primary governmental function of administering justice, and have historically been 'officers of the court'"). Indeed, "[t]he Sherman Act makes no mention of the state as such, and gives no hint that it was intended to restrain state action or official state action directed by a state." Parker v. Brown, 317 U.S. 341, 351 (1943).

The authority of a State supreme court to set standards for the legal profession and to discipline attorneys who violate those standards falls squarely within its sovereign power; when the State takes such actions, it is immune from Federal antitrust liability. See Hoover v. Ronwin, 466 U.S. 558, 573 (1984). Thus, such basic measures of attorney discipline as the Commonwealth's highest court imposing reciprocal discipline

pursuant to S.J.C. Rule 4:01, § 16, essential to protecting the public, are not barred by the Sherman Act.

The respondent also argues that the protections of the First Amendment allow him to object to discovery orders and to refuse to notify clients of the imposition of discipline against him. The respondent challenges basic rules of professional conduct which incidentally burden his speech. Under the First Amendment, "States may regulate professional conduct, even though that conduct incidentally involves speech." Nat'l Inst. of Family & Life Advocates v. Becerra, 138 S. Ct. 2361, 2372 (2018). See Planned Parenthood of Se. Pa. v. Casey, 505 U.S. 833, 884-885 (1992). As the United States Supreme Court has recognized, "the State bears a special responsibility for maintaining standards among members of the licensed professions." Ohralik v. Ohio State Bar Ass'n, 436 U.S. 447, 460 (1978).

With respect to the imposition of attorneys' fees for the respondent's clients' costs, the respondent was disciplined because he spent more than one year repeatedly not complying with court orders to produce documents, and raised objections which the motion judge already had overruled. That there were verbal components to the respondent's noncompliance does not shield him from professional discipline. "[I]t has never been deemed an abridgment of freedom of speech or press to make a

course of conduct illegal merely because the conduct was in part initiated, evidenced, or carried out by means of language, either spoken, written, or printed." See id. at 456, quoting Giboney v. Empire Storage & Ice Co., 336 U.S. 490, 502 (1949).

Similarly, the requirement that a suspended attorney must notify his or her clients of the suspension is incidental to the broader scheme of disciplinary suspension, informing clients that the individual they have retained to perform legal services will no longer be authorized to practice law, so that they may obtain successor counsel as needed. Cf. Casey, 505 U.S. at 884-885 (1992) (upholding statute requiring physicians to inform patients about certain medical procedures despite incidental burden on speech). Thus, the respondent's First Amendment claims are unavailing.

Turning to the specifics of the respondent's misconduct in Florida, with respect to the discovery orders and the failure to pay attorneys' fees as ordered, the Florida Supreme Court found the respondent in violation of three of the rules regulating the Florida bar, including Rule 4-1.1 (a lawyer shall provide competent representation to a client); Rule 4-3.4(d) (a lawyer shall not in pretrial procedure intentionally fail to comply with legally proper discovery request by opposing party); and Rule 4-8.4(d) (a lawyer shall not engage in conduct in connection with practice of law that is prejudicial to

administration of justice). The same requirements are present in the Massachusetts rules of professional conduct. See Mass. R. Prof. C. Rule 1.1 (lawyer shall provide competent representation to client); Rule 3.4(d) (lawyer shall not in pretrial procedure fail to comply with legally proper discovery request by opposing party); and Rule 8.4(d) (lawyer shall not engage in conduct in connection with practice of law that is prejudicial to administration of justice).

In comparable cases of repeated noncompliance with discovery orders, the sanction imposed in Massachusetts has been a term suspension. See, e.g., Matter of Martin, 36 Mass. Att'y Discipline Rep. 330, 331-333 (2020) (suspension for one year with six months stayed on conditions where respondent defied court orders and failed to comply with discovery requests); Matter of Rainer, 35 Mass. Att'y Discipline Rep. 494, 495-497 (2019) (suspension for one year and one day where respondent defied discovery orders and failed to comply with orders to pay fees); Matter of Marciello, 21 Mass. Att'y Discipline Rep. 451, 451-454 (2005) (respondent received public reprimand for not responding to discovery requests; in mitigation, respondent was overburdened and offered to compensate injured client).

As to the respondent's disobedience of the order of suspension, in the Commonwealth, the failure to comply with an order of suspension typically would not result in disbarment, as

it did in Florida; rather, the respondent's suspension would be extended by a term of years. See, e.g., Matter of Balser, 36 Mass. Att'y Discipline Rep. 62, 62 (2020) (respondent's suspension was extended four years for contempt of order suspending respondent for period of four years); Matter of Kaplan, 33 Mass. Att'y Discipline Rep. 241, 241-242 (2017) (respondent's suspension extended two years for contempt of two-year order of suspension); Matter of Levine, 20 Mass. Att'y Discipline Rep. 311, 311, 324 (2004) (respondent suspended for four years after being held in contempt for violating two-year order of suspension).

Had the respondent's misconduct ended there, I would not conclude that disbarment was the appropriate sanction in Massachusetts. After his disbarment from the practice of law in Florida, however, the respondent continued flouting the Florida Supreme Court's orders, leading to his permanent disbarment in Florida. Disbarment is "a clear and unequivocal command to the disbarred attorney not to practice law." Matter of McBride, 29 Mass. Att'y Discipline Rep. 440, 442 (2008). Yet the respondent apparently was unwilling or unable to comply with this unequivocal order; he continued representing clients in matters pending in the Florida courts, and held himself out as an attorney, arguing that he had a First Amendment right to do so.

In determining the appropriate sanction in Massachusetts for failure to obey an order of disbarment, and for continuing to hold oneself out as an attorney, I must consider "the effect upon, and perception of, the public and the bar" due to the respondent's misconduct. See Matter of Alter, 389 Mass. 153, 156 (1983). When an attorney is disbarred in another jurisdiction, "[t]hat attorney is not suddenly rehabilitated when she [or he] crosses a State line." See Lebbos, 423 Mass. at 755. "Permitting an attorney suspended or disbarred in one State to practice law in the Commonwealth . . . tends to undermine public confidence in the effectiveness of attorney disciplinary procedures and threatens harm to the administration of justice and to innocent clients." Id.

The respondent's refusal or inability to comply with an order of disbarment strikes at the very heart of a State supreme court's authority to regulate the legal profession. See Matter of McInerney, 389 Mass. 528, 535-536 (1983). This, in turn, tends to erode public confidence in attorney disciplinary proceedings and to harm unsuspecting clients. See Kersey, 444 Mass. at 69-71; McInerney, 389 Mass. at 534-536. Clients hire an individual to provide legal services on the assumption that the individual is an officer of the court, and thus authorized to practice law. Someone who is no longer an attorney but purports to be so harms not only the clients who hired an

attorney to help them resolve their legal issues, but all attorneys, who bear the brunt of that single individual's misrepresentations, in terms of public opprobrium. Accordingly, I conclude that, absent any mitigating factors, the appropriate sanction here would be disbarment. See McInerney, 389 Mass. at 536 n.11 (noting that a disbarred attorney holding himself or herself out as practicing law "would be a sufficient basis for a judgment of disbarment"); McBride, 29 Mass. Att'y Discipline Rep. at 444 (respondent who had been held in contempt of disbarment order was barred from reinstatement for eight years, "the same period of time that applies to disbarment itself").

The determination of an appropriate sanction also requires me to consider any "special" circumstances in mitigation. See Matter of Crossen, 450 Mass. 533, 576 (2008); Matter of Dawkins, 412 Mass. 90, 95 (1992).⁵ The mitigating factors cited by the Florida Supreme Court include the absence of any prior disciplinary action, and the fact that the respondent already had received a monetary sanction for his bad faith conduct.

In Massachusetts, the absence of a prior disciplinary history is not a special mitigating factor. Id. "[W]e are not so pessimistic about the ethics of lawyers as to conclude that a

⁵ "'Typical' mitigating circumstances have not diverted [the court] from the imposition of disbarment or suspension." Matter of Alter, 389 Mass. 153, 157 (1983).

lawyer who conforms to the expected standard of conduct in some respects thereby has established mitigating circumstances."

Dawkins, 412 Mass. at 96. Similarly, any monetary sanction that already had been imposed upon the respondent does not mitigate his disregard for the Florida court's order of suspension or its order of disbarment. Moreover, payment of fees and sanctions is not a mitigating factor typically recognized as special in Massachusetts. See Matter of Finneran, 455 Mass. 722, 736 n.20 (2010) ("Special mitigating factors . . . have focused on serious physical or psychological conditions affecting the attorney's capacity to act in accordance with legal and ethical obligations").

I recognize that one of the conditions of the respondent's initial suspension was addressing "whatever underlying psychological or emotional issues may exist which appear to interfere with his ability to objectively evaluate facts, precedents, and court orders." In Massachusetts, issues of a respondent's or a respondent's family member's mental or physical health have been considered mitigating. "If a disability [such as an attorney's mental health issues] caused a lawyer's conduct, the discipline should be moderated, and, if that disability can be treated, special terms and considerations may be appropriate." Matter of Zankowski, 487 Mass. 140, 154 (2021), quoting Matter of Schoepfer, 426 Mass. 183, 188 (1997).

See Matter of Johnson, 452 Mass. 1010, 1011 (2008) (acknowledging that "there may be circumstances where medical, psychological, or other mitigating factors will warrant a reduction from the presumption sanction"); Finneran, 455 Mass. at 736 n.20 ("Special mitigating factors identified in our case law have focused on serious physical or psychological conditions affecting the attorney's capacity to act in accordance with legal and ethical obligations"). See, e.g., Matter of Sharif, 459 Mass. 558, 571 (2011) (attorney's depression was not mitigating with respect to intentional misrepresentations to bar counsel, but was as to her conduct towards her clients); Matter of Angwafo, 453 Mass. 28, 38-39 (2009) ("powerful" and "compelling" circumstances of six years of physical and mental abuse by spouse); Matter of Concemi, 422 Mass. 326, 330 n.4 (1996) (collecting cases).

Here, however, the respondent does not discuss any of those issues, nor is the record sufficient to disclose what they were. Because the respondent did not establish a causal connection between any psychological or emotional issues he may have been experiencing and the charged misconduct, see Zankowski, 487 Mass. at 152, I cannot conclude that any issues concerning the respondent's mental health amount to a mitigating factor.

Weighing the defendant's experience as an attorney, see Crossen, 450 Mass. at 580, and his multiple violations of the

rules of professional conduct over a period of years, see Matter of Grayer, 483 Mass. 1013, 1019 (2019), I conclude that the appropriate sanction in Massachusetts is disbarment.⁶ Permanent disbarment, such as was imposed in Florida, does not exist in the Commonwealth. See Matter of Gordon, 385 Mass. 48, 53 (1982). Under S.J.C. Rule 4:01, § 18(2)(a), a disbarred attorney "may not petition for reinstatement until three months prior to the expiration of at least eight years from the effective date of the order of disbarment." Accordingly, the respondent may petition for reinstatement consistent with that rule.

4. Disposition. A judgment shall enter disbarring the respondent from the practice of law in the Commonwealth. Consistent with S.J.C. Rule 4:01, § 18(2)(a), the respondent "may not petition for reinstatement until three months prior to the expiration of at least eight years from the effective date of the order of disbarment." Reinstatement to the bar of the Commonwealth shall not be contingent upon reinstatement to the Florida bar, or to reinstatement after reciprocal discipline with respect to that disbarment in any other jurisdiction.

⁶ Under S.J.C. Rule 4:01, § 16(3), a respondent may argue that reciprocal discipline should not be imposed because it would result in a "grave injustice." The respondent presents no such argument, and I discern no reason why disbarment would result in a grave injustice in light of the respondent's misconduct.

All of the respondent's remaining motions in this case shall be, and hereby are, DENIED.

By the court,



Frank M. Gaziano
Associate Justice

Entered: 12.8.21