IN RE: MATTER OF MICHAEL A. JOHNSON
BBO NO. 690166

COMMONWEALTH OF MASSACHUSETTS
BOARD OF BAR OVERSEERS
OF THE SUPREME JUDICIAL COURT

BAR COUNSEL, Petitioner	)	BBO File No. C3-20-00265676 C3-22-00273198 C3-22-00275986
v.	)	C3-22-00277705
MICHAEL A. JOHNSON, ESQ. Respondent	)	

HEARING COMMITTEE REPORT

On May 13, 2022, bar counsel filed a petition for discipline against the respondent, Michael A. Johnson, Esq. The petition charged the respondent with disclosing his former client's confidential information without her informed consent when he posted a response to her negative online review. Further, he was charged with subsequently editing his online response, disclosing additional confidential information, and falsely asserting that he, rather than the client, had terminated the attorney-client relationship. On August 22, 2022, the respondent filed his answer. Thereafter, the matter was scheduled for a hearing but bar counsel received additional bar complaints against the respondent. Due to the ongoing investigations of the new complaints, the parties filed multiple joint motions to reschedule the hearing and accompanying deadlines. The parties expressed a desire to handle all of the matters collectively. On June 15, 2023, bar counsel moved to amend the petition for discipline, which was opposed by the respondent (without providing any grounds for the opposition). The motion was allowed by the chair of the hearing committee.

On June 30, 2023, bar counsel filed the amended petition for discipline against the respondent. The amended petition charged the respondent with misconduct in three additional client matters. The new counts charged the respondent with lack of competence and diligence, failure to communicate with his clients, and making misrepresentations to conceal his neglect to his clients, a court, and under oath to bar counsel. The respondent filed his answer to the amended petition for discipline on August 1, 2023.

The public hearing in this matter was held remotely over three days: January 8, 9, and 10, 2024. Twenty-one exhibits were agreed-upon and admitted into evidence. Four witnesses testified: the respondent; his former client, Yujin Nah, M.D.; his former client, Mary Albano; and Ms. Albano's daughter, Katherine Mogan.

The parties filed their proposed findings of fact and conclusions of law on March 1, 2024.

FINDINGS OF FACT[1]

1. The respondent, Michael A. Johnson, was admitted to the bar of the Commonwealth on June 16, 2014. Ans. ¶ 1.

2. The current name of the respondent's law practice is Johnson Law and Mediation Services.[2] Tr. I:20 (respondent).

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[1] The transcript is referred to as "Tr. [vol.]:[page]"; the matters admitted in the answer to the amended petition for discipline are referred to as "Ans. ¶ _"; and the hearing exhibits are referred to as "Ex. _." The matters admitted by the answer include those deemed admitted as a result of the respondent's failure to deny them in accordance with B.B.O. Rules, § 3.15(d). See Matter of Moran, 479 Mass. 1016, 1018, 34 Mass. Att'y Disc. R. 376, 379 (2018).

We have considered all of the evidence, but we have not attempted to identify all evidence supporting our findings where the evidence is cumulative. We credit the testimony cited in support of our findings to the extent of the findings, and we do not credit contradictory testimony. In some instances, we have specifically indicated testimony that we do not credit.

[2] The respondent testified before us that he is a "certified mediator" by which he meant that he took a mediation class in law school and received a certificate at the conclusion of the class. Tr. I:20-21 (respondent). He did not identify the name of the certifying organization and, therefore, we are uncertain if he is actually certified. He further testified that he has not taken any additional classes or trainings in mediation and has not received any other certification. Id. It is unclear if the respondent advertised himself as a "certified mediator" or otherwise

3. At all relevant times, the respondent was a sole practitioner focusing his law practice on family law matters.[3] Tr. I:21, 27 (respondent). He has never had any employees at his firm and handled every aspect of his law firm himself. Id. at 21-22.

4. The respondent does not utilize computer software to manage his cases and keeps track of his court dates and events on a physical calendar. Tr. I:22-23 (respondent). The respondent did not produce a physical calendar to bar counsel and none was admitted into evidence. Tr. I:23 (respondent).

COUNT ONE
FINDINGS OF FACT

5. On or about May 5, 2020, Dr. Yujin Nah retained the respondent to represent her in her ongoing divorce matter. Ans. ¶ 2; Ex. 3, at BBO-151-152 (engagement letter). Dr. Nah testified before us. See Tr. II:5-53 (Nah).

6. Dr. Nah paid the respondent a flat fee of $2,500 for the representation. Ex. 3, at BBO-151-154.

7. The respondent and the client frequently communicated about issues surrounding the divorce matter, including, but not limited to, financial issues, dividing parenting time of the minor child, and handling certain parenting situations with the client's husband. Ans. ¶ 2.

8. Dr. Nah informed the respondent that she wanted to contest her husband's right to parenting time in her divorce. Tr. I:46-47 (respondent); see also Tr. II:17 (Nah). The respondent

communicated this publicly. See Mass. R. Prof. C. 7.4. There was no charge or allegation of misconduct related to this testimony and, therefore, we make no findings about it and decline to discuss it further.

[3] The respondent testified that from 2014 through 2018, his firm was called Johnson Law & PIP Recovery, and he primarily represented service providers such as chiropractors and physical therapists in payment disputes with insurance companies. Tr. I:23-25 (respondent). In March of 2019, he shifted his law practice to family law. Tr. I:27 (respondent).

admitted that this information about the client's goals was protected by the attorney-client privilege. See Tr. I:47 (respondent).

9. On July 10, 2020, a telephonic four-way meeting was held among the parties (Dr. Nah and her husband) and their counsel. Ans. ¶ 2. Such meetings are mandatory in divorce cases and serve the purpose of requiring the parties to discuss potential issues prior to a pretrial conference. See Tr. I:48 (respondent).

10. A few days after the meeting, on July 13, 2020, Dr. Nah asked the respondent to meet with her on the following day, July 14, 2020. Ans. ¶ 2. During the meeting on July 14th, Dr. Nah told the respondent that, *inter alia*, he had not been assertive enough during the four-way meeting. Id. She terminated her attorney-client relationship with the respondent at that meeting and requested the return of her client file as well as a refund. Tr. II:15, 25-26 (Nah). The respondent refused to pay a refund to Dr. Nah. Ans. ¶ 3.

11. Although the respondent admitted that the relationship was terminated during that meeting, he claimed that the client began yelling at him, causing him to terminate the attorney-client relationship, and then he asked her to leave. Tr. I:29, 38-40 (respondent). We do not credit this testimony. In addition to our belief in the sincerity of Dr. Nah's testimony concerning the meeting, the respondent's testimony contradicts his contemporaneous writings on this issue. For example, on the day of the meeting with Dr. Nah, July 14, 2020, the respondent emailed opposing counsel (the lawyer for Dr. Nah's husband) stating, "I am sorry to say that I have been terminated as counsel for this matter." Ex. 3, at BBO-155. He also improperly revealed: "Seems I didn't represent her interests aggressively enough. Of course, I had already shared with my client how things were likely to turn out." Id.

12. In addition, the respondent drafted an Assented-To Motion to Withdraw in the matter, which he filed with the Bristol County Probate and Family Court. The respondent represented to the court that "there has been a breakdown in the attorney/client relationship and counsel has been terminated as [Dr. Nah's] advocate." Ex. 3, at BBO-160. He admitted to us that in this motion he represented to the court that Dr. Nah had terminated the relationship. Tr. I:41 (respondent). Finally, as detailed below, in an email to the client on July 22, 2020, the respondent stated that Dr. Nah had "severed" the attorney/client relationship. Ex. 3, at BBO-159. For these reasons, we do not credit the respondent's testimony to us on this issue and further find that his testimony was knowingly false.

13. After terminating the attorney-client relationship,[4] Dr. Nah wrote an online Google review of the respondent's law firm, Johnson Law & Mediation Services, in which she gave the respondent one star[5] and made negative comments. Her Google review showed her username as "Y N." Ans. ¶ 4. Dr. Nah's initials are "YN." See Tr. II:5 (Nah).

14. The client's Google review read as follows: "Michael Johnson will tell you as if he knows [sic] ins and outs of the law and he emphasizes how strong he is in negotiation to reach the agreement. However, he is very passive when you need him for the representation. Poor quality." Ans. ¶ 4; Ex. 3, at BBO-150; see also Tr. II:26-27 (Nah) (identifying the review and identifying the handwriting that appears on the review (Ex. 3, at BBO-150) as her own).

[4] Dr. Nah testified that she wrote the review "pretty soon" after she terminated the respondent. Tr. II:27-28 (Nah). We credit this testimony.

[5] We take administrative notice that one star is the lowest possible rating for a Google review, with five stars being the highest.

15. The respondent received a notification on his phone of the review being posted. Tr. I:52 (respondent). He knew when he read the review that Dr. Nah had posted it due to its contents as well as her initials. He had no other clients with those initials. Id.

16. Shortly thereafter,[6] the respondent posted an online response to the client's Google review. Ans. ¶ 4. He wrote:

> Thank you for your input. As I told you from the outset, I am a negotiator. One must choose when to fight carefully. You wished to fight in [sic] the issue of parenting time, whicH [sic] you have denied the father of a child you had together. In the end, he will have parenting time and if you are not careful, custody too. You have your expertise and I have mine. All that being said, good luck as you proceed.

Id.; Ex. 3, at BBO-150.

17. On July 21, 2020, the client emailed the respondent an overview of her complaints about his handling of her case at the four-way meeting. She concluded by saying that she was "flabbergasted" by the respondent's online response to her review and his inclusion of "such specific information about my situation." The client objected to the respondent having revealed confidential information regarding her divorce matter. Ex. 3, at BBO-149. We find that the respondent did not obtain Dr. Nah's informed consent[7] to post the information he disclosed in his original online response. See Ans. ¶ 10.

18. On July 22, 2020, the respondent replied to Dr. Nah's email stating, "[i]t is your remedy to have severed our attorney/client relationship as you wished to do." Ex. 3, at BBO-159.

19. On July 27, 2020, Dr. Nah filed a complaint with bar counsel against the respondent. Ans. ¶ 6.

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[6] The respondent testified that he might have responded to Dr. Nah's review the same day he received the notification that it was posted. See Tr. I:125 (respondent).

[7] The respondent admits that he did not obtain Dr. Nah's informed consent to post his response but denied that he disclosed confidential information. Ans. ¶ 10.

20. On September 14, 2020, the respondent wrote to bar counsel to answer Dr. Nah's bar complaint. Ex. 4. In that letter, the respondent claimed that Dr. Nah "was actually very angry and yelling in the office so I reminded her that she has a remedy of terminating my services. She then did so and then demanded that I give her back half the fee that she had paid. I told her that I had earned that fee and that I was sorry that she was somehow dissatisfied with my advocacy and asked her to leave the office because she was yelling at me." Id., at BBO-163. Again, we note that, contemporaneously, the respondent consistently admitted that Dr. Nah terminated the attorney-client relationship.

21. In or about January 2021, after receiving correspondence from bar counsel about the client's bar complaint, the respondent edited his online response to the client's Google review. Ans. ¶ 6. He posted: "Unfortunately, this client did not agree with my strategy and the requirement that she provide the other party parenting time absent good cause. I regret that I had to terminate our relationship." Id. As discussed supra, we find that Dr. Nah terminated the attorney-client relationship with the respondent. Therefore, the respondent's edited online response to Dr. Nah's Google review was knowingly false.

22. We find that the respondent did not obtain Dr. Nah's informed consent to post the information he disclosed in his edited online response. See Ans. ¶ 10.

23. Dr. Nah testified that she believed her then-husband was aware of the respondent's online responses to her Google review because of similar language he or his counsel used later in the divorce matter. See Tr. II:32-33 (Nah). We do not place any weight on this testimony because it is vague, unsupported, and speculative.

COUNT ONE
CONCLUSIONS OF LAW

24. Bar counsel charged that, by disclosing confidential information related to his representation of the former client without her informed consent, the respondent violated Mass. R. Prof. C. 1.9(c)(2) (do not reveal confidential information relating to a former client) and 1.6(a) (do not reveal confidential information relating to the representation of a client unless the client gives informed consent). We conclude that bar counsel has proved these charges.

25. The respondent admitted that Dr. Nah informed him that she wanted to contest her husband's right to parenting time in her divorce and that this information was protected by the attorney-client privilege. See ¶ 8, supra. We conclude that this information was also "confidential information" under Mass. R. Prof. C. 1.6(a).[8] By posting this information in his first response to Dr. Nah's online review, without her informed consent, the respondent violated Rules 1.9(c)(2) and 1.6(a).

26. By posting the information in his edited online response, in which he portrayed his client as unreasonably contesting her husband's parenting time against the legal advice of her lawyer, the respondent violated Rules 1.9(c)(2) and 1.6(a) again.

27. The respondent argues that he did not reveal his client's confidential information because neither her posting, nor his response, specifically identified her. He misses the point entirely. The respondent realized immediately who had posted the review due to its contents and the reviewer's initials. Dr. Nah's spouse knew that the respondent represented Dr. Nah in their divorce matter. If her spouse had searched for the respondent on Google, he could easily have

[8] Mass. R. Prof. C. 1.6(a) provides, in relevant part: "'Confidential information' consists of information gained during or relating to the representation of a client, whatever its source, that is (i) protected by the attorney-client privilege, (ii) likely to be embarrassing or detrimental to the client if disclosed, or (iii) information that the lawyer has agreed to keep confidential."

seen the review and the respondent's response(s) and identified Dr. Nah as the reviewer—just as the respondent himself did. Rule 1.6 does not require that the third party "actually connect the dots. If it would be reasonably likely that a third party could do so, the disclosure runs afoul of the rule." See Matter of Smith, 35 Mass. Att'y Disc. R. 554 (2019).

28. Bar counsel charged that, by stating false information about the representation in his edited online response, the respondent violated Mass. R. Prof. C. 8.4(c) (do not engage in conduct involving dishonesty, fraud, deceit, or misrepresentation). The respondent falsely claimed that he terminated the attorney-client relationship, when it was Dr. Nah who did so. We conclude that bar counsel has proved this charge.

COUNT TWO
FINDINGS OF FACT

29. On or about April 2, 2021, Mary Albano retained the respondent to represent her in her efforts to gain custody of her minor granddaughter who was then in the custody of the Department of Child Services ("DCF"). [9] Ans. ¶ 13. Ms. Albano also testified before us. See Tr. II:85-98 (Albano).

30. On or about April 2, 2021, the respondent provided Ms. Albano with a written fee agreement pursuant wherein he agreed to represent Ms. Albano in the matter for a flat fee of four thousand dollars ($4,000). Ans. ¶ 13; Ex. 6, at BBO-194.[10] The respondent subsequently charged $4,000, but collected only $3,600 from the client. See Ans. ¶ 14; Ex. 6, at BBO-201 (copies of checks).

[9] We take administrative notice that the correct name is the Massachusetts Department of Children & Families.

[10] The agreement is dated May 2, 2021.

31. Ms. Albano's daughter, Katherine Mogan,[11] was assisting her with the matter and communicating with the respondent. Ans. ¶ 13. Ms. Mogan also testified before us. See Tr. II:59-84 (Mogan).

32. Ms. Albano and her daughter testified that when they first met with the respondent in April 2021, he informed them that he had previously filed petitions for guardianship and he was confident he would be successful in gaining guardianship here. See Tr. II:62-64 (Mogan); Tr. II:88-89 (Albano) ("…he kept telling me you're gonna get your granddaughter."). We found both women to be sincere and credible and we credit their testimony.

33. By contrast, the respondent testified that he advised Ms. Albano and her daughter that he had never filed such a petition before. Tr. I:59 (respondent) ("…I said this will be a learning experience for both of us…). We do not believe him or credit his testimony.

34. Although he had never filed a petition for guardianship before, the respondent testified that he did not recall conducting any legal research about such petitions. Tr. I:60 (respondent).

35. The respondent claimed that he first attempted to file the petition for guardianship in the Suffolk County Probate and Family Court. He testified that he initially mailed the petition to the court. Tr. I:67 (respondent). He admits that the petition was never docketed by the court but claimed that was because the granddaughter's birth certificate was not attached. Tr. I: 67-68, 70, 129 (respondent) ("I filed [the petition] initially with the probate and family court. The first one they couldn't find then they eventually found it and said, oh, well, you have to have a –

[11] Ms. Mogan is the aunt, and not the mother, of the minor child at the center of the custody proceedings. Tr. II:60-61 (Mogan).

there's no birth certificate attached to it so we haven't docketed it. So I set about contacting Ms. Mogan and Ms. Albano to see if there was a birth certificate. They didn't have one.").

36. The respondent's testimony is contradicted by the letter from the respondent's counsel to bar counsel, dated August 20, 2022. Ex. 8. In that letter, there is no mention that the court later located the undocketed petition. Rather, it states that the court "had no record of [the respondent's] filing" which he attempted to file by mail. The respondent allegedly completed the paperwork again and attempted to re-file in person but was turned away because the "paperwork would not be accepted without a copy of the child's birth certificate, which [his] client did not have." Id. at BBO-222; see also Tr. I:129 (respondent).

37. The respondent subsequently claimed that he filed the petition in the Juvenile Court in person but that the Juvenile Court, like the Probate Court, failed to docket his petition. Tr. I:67-70 (respondent). Before us, he testified that he filled out paperwork in the hallway of the Juvenile Court and submitted it on the spot. Tr. I:130 (respondent) ("…at the juvenile desk I was given a packet and I sat outside – they have some chairs on the outside of the office there – and I filled out all that paperwork and submitted it to the clerk at the desk.").

38. This testimony is inconsistent with the respondent's letter to bar counsel on August 20, 2022. Ex. 8. There, the respondent claimed that after he was turned away from the Probate Court because he did not have the child's birth certificate, he "went to the Juvenile Court to explain the situation, and was instructed to file for guardianship there. This required several additional forms, and several items of information that I did not have, so I had to meet further with Ms. Albano and her daughter. I was eventually able to file the guardianship paperwork on October 4, 2021…" Id.

39. We do not credit the respondent's testimony and changing stories, which we find to be deeply problematic. The respondent admitted that as of December 2021, there is no court docket in any court evidencing that he ever filed anything on Ms. Albano's behalf. See Tr. I:63, 70 (respondent). However, he claimed before us that it was the courts' fault—according to the respondent, two separate courts failed to docket his attempts to file three separate petitions. See Tr. I:70 (respondent). This testimony is implausible and far-fetched. We find that the respondent failed to file a petition for guardianship in any court on Ms. Albano's behalf at any time, despite having told Ms. Mogan that he had done so. See Tr. II:69 (Mogan).

40. On December 14, 2021, Ms. Albano wrote a letter to the respondent, terminating his services. Ans. ¶ 16; Ex. 6, at BBO-167. Ms. Albano complained that during his nine-month representation "nothing was done on this matter no document [sic] number or court date" and demanded a refund. Ex. 6, at BBO-167.

41. On that same day, Ms. Albano, acting pro se, filed a petition for guardianship with the Suffolk County Probate Court. Ex. 10, at BBO-225 (docket sheet); Ex. 10, at BBO-236-239 (petition). The Suffolk Probate Court ultimately denied the petition because Ms. Albano's granddaughter was in DCF custody and only the Suffolk Juvenile Court had jurisdiction over the matter. See Ex. 10, at BBO-226 ("The child in question is in DCF custody, as noted throughout the pleadings by the petitioner. As such this Court is barred from entering any orders concerning the custody of the named child."); Tr. II:72-73 (Mogan) ("[Suffolk Probate Court] advised us that we needed to go to [Suffolk Juvenile Court] and file [the Petition for Guardianship] there.").

42. The respondent was not aware of, and never advised his client, that the Probate Court was prohibited from entering orders concerning the custody of children who were in DCF custody. See Tr. I:65-66 (respondent); Tr. II:73 (Mogan). He also admitted that he did not know

whether the petition should be filed in the Probate Court or the Juvenile Court. Before us, the respondent agreed that his failure to learn the answer to this question during the entire course of the representation demonstrated a lack of competence and diligence. Tr. I:66 (respondent).

43. Once Ms. Albano received the Probate Court's Order, she re-filed the petition for guardianship in the Suffolk County Juvenile Court. Tr. II:73 (Mogan).

44. On December 23, 2021, Ms. Albano sent another letter to the respondent demanding a refund. Ans. ¶ 18; Ex. 6, at BBO-168.

45. The respondent did not respond to either of Ms. Albano's letters until weeks later, on January 5, 2022, when he sent Ms. Mogan a text message. See Ans. ¶¶ 17-18; Ex. 6, at BBO-169-171. The respondent informed Ms. Mogan that he refused to refund the full amount because he "did many hours of work on the matter and went back and forth to Boston four times." He claimed he would try to "figure out" how many hours of work he had done. Ex. 6, at BBO-169. The following day, on January 6, 2022, the respondent sent another text message to Ms. Mogan stating that he was willing to refund four hundred and twenty-five dollars ($425). See Ans. ¶ 18; Ex. 6, at BBO-171-174.

46. On January 7, 2022, Ms. Mogan responded to the respondent's text message by again demanding a full refund. Ans. ¶ 18; Ex. 6, at BBO-174-177. She reiterated her accusation that the respondent did "nothing for 9 months." The respondent did not respond to Ms. Mogan's text message. Id.

47. On or about February 23, 2022, Ms. Albano filed a small claims court action against the respondent. Ans. ¶ 18; Ex. 7, at BBO-203-208.

48. On March 4, 2022, Ms. Albano filed a bar complaint against the respondent. Ans. ¶ 18.

49. On May 26, 2022, the respondent entered into a written agreement with Ms. Albano in the small claims matter, pursuant to which the respondent agreed to pay her one thousand dollars ($1,000) in exchange for her withdrawal of the bar complaint. Id.[12]; see Ex. 7, at BBO-210-211 (agreement signed by the respondent).

50. Rather than collect the one thousand dollars ($1,000) from the respondent, Ms. Albano subsequently agreed to have him represent her during a June 19, 2022 hearing in the Suffolk Juvenile Court concerning the guardianship of Ms. Albano's granddaughter.[13] Ms. Albano did not seek to withdraw her bar complaint. Id.

51. Ms. Albano attended the June 2022 hearing, represented by the respondent, but the court denied her guardianship. Tr. II:75 (Mogan); Tr. II:94 (Albano). We make no findings as to whether the respondent's conduct contributed to the denial.

52. As detailed above, we find that the respondent did not file a petition for appointment of guardian of a minor with any court on Ms. Albano's behalf. We find that the respondent's multiple misrepresentations that he filed, or attempted to file, a petition for guardianship, either in the Suffolk Probate Court or Suffolk Juvenile Court, were knowingly false.

53. During his statement under oath to bar counsel, the respondent misrepresented to bar counsel that he attempted to file the petition for appointment of guardian of a minor in both

[12] The agreement was a result of voluntary mediation at the Chelsea District Court. See Ex. 7, at BBO-209; see Tr. I:72-73 (respondent). Anything said in the mediation is privileged and confidential pursuant to M.G.L. c. 233, § 23(c). Therefore, we have not considered or placed any weight on any testimony about the communications during the mediation. However, the respondent admitted to certain facts in the petition for discipline and agreed to submit the terms of the agreement as an exhibit in this matter. See Ex. 7, at BBO-210-211. We have considered that evidence.

[13] Ms. Mogan testified that her mother agreed to re-hire the respondent for the hearing in the Juvenile Court, despite her dissatisfaction with him, because they had relatively little advance notice of the hearing and could not find another attorney on short notice. Tr. II:74-75 (Mogan). We credit this testimony.

the Suffolk County Probate and Family Court and Suffolk Juvenile Court.[14] Ex. 1, at BBO-087-090. We find this testimony was knowingly false.

COUNT TWO
CONCLUSIONS OF LAW

54. Bar counsel charged that, by failing to competently and diligently represent his client, the respondent violated Mass. R. Prof. C. 1.1 (failing to provide competent representation and prepare adequately) and 1.3 (failing to represent his client with reasonable diligence and promptness). The respondent admitted that his failure to learn the proper court to file a petition for guardianship demonstrated a lack of competence and diligence. Tr. I:66 (respondent). In addition, we find and conclude that the respondent failed to file a petition for appointment of guardian of minor as he was retained to do, and claimed to have done, which also violated Mass. R. Prof. C. 1.1 and 1.3. We conclude that bar counsel proved these charges.

55. Bar counsel charged that, by failing to keep his client reasonably informed about the status of the matter, and by failing to promptly comply with reasonable requests for information, the respondent violated Mass. R. Prof. C. 1.4(a)(3) and 1.4(a)(4) (failure to keep the client reasonably informed about the status of the matter and failure to comply promptly with reasonable requests for information). The respondent repeatedly failed to keep his clients timely and accurately informed as to the status of the matter because he misrepresented that he had filed a petition for guardianship when he had not. We conclude that bar counsel proved these charges.

56. Bar counsel charged that, by attempting to condition settlement of a small claims matter upon the withdrawal of the bar complaint, the respondent violated S.J.C. Rule 4:01, §

[14] During the first day of hearing, bar counsel verbally moved to amend the amended petition for discipline to correct a scrivener's error in paragraph 40. That paragraph referenced Norfolk County Probate Court instead of Suffolk County Probate Court. The chair allowed the motion to amend. Tr. I:10-12.

10,[15] Mass. R. Prof. C. 8.4(d) (engaging in conduct that is prejudicial to the administration of justice) and Rule 8.4(h) (engaging in conduct that reflects adversely on his fitness to practice law). The respondent argues that he did not ask Ms. Albano to withdraw her bar complaint but, rather, that Ms. Albano offered to withdraw it as part of the mediated settlement.[16] This is irrelevant. The respondent agreed to the withdrawal of the complaint as a term of the resolution of the small claims matter. The respondent should have known that it was improper for him to agree to that condition, regardless of who offered it. We conclude that bar counsel has proved these charges.

57. Bar counsel charged that, by making false statements under oath to bar counsel, the respondent violated Mass. R. Prof. C. 8.1(a) (knowingly making a false statement of material fact to bar counsel in connection with a disciplinary matter), 8.1(b) (failing to disclose a fact necessary to correct a misapprehension known by the respondent to have arisen in the matter or knowingly failing to respond to a lawful demand for information from bar counsel), 8.4(c) (conduct involving dishonesty, fraud, deceit, or misrepresentation), 8.4(d) and 8.4(h). We conclude that bar counsel has proved these charges.

COUNT THREE
FINDINGS OF FACT

58. On or about June 8, 2021, a client whose initials were SQ[17] retained the respondent to represent her in a divorce matter. Ans. ¶ 25; Ex. 12, at BBO-243 (engagement letter and fee arrangement). The written fee agreement called for a flat fee of $2,500 for the

[15] The Rule provides, in relevant part: "A lawyer shall not, as a condition of settlement, compromise, or restitution, require the complainant to refrain from filing a complaint, to withdraw the complaint, or to fail to cooperate with bar counsel."

[16] We note that this testimony involves communications that occurred during a confidential mediation. We note it but place no weight on the testimony because it is not relevant.

[17] The petition for discipline referred to all four clients by their initials. Consistent with that practice, we have only identified the full name of the clients who appeared to testify before us.

matter. Ex. 12, at BBO-243. SQ did not testify before us, but the respondent agreed to the admission of several exhibits related to her case. See Exs. 11-16. These documents have sufficient indicia of reliability, including that the respondent agreed to their admission, so we are entitled to rely on them.

59. On June 2, 2022, the respondent informed SQ that a mandatory four-way meeting was scheduled with the opposing party for June 7, 2022. Ans. ¶ 25. SQ informed the respondent that she "didn't know that" and that she could not attend a four-way meeting on June 7, 2022. Id.; Ex. 12, at BBO-261. The respondent admitted that he failed to communicate this fact to opposing counsel and failed to attempt to reschedule the four-way meeting. Ans. ¶ 25.

60. On June 7, 2022, opposing counsel emailed the respondent at 10:43 a.m. stating, "Mike, we had a four-way meeting scheduled for 10:00 a.m. this morning at my office in Quincy." Ex. 12, at BBO-246. The respondent replied that afternoon stating, "I got held up in FL with an emergency having to do with my sister. Please accept my apologies. Can we reschedule?" Id. at BBO-247. Shortly thereafter, opposing counsel replied,

> Where [sic] I understand and I am sympathetic to your emergency, I hope your sister is ok. However, your client was not here either. That means she knew you couldn't make it, and we didn't get that same courtesy. My client missed a half of day of work as he is suppose [sic] to be in by 7:00 a.m. I think it's fair that he is compensated by your client for his missed 3.5 hrs. of work and had to pay me for 30 minutes at $250/hr. If you agree please have her send him a check for $230 we will agree to reschedule. Thank you.

Id. at BBO-248. The respondent wrote back stating, "I had not told my client either that I wasn't going to make it. Stuff happens." Id. at BBO-250. Opposing counsel replied, "Well. She wasn't here and we checked the parking lot a couple times for her car. If she showed up as scheduled, I would agree with you. [sic] 100% but she didn't. My client thinks she did this on purpose." Id. at BBO-249.

61. That same day, June 7, 2022, the respondent texted SQ, saying, "We missed the 4 way today. I didn't get back in time." Ex. 12, at BBO-262.

62. The four-way meeting was never rescheduled despite the client's multiple attempts to arrange it with the respondent. See Ex. 12, at BBO-262-265.

63. A pretrial hearing was scheduled for July 28, 2022. The respondent failed to appear at the pretrial hearing. Ans. ¶ 27. Before us, the respondent acknowledged that his failure to appear at a court hearing demonstrates a lack of competence and diligence. Tr. I:149-150 (respondent).

64. On July 28, 2022, the Norfolk Probate Court entered an Order rescheduling the matter to August 22, 2022. Because the respondent and his client had failed to attend both the four-way meeting and the pretrial conference, the court noted that it would "hear the [client's spouse] on the issue of sanctions" at that time and would consider entering judgment "regardless of whether [SQ] and/or her counsel are present." Ex. 12, at BBO-260.

65. On August 3, 2022, SQ sent the respondent a text message asking for an update on the matter. Ex. 12, at BBO-265. The respondent admits that he received the text message. Ans. ¶ 27. The client wrote, "I am not sure what's happening, I'm trying to set a date for the 4 way meeting since June and I'm not getting feedback from you." Ex. 12, at BBO-265. The respondent did not reply by text; there is no evidence that he replied by any other means. See id.

66. On August 8, 2022, the client sent another text message to the respondent asking him to send her a document. There is no evidence that he replied. See Ex. 12, at BBO-265.

67. On August 16, 2022, SQ terminated the attorney-client relationship with the respondent. In a text message, SQ instructed the respondent to withdraw from her case so that another attorney could step in. Ans. ¶ 30.

68. On August 19, 2022, the Norfolk County Probate Court clerk's office sent an email to the respondent to confirm that he was aware that a hearing in SQ's case was scheduled for August 22, 2022. Ans. ¶ 30; Ex. 12, at BBO-244. The clerk asked the respondent to respond by email to confirm his receipt of the message. The respondent responded by email that day, stating, "Hi Marty! I got this. Thank you." Ans. ¶ 30.; Ex. 12, at BBO-245. The respondent did not tell the clerk that he had been instructed to withdraw from the case. See id. There is no evidence that the respondent informed SQ about the hearing.

69. On August 22, 2022, less than fifteen minutes before the scheduled hearing, SQ texted the respondent the following message:

> Hi Michael! Good morning! I am supposed to have a court review today which I was only notified a week ago when I called to find out what was going on with my case.[18] Because you did not withdraw from my case the new lawyer could not step in. Even if he did, it was not enough time for him to get my case ready for the court today. I just called the court and the attendant have [sic] told me that you are still my lawyer. He also told me that you need to file a motion. Please do so, today! Thank you!

Ans. ¶ 30; Ex. 12, at BBO-267.

70. The respondent attended the hearing on August 22, 2022 via Zoom. The respondent did not inform the court that SQ had discharged him. Ans. ¶ 30. Following the hearing, the respondent summarily informed his client that "[b]ecause you didn't come on to the hearing today they granted the divorce. You are divorced." Ex. 12, at BBO-281.

71. That same day, the respondent also repeatedly texted SQ that he had filed a Notice of Withdrawal on August 17th. Id. at BBO-268 and 281. The Notice of Withdrawal filed with the court was dated August 17, 2022. In addition, in his Certificate of Service, which he

[18] In SQ's complaint to bar counsel, she states that she called the court in early August and was told about the upcoming hearing on August 22nd. See Ex. 11, at BBO-241.

signed "under the penalties of perjury," the respondent represented to his client, and testified to us, that he had mailed the Notice to opposing counsel and the court on August 17, 2022. Ex. 12, at BBO-259; Tr. I:100-108 (respondent). However, the Notice of Withdrawal was not docketed by the Norfolk County Probate and Family Court until August 31, 2022. Ex. 12, at BBO-259; Ex. 16, at BBO-292 (court docket).

72. Importantly, the metadata for the original document,[19] which is information embedded in a computer document that identifies the source of the document and the date and time that the document was created (Tr. I:104 (respondent)), shows that the respondent created the document on August 22, 2022.[20] Ex. 21.

73. Finally, and we believe critically, the respondent saved the document to his computer with the title "Notice of Withdrawal Norfolk **8/22/22**." Ex. 21; Tr. I:107 (respondent) (emphasis added).

74. Based on the Notice's metadata, the title the respondent chose to save the Notice to his computer which included the date of 8/22/22, and his failure to inform the court and/or the clerk's office by email or during the August 22, 2022 hearing that he had been discharged (as we would expect), we find that the respondent knowingly misrepresented the date he drafted and filed the Notice of Withdrawal. We find that he drafted the Notice on August 22, 2022 and, therefore, falsely certified in the Certificate of Service that he had mailed the Notice of Withdrawal to opposing counsel and the court on August 17, 2022.

[19] The respondent produced the original Microsoft Word document to bar counsel in its native format. Tr. I:104 (respondent).

[20] The metadata for the document is not without controversy—a field identified as "Content created" shows a date and time stamp of 8/22/2022 at 8:00 AM. However, it also shows that the document was "Last printed" on 8/22/2022 at 7:59 AM. This inconsistency or abnormality, that appears to show the document was printed before it was created, was not explained to us. What *is* clear is that the only date identified is August 22, 2022.

75. The respondent misrepresented to bar counsel in his statement under oath that he mailed the Notice of Withdrawal to the court on August 17, 2022. Ex. 1, at BBO-103, BBO-105-106. He made the same misrepresentations in his testimony to us. Tr. I:100-108 (respondent).

76. The respondent did not refund any money to SQ. Ex. 13, at BBO-283.

COUNT THREE
CONCLUSIONS OF LAW

77. Bar counsel charged that, by failing to competently and diligently represent his client, the respondent violated Mass. R. Prof. C. 1.1 and 1.3. The respondent admitted that his failure to appear at the pretrial conference demonstrated a lack of competence and diligence. Tr. I:149-150 (respondent). In addition, the respondent failed to appear at, or reschedule, the mandatory four-way meeting even though his client informed him in advance that she could not attend and failed to timely file a notice of withdrawal after being discharged by his client. We conclude that bar counsel has proved these charges.

78. Bar counsel charged that, by failing to keep his client reasonably informed about the status of the matter, and by failing to promptly comply with reasonable requests for information, the respondent violated Mass. R. Prof. C. 1.4(a)(3) and 1.4(a)(4). We conclude that bar counsel has proved this charge. The respondent did not keep his client reasonably informed as to important dates in the representation, e.g. the four-way meeting or the pretrial conference. He also failed to respond to his client's text messages asking for updates and/or attempting to reschedule the four-way meeting. Finally, he failed to promptly file a motion to withdraw as instructed by SQ, and then lied to her about the date on which he had done so. We conclude that bar counsel has proved these charges.

79. Bar counsel charged that, by misrepresenting to his client that he filed a Notice of Withdrawal on August 17, 2022, the respondent violated Mass. R. Prof. C. 8.4(c) and 8.4(h). We conclude that bar counsel proved these charges.

80. Bar counsel charged that, by making a false certification in the Notice of Withdrawal that was filed with the court, the respondent violated Mass. R. Prof. C. 3.3(a)(1) (do not make a false statement of fact or law to a tribunal). We take administrative notice that certificates of service are not required to be signed "under the penalties of perjury." The respondent voluntarily chose to include that language in the Notice.[21] Whether or not the respondent was required to sign the document "under oath," as a lawyer, he typed the words, he knew what they meant,[22] and he signed his name. We conclude that bar counsel proved this charge.

81. Bar counsel charged that, by making false statements under oath to bar counsel, the respondent violated Mass. R. Prof. C. 8.1(a), 8.1(b), 8.4(c), 8.4(d) and 8.4(h). We conclude that bar counsel has proved these charges.

COUNT FOUR
FINDINGS OF FACT

82. On or about November 15, 2022, a client whose initials were MOA retained the respondent to represent him in filing and pursuing a complaint for parenting time. Ans. ¶ 40. MOA did not testify before us, but the respondent agreed to the admission of several exhibits

[21] We note that the respondent also signed the Certificate of Service for his Entry of Appearance in SQ's divorce "under the penalties of perjury." See Ex. 12, at BBO-270. We infer that this was the respondent's common practice.

[22] Tr. I:101 (respondent) ("Q: So in your mind you were signing this under the penalties of perjury? A. Yes, sir.")

related to his case. See Exs. 17-19. These documents have sufficient indicia of reliability, including that the respondent agreed to their admission, so we are entitled to rely on them.

83. MOA was seeking parenting time with his two-year-old child. See Ex. 17, at BBO-309.

84. On November 15, 2022, MOA paid the respondent one thousand dollars ($1,000) as a partial payment for the respondent's legal services. Id.; Ex. 17, at BBO-306.

85. On or about December 2, 2022, the respondent provided MOA with a written fee agreement pursuant to which the respondent agreed to represent MOA in the matter for a flat fee of two thousand dollars ($2,000). Ans. ¶ 40; Ex. 17, at BBO-299.[23]

86. Before us, the respondent testified that he had filed complaints for parenting time "many times" prior to his representation of MOA and he understood that establishing that MOA was a parent of the child, i.e. establishing paternity, was a basic requirement. Tr. I:84-85 (respondent).

87. The client had filed a pro se Complaint to Establish Paternity with the Norfolk Probate Court before retaining the respondent, but it was dismissed without prejudice. Ex. 19, at BBO-317-328. In other words, MOA's paternity was not established. The respondent admitted that he was unaware of this fact and did nothing to either establish MOA's paternity or confirm that paternity had already been established. Tr. I:86-89 (respondent). He did not search the court dockets for a case file on MOA. Id. In fact, the respondent testified that he only recently learned, in 2023, that it was possible to check the dockets of Massachusetts court cases online. See Tr. I:151-152 (respondent) ("So the Mass. Courts [website] has been used much more by me

[23] MOA signed the fee agreement on December 5, 2022. Ex. 17, at BBO-299. We note that the client, MOA, paid the $1,000 payment several weeks before receiving and signing the fee agreement.

certainly in the last year than ever. I didn't even know it was a resource, quite honestly. And if it was prior to Covid, I wasn't aware of it.").

88. The respondent drafted a Complaint for Custody-Support-Parenting Time Pursuant to G.L. c. 209C for MOA. The Complaint was a form document that the respondent partially filled out. See Ex. 17, at BBO-309. Item 6 on the form requests information on how paternity was established. The options to click are either "signed a voluntary acknowledgement of paternity" or "was adjudicated the father on [date], a copy of which is attached to this complaint." Id. The respondent failed to indicate on the form how MOA's paternity was established—he left it blank. Tr. I:91-93 (respondent). The respondent admitted before us that this demonstrated a lack of competence and diligence. Tr. I:93-94 (respondent).

89. The respondent claims that he mailed the Complaint along with a check for the filing fee to the Norfolk Probate and Family Court on December 13, 2022. Ans. ¶ 43; Tr. I:89-90, 94 (respondent). On December 15, 2022, he charged and collected one hundred and twenty dollars ($120) from MOA as a "filing fee." Ex. 17, at BBO-308.

90. No such Complaint was ever docketed in Norfolk Probate Court, which the respondent admits. Tr. I:95 (respondent). The respondent testified before us that he has no evidence that he mailed a check to the court: he has no canceled check or check register. Tr. I:94-95 (respondent). Yet, the respondent maintains that he did file the Complaint and, again, claims that another court failed to docket something he filed. See Tr. I:95-96 (respondent). We do not credit this testimony and find that the respondent never filed a complaint for parenting time on MOA's behalf. See Matter of Zankowski, 487 Mass. 140, 149, 37 Mass. Att'y Disc. R. 554, 565 (2021) (adverse inference warranted "from the respondent's failure to offer materials, readily available to her, that would presumably support her version of the facts if true").

91. On January 9, 2023, MOA sent the respondent a text message asking for an update on the case. Ex. 17, at BBO-302. The respondent replied, claiming he was in court, but would get back to MOA that afternoon. The respondent did not follow up with MOA later that day. Id. The following day, January 10, 2023, MOA again texted the respondent, asking for an update. The respondent replied on January 11th that he just returned from "NC" after a service for his brother who died on December 1. He asked if he could get back to MOA the next day. Id. There is no evidence that the respondent ever responded to MOA. In fact, MOA continued to request email updates from the respondent throughout January 2023 but the respondent failed to respond. Ex. 17, at BBO-304.

92. On or about January 20, 2023, MOA filed a complaint against the respondent with bar counsel. In response to the complaint, the respondent represented in an email to assistant bar counsel on April 3, 2023 that he had filed a complaint for parenting time with the Norfolk County Probate and Family Court on behalf of MOA on or about December 13, 2022. Ans. ¶ 42. The respondent claimed he mailed a complaint for parenting time, along with a check for the filing fee, to the court on or about that date. See Ans. ¶ 43. He reiterated these claims during his statement under oath to bar counsel and testified similarly before us. Ex. 1, at BBO-051-054; Tr. I:90, 94-96 (respondent).

93. On March 6, 2023, MOA emailed the respondent requesting a full refund of the $1,000 payment and the filing fee. The respondent claimed that he made these refunds and we have no evidence other than his testimony. See Ex. 2; Tr. I:140 (respondent).

COUNT FOUR
CONCLUSIONS OF LAW

94. Bar counsel charged that, by failing to competently and diligently represent his client, the respondent violated Mass. R. Prof. C. 1.1 and 1.3. The respondent failed to establish

MOA's paternity, which was a necessary element of the Complaint for Parenting Time. He further failed to properly fill out the Complaint which he admitted constituted a lack of competence and diligence. Finally, he did not file a Complaint for Parenting Time with the court as he was retained to do and as he told his client he did. For these reasons, we conclude that bar counsel proved these charges.

95. Bar counsel charged that, by failing to keep his client reasonably informed about the status of the matter, and by failing to promptly comply with reasonable requests for information, the respondent violated Mass. R. Prof. C. 1.4(a)(3) and 1.4(a)(4). We conclude that bar counsel proved these charges.

96. Bar counsel charged that, by misrepresenting to his client that he filed or caused to be filed a complaint for parenting time on behalf of his client, the respondent violated Mass. R. Prof. C. 8.4(c) and (h). We conclude that bar counsel proved these charges.

97. Bar counsel charged that, by making false statements under oath to bar counsel, the respondent violated Mass. R. Prof. C. 8.1(a), 8.1(b), 8.4(c), 8.4(d) and 8.4(h). We conclude that bar counsel proved these charges.

FACTORS IN MITIGATION AND AGGRAVATION

MITIGATION

98. In his Answer, the respondent alleged in mitigation that he suffered from the effects of COVID-19 on two occasions—May 2021 and June 2022—and that negatively impacted his ability to maintain his law practice at those times. He further claimed that he suffered "long COVID" symptoms which affected his memory and energy levels. Ans. ¶¶ 51-54. However, he also admitted before us that COVID did not affect his representation of three of the four clients involved in this matter—it only affected his representation of SQ. See Tr. I:147

(respondent).

99. We take administrative notice that, in mid-March 2020, the pandemic began in earnest in Massachusetts and severely impacted public health for a period of time. Yet, the respondent has the burden of proving mitigation and he has provided scant evidence of COVID diagnoses[24] and zero evidence of either his suffering from "long COVID" or of how COVID caused his misconduct. Rules of the Board of Bar Overseers ("BBO Rules") § 3.28; see also Matter of Ablitt, 486 Mass. 1011, 1018, 37 Mass. Att'y Disc. R. 1 (2021) (requiring causal connection between claimed mitigating factor and misconduct) (internal citations omitted). We conclude that the respondent failed to prove this mitigating factor.

100. The respondent also proffered as mitigating that he is willing to undergo an audit by the Law Office Management Assistance Program ("LOMAP"). Ans. ¶ 55. This is also not a recognized factor in mitigation. Further, we note that the respondent could have contacted LOMAP on his own for assistance at any point while this matter was pending and, as of the date of his hearing before us, failed to do so. See Tr. I:143, 145 (respondent).

101. In his posthearing brief, the respondent asserts, for the first time, that he has performed a significant amount of pro bono legal work for low-income litigants and children in contested custody cases which should be considered mitigating. In the first instance, this mitigating factor was not properly pled and therefore was waived by the respondent. See BBO Rules § 3.15(f) (claimed factor in mitigation must be asserted in the answer to the petition for discipline). Even if it were properly pled, this is not a recognized mitigating factor. See Matter of Zak, 476 Mass. 1034, 1040, 35 Mass. Att'y Disc. R. 521 (2017) (internal citations omitted).

[24] The respondent provided a letter dated August 17, 2022 which states only that he "was seen at Convenient MD Urgent care on June20,2022 [sic] for a COVID related symptoms of fatigue and cough." Ex. 20. We note that this letter does not appear on any official letterhead as we would expect to see from a medical provider. Further, there is no evidence of his May 2021 diagnosis.

AGGRAVATION

102. The respondent has been disciplined before. Matter of Johnson, 34 Mass. Att'y Disc. R. 214 (2018) (stipulation to a three-month suspension for negligent misuse of settlement funds and failure to comply with IOLTA recordkeeping rules). Prior discipline, even if unrelated, is always a "substantial factor" in choosing a sanction. Matter of Dawkins, 412 Mass. 90, 96, 8 Mass. Att'y Disc. R. 64, 71 (1992).

103. The respondent lacked candor at the disciplinary hearing. He testified falsely under oath before us on multiple occasions. We find that the respondent intended to deceive us with his testimony. Lack of candor before the hearing committee is an aggravating factor. Zankowski, supra; Matter of Hoicka, 442 Mass. 1004, 1006, 20 Mass. Att'y Disc. R. 239 (2004); Matter of Eisenhauer, 426 Mass. 448, 457, 14 Mass. Att'y Disc. R. 251, 262, cert. denied, 524 U.S. 919 (1998); Matter of Friedman, 7 Mass. Att'y Disc. R. 100 (1991).

104. Lying to bar counsel in the course of an investigation is also a factor in aggravation. Matter of Curry, 450 Mass. 503, 532, 24 Mass. Att'y Disc. R. 188 (2008) ("False representations to bar counsel are comparable to making false representations to a court . . . [the respondent's] lack of candor and his misrepresentations are under oath bar counsel constitute a serious factor in aggravation").

105. The respondent violated numerous disciplinary rules. This is a recognized factor in aggravation. E.g., Matter of Strauss, 479 Mass. 294, 302, 34 Mass. Att'y Disc. R. 522, 531 (2018); Matter of Saab, 406 Mass. 315, 326-327, 6 Mass. Att'y Disc. R. 278, 289-290 (1989).

Recommended Disposition

Bar counsel recommends that the respondent be suspended from the practice of law for three years. The respondent recommends a suspension of no more than three months. We recommend a suspension from the practice of law for two-and-one-half-years.

We are confronted here with a "pattern of neglect and deceit" by a lawyer who was supposed to be helping his clients navigate through divorce, custody, and / or guardianship issues—clearly stressful and emotional periods in their lives. Matter of Kerlinsky, 428 Mass. 656, 665, 15 Mass. Att'y Disc. R. 304 (1999). As set forth above, the respondent had a habit and practice of over-promising and under-delivering to his clients. This alone is dangerous to the public and harmful to the public's perception of lawyers and the legal profession. However, the respondent compounded his misconduct because, when his lack of competence and diligence led to legal failures, he intentionally misrepresented to his clients the status of their cases to avoid the consequences of his own inaction. As we consider the appropriate sanction here, we must consider the cumulative effect of multiple violations, which can warrant a harsher sanction than if the violations were evaluated separately and simply added up. Matter of Strauss, 479 Mass. 294, 302, 34 Mass. Att'y Disc. R. 522 (2018); Matter of Zak, 476 Mass. 1034, 1039 (2017); Matter of Crossen, 450 Mass. 533, 24 Mass. Att'y Disc. R. 122 (2008).

Starting with the most serious allegation, in Count III, SQ's case, the respondent intentionally mis-dated the Notice of Withdrawal and his certificate of service, which he signed "under the penalties of perjury," to make it appear that he had filed it with the court and served it on opposing counsel on August 17, 2022 (before the hearing on August 22, 2022). He then repeatedly lied about this to his client, bar counsel, and this committee. We concluded that this was a violation of Mass. R. Prof. C. 3.3(a)(1). Deliberate misrepresentation by an attorney to a

tribunal, not under oath, generally warrants a one-year suspension. Matter of Macero, 27 Mass. Att'y Disc. R. 554 (2011) (false statement, not under oath, about when docketing fee was paid). Matter of Neitlich, 413 Mass. 416, 8 Mass. Att'y Disc. R. 167 (1992). Misrepresentation to a tribunal while under oath generally warrants a two-year suspension. Matter of Diviacchi, 475 Mass. 1013, 1020-1021, 32 Mass. Att'y Disc. R. 268, 280-281 (2016); Matter of Shaw, 427 Mass. 764, 770, 14 Mass. Att'y Disc. R. 699 (1998). But see Matter of Merrill, 34 Mass. Att'y Disc. R. 347 (2018) (stipulation to eighteen-month suspension for, *inter alia*, lying in an affidavit filed with the SJC); Matter of Freyleue, 29 Mass. Att'y Disc. R. 270 (2013) (eighteen-month suspension); Matter of Pezza, 29 Mass. Att'y Disc. R. 535 (2013) (stipulation to one-year-and-one-day suspension for making statements in affidavit which were either knowingly false or made with reckless disregard for their truth or falsity); Matter of Livingston, 27 Mass. Att'y Disc. R. 548 (2011) (stipulation to one-year suspension for lying in affidavit).

While the respondent's misrepresentation was technically "under oath," we acknowledge that the respondent's mis-dating of the Notice did not reach the merits of the case—it was procedural in nature. See Matter of Macero, supra at 559. In addition, his misrepresentation about when the Notice was served and filed did not harm his client because she was already aware that no Notice of Withdrawal had been docketed as of the date of the final hearing in her divorce matter. We find this issue to be quite similar to Matter of Macero, where the lawyer misrepresented to the court the date on which she had mailed an appellate filing fee to conceal that the payment was untimely. Id. She then continued lying to conceal her original misrepresentation by backdating a check and, in a motion to the court, blaming the post office for the delay. The Single Justice noted that the presumptive sanction for misrepresentation to a

tribunal of material[25] disputed facts is a one-year suspension. See id. and cases cited. Despite the presence of aggravating factors (e.g. her lack of candor), the Single Justice held that the sanction should not exceed one year in part because the lawyer's misrepresentations concerned facts "material to a procedural ruling, not facts central to the underlying litigation." Cf. Matter of Smoot, 26 Mass. Att'y Disc. R. 637 (2010) (the lawyer received a six-month-and-one-day suspension, with the final three months stayed, for certifying that he had served a summary judgment motion on opposing counsel who he knew had died; the court adjusted downward from the presumptive one-year suspension in Smoot because the lawyer had paid the opposing party's attorney's fees which the court treated as analogous to restitution and the lawyer made only a single misrepresentation and did not try to conceal it.). We do not believe that the sanction for the respondent's violation of Rule 3.3 alone should exceed one year because it involved only a Notice of Withdrawal which was not central to the merits of the litigation. See Matter of Francoeur, 38 Mass. Att'y Disc. R. 117 (2022) but compare Matter of Cross, 15 Mass. Att'y Disc. R. 157 (1999) (the lawyer stipulated to a public reprimand for violating Rules 8.4(d) and (h) when she filed an inaccurate return of service with the court and subsequently filed an inaccurate affidavit; in mitigation, the lawyer's misrepresentations were not material).

The core of the instant disciplinary proceeding is that the respondent repeatedly neglected three of the four client matters at issue (including SQ's case), failed to keep his clients reasonably informed about the status of their matters, and made multiple misrepresentations to them to conceal his neglect. See Counts II-IV. Under the standards set forth in Matter of Kane, a "suspension is generally appropriate for misconduct involving repeated failures to act with

[25] We take administrative notice that after Macero, but before the events at issue, Rule 3.3(a)(1) was revised and no longer requires that the knowingly false statement of fact to a tribunal be material. This does not change our analysis of the applicability of Macero here.

reasonable diligence, or when a lawyer has engaged in a pattern of neglect, and the lawyer's conduct causes serious injury or potentially serious injury to a client." Matter of Kane, 13 Mass. Att'y Disc. R. 321, 328 (1997). Here, we find that the respondent's conduct risked potentially serious injury to his clients because they could have lost the opportunity to pursue their claims due to his neglect and misrepresentations. For example, in Ms. Albano's matter, the respondent did not file a petition for appointment of guardian of a minor as he claimed he did. Fortunately, Ms. Albano terminated the respondent and accomplished the filing herself, pro se. If she had not, Ms. Albano could have lost the opportunity to petition for guardianship. The fact that she was ultimately denied guardianship does not absolve the respondent since even the loss of a weak claim constitutes harm. See Matter of Shaughnessy, 19 Mass. Att'y Disc. R. 410 (2003) (Court rejected the lawyer's claim that because her claims had no chance of success, there was no harm to the client when they were dismissed; if the claims had no merit, it was the respondent's duty to inform his client, there is no justification for neglecting claims and misrepresenting the status of proceedings); Matter of Long, 24 Mass. Att'y Disc. R. 435, 444-445 (2008); Matter of Aufiero, 13 Mass. Att'y Disc. R. 6, 25 (1997); Matter of Buckley, 2 Mass. Att'y Disc. R. 24, 25 (1980). In addition, and disturbingly, in SQ's matter, the court entered a divorce judgment without her knowledge or input—a potentially very serious injury. However, because SQ did not testify, we cannot say with certainty what the final result was in her divorce or how the respondent's actions may have definitively harmed her.

Standing alone, a pattern of neglect over three separate cases, as we found here, can warrant a suspension of at least six months. See e.g., Matter of Quinlan, 34 Mass. Att'y Disc. R. 488 (2018) (six-month suspension with a reinstatement requirement for neglecting three unrelated client matters, failing to respond to the clients' inquiries, and failing to return files and unearned

fees; the lawyer was administratively suspended and failed to participate in the disciplinary proceedings); Matter of Andrade, 32 Mass. Att'y Disc. R. 10 (2016) (six-month suspension with reinstatement for abandoning a single client matter; administrative suspension for lack of cooperation and failure to participate in the disciplinary proceedings); Matter of Kleinfeld, 23 Mass. Att'y Disc. R. 358 (2007) (suspension of one-year-and-one-day for neglecting two unrelated matters and failing to respond to client requests for information and files; the lawyer failed to cooperate and did not comply with a prior order of administrative suspension); Matter of Scannell, 21 Mass. Att'y Disc. R. 580 (2005) (the lawyer stipulated to one-year-and-one-day suspension where he neglected three client matters, in violation of Rules 1.1, 1.2(a), 1.3 and 1.4; mitigated by mental health issues and aggravated by prior discipline for similar misconduct).

The respondent's pattern of neglect does not stand alone, however, because he also attempted to conceal his neglect by making numerous misrepresentations to his clients—this is an aggravating factor. Matter of Kane, supra. For example, in Ms. Albano's and MOA's cases, the respondent told his clients that he had filed pleadings to initiate their cases with the court that were never filed. Where an attorney's neglect has caused harm or potential harm, lying to a client to cover up the attorney's neglect typically results in a term suspension, the length of which depends upon the other misconduct that was involved.

In Matter of Brennan, 37 Mass. Att'y Disc. R. 75 (2021), the lawyer was suspended for one year and one day for neglecting three clients' criminal cases, failing to return an unearned fee to one client, making misrepresentations to one client, failing to cooperate with bar counsel, and practicing law while administratively suspended for noncooperation. In one of the matters, which is strikingly similar to the misconduct found here, Brennan was retained to, among other things, file a motion for a new trial. She failed to do so and intentionally misrepresented to her client,

her co-counsel, the client's family, and, later, bar counsel, that she had done so. See also Matter of Hoffman, 35 Mass. Att'y Disc. R. 276 (2019) (lawyer stipulated to one-year-and-one-day suspension where she neglected three cases and made misrepresentations to clients in two of them); Matter of Trefethen, 24 Mass. Att'y Disc. R. 697 (2008) (the lawyer stipulated to a one-year-and-one-day suspension for neglecting three matters causing his clients' cases to be dismissed, failed to notify his clients of the dismissals, and actively misrepresented the status of the cases to clients; in aggravation, he had received a prior public reprimand for similar misconduct). Cf. Matter of Kaplan, 31 Mass Att'y Disc. R. 353 (2015) (the lawyer stipulated to a two-year suspension after he failed to effectuate service of a client's complaint on the defendant, causing the complaint to be dismissed, and then misled client to believe that the case was still active and then subsequently settled; he fabricated a settlement agreement; he misused, without deprivation, other client funds to pay fabricated settlement; and practiced law while under an order of administrative suspension). Here, the respondent also repeated his lies about these three matters, under oath, to bar counsel and this committee—yet another aggravating factor.

Finally, we return to Count One, Dr. Nah's case, which began the investigation into the respondent's conduct. By posting confidential information about his former client on the internet without her informed consent, and by later editing his response to include additional confidential information and a false claim that he terminated the attorney-client relationship, the respondent violated Mass. R. Prof. C. 1.6(a), 1.9(c)(2), 8.4(c) and (h). The sanctions for this type of misconduct typically range from admonition to public reprimand. In Matter of Smith, the respondent received a public reprimand after he posted information in the nature of a status update on his public Facebook page which revealed confidential information about a Juvenile

Court proceeding in which his client was seeking guardianship of her grandchild. Matter of Smith, supra.

While each case needs to be decided "`on its own merits and every offending attorney must receive the disposition most appropriate in the circumstances,'" Matter of Foley, 439 Mass. 324, 333, 19 Mass. Att'y Disc. R. 141, 152 (2003) (citation omitted), we "need not endeavor to find perfectly analogous cases, nor . . . concern ourselves with anything less than marked disparity in the sanctions imposed." Matter of Hurley, 418 Mass. 649, 655 (1994). There are no mitigating factors and several aggravating factors here, including a prior three-month suspension and lack of candor to bar counsel and the committee.

The respondent's desire and willingness to lie to cover up his shortcomings is stunning and incredibly troubling. The respondent made many misrepresentations over multiple cases; he made misrepresentations to each of the four clients at issue, to a court, to bar counsel during the investigation, and to this committee when he testified before us. He claimed in two separate cases that three different courts failed to docket something that he filed. Tr. I:96-97 (respondent). He has shown a clear willingness to lie when it suits him. He lacked credibility, integrity, and candor before us. Finally, he carelessly revealed his client's confidential information online not once, but twice. His conduct is dangerous for the public and for the integrity of the legal system. We are mindful of the consequences of such behavior on the public's trust in, and perception of, lawyers and the legal profession. As expressed above, we consider the totality of these violations in determining our sanction recommendation.

Conclusion

For the foregoing reasons, we recommend that the respondent, Michael A. Johnson, be suspended from the practice of law for two-and-one-half-years. Given the respondent's many deficiencies in practice and resulting rules violations, we recommend that any future reinstatement be conditioned on an audit by LOMAP, a mentoring agreement, and an evaluation by Lawyers Concerned for Lawyers.

Dated: 1/16/25

Respectfully submitted,
By the Hearing Committee,

Bernard Greene
Bernard Greene, Esq., Chair

Nicholas D. Stellakis
Nicholas D. Stellakis, Esq., Member

Jo-Ann Burnett
Jo-Ann Burnett, Member