**IN RE: MATTER OF ALBERTINA CERVEIRA-HAJJAR**
**BBO NO. 079830**

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

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| **BAR COUNSEL,** **Petitioner** | ) | |
| **v.** | ) | **B.B.O. File No. C3-21-00270268** |
| **ALBERTINA CERVEIRA-HAJJAR,** **Respondent.** | ) | |

## HEARING REPORT

On March 1, 2023, bar counsel filed a petition for discipline against the respondent, Albertina Cerveira-Hajjar, Esquire.

The petition charged that the respondent, while serving as a guardian and conservator for an elderly woman named Mary Gifford, failed to file required inventories and accountings, and failed, before Gifford died, to collect certain bank funds that should have been part of her estate. The petition charged further misconduct with reference to a related estate, that of Gifford's friend Veronica Noren. The Noren Estate was related to Gifford's because Noren predeceased Gifford, and left Gifford her entire estate. The petition alleged that the respondent, who was appointed Noren's personal representative, failed to take appropriate actions to complete the Noren probate, failed promptly to deliver the Noren Estate funds to the Gifford Conservatorship, while Gifford was living and then, once Gifford died, failed to take any action regarding the Gifford Estate, including failing, for more than seven years, to contact her heirs about the significant assets to which they were entitled.

Represented by counsel, the respondent filed her answer on March 21, 2023, denying any violation of the Rules of Professional Conduct.

The hearing was held on January 29, January 30, January 31 and February 1, 2024. Ninety-four exhibits were admitted. Six witnesses testified: Jamie Lynn Jordan (nee Kelaher, Esq., an attorney who successfully opened the Gifford Estate and oversaw payment to its heirs; Jane Eagan, the complainant and one of the Gifford heirs; Kristin Shirahama, Esq., bar counsel's expert witness; Matthew Beaulieu, Esq., an attorney who represented the respondent intermittently during the course of the probate proceedings; John Dugan, Esq., the respondent's expert witness; and the respondent.

On April 19, 2024, the parties filed their proposed findings and conclusions.

## FINDINGS AND CONCLUSIONS[1]

### Findings of Fact

1. The respondent, Albertina Cerveira-Hajjar, is an attorney duly admitted to the Bar of the Commonwealth on December 14, 1983. Ans. ¶ 2.

2. The respondent's current business address is 4 Cypress Street, Suite 9, Brookline, Massachusetts, 02445. Ans. ¶ 2.

### The Gifford Guardianship and Conservatorship

3. On July 11, 2011, the Faulkner Hospital, through its attorney Matthew Beaulieu, petitioned the Suffolk Probate Court for the appointment of a temporary conservator for Mary Gifford, at that point a Faulkner patient "unable to make adequate arrangements for safe

[1] The transcript is referred to as "Tr. __: __"; the matters admitted in the answer 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.

discharge." Exs. 2, 3 (009). On the same day, the hospital petitioned the Court for a guardian for Gifford. Ex. 4. The reason given for the need for a guardian was Gifford's memory impairment, and her inability to care for herself and manage her household and finances. Ex. 4 (012). A medical certificate, not part of our record, was attached to the guardianship petition, detailing the extent of Gifford's alleged incapacity. Id. Beaulieu wrote that Gifford was "[b]elieved to have nieces and nephews[; w]hereabouts are unknown." Ex. 4 (013). On August 4, 2011, the respondent was appointed Gifford's temporary guardian and conservator. Ex. 6; Ex. 10 (045). She procured a conservator's bond. Ex. 5. These appointments became permanent in separate Decrees dated April 19, 2012. Exs. 11, 12.

4. The Guardianship Decree required the respondent to file an Initial Care Plan/Report within sixty days of the appointment, and to file Annual Care Plan/Reports every year for the duration of the guardianship. Ex. 11 (083). See Massachusetts Uniform Probate Code, G.L. c. 190B, §§ 5-309(b) (setting out contents and frequency requirements for reports) and 5-309(c) (court to establish a system for monitoring guardianships, including review of annual reports).

5. While the respondent, by all accounts provided exemplary care, she has admitted that she did not file the required care plans for Gifford. Tr. 3:30-31 (Respondent).

6. The Conservatorship Decree required the respondent to file a Conservator's Inventory within ninety days of the appointment, and a Conservator's Account one year from the date of appointment, and annually thereafter. Ex. 12 (086). See MUPC §§ 5-417 and 5-418.

7. The respondent filed a Temporary Conservator's Inventory on October 26, 2011. Ex. 9; Ex. 13, #10 (088). It includes real estate and a schedule of property, listing a single bank account at Bank of America. Ex. 9 (043).[2]

8. The respondent "had to get [Gifford] out of Faulkner [Hospital]," and found her a placement in an assisted living facility. Tr. 3:31 (Respondent).

9. She described her search for assets: she got Gifford's mail, including bank statements, which led her to discover a second Bank of America account; had a realtor appraise Gifford's house; and checked Gifford's safe deposit box. Tr. 3:27-29, 35-36 (Respondent). The respondent did not check the Massachusetts unclaimed property fund to determine if Gifford had any money there. Tr. 4:53 (Respondent).

10. The respondent knew she had to sell Gifford's house to pay for her care. To effect this, on October 3, 2011, she applied to the Suffolk Probate Court for a license to sell, writing that the sale of the home was necessary for Gifford's maintenance, and citing an offer to buy it for $311,050. Ex. 8.

11. The Court quickly appointed a Guardian ad Litem (GAL) to "review the matter and to file a written report to the Court on or before October 26, 2011." Ex. 7 (023); Tr. 3:31-33 (Respondent). GAL reports are confidential, but the respondent testified generally that a GAL might want to review bank statements, and would want to see the medical certificate establishing the need for guardianship. Tr. 3:32 (Respondent).

12. The Probate Court docket reflects that the GAL assented to the sale of the house on October 28, 2011, and filed a report on April 20, 2012. Ex. 13, #s 12, 13 (089).

[2] The respondent has admitted that she filed no further accounts or inventories until significantly after Giffords's death, ignoring a Notice of Non-Compliance of Account the Probate Court sent her on or around November 16, 2015. See Tr. 3:60-61; Ex. 13 (089).

13. Before the house was sold, the respondent went through it. She found a will in a drawer in Gifford's bedroom. Tr. 3:44-45 (Respondent). It was dated June 4, 1986, and had handwritten annotations on it, among them a note that the original was in a safe deposit box. Ex. 1; Tr. 3:44-45 (Respondent). Gifford, who was intermittently lucid, allegedly told the respondent that this was no longer her will, and that she and her friend Veronica Noren had each executed a will, giving everything to each other. Tr. 3:45, 48 (Respondent). The respondent believed that the will she found (Ex. 1) had been revoked by Gifford. Tr. 3:45 (Respondent).

14. Although the respondent searched the safe deposit box and Gifford's house, she found no new will. Tr. 3:47 (Respondent).

**The Noren Estate**

15. Noren died on August 17, 2012, predeceasing Gifford. Ex. 16.

16. Initially, no will was found. Accordingly, on or around December 12, 2012, Frederick G. Barry, Esq. filed an intestate probate case for the Noren Estate in the Suffolk Probate Court, seeking to have himself appointed personal representative ("PR"). Ex. 13 (093-094); Ex. 15.

17. Barry was appointed PR by decree dated January 23, 2013. Ex. 16. The decree provided for a corporate bond. Ex. 16 (107).

18. At the time of her death, Noren owned a three-family house in South Boston. Ex. 30 (154).

19. Barry subsequently discovered that Noren had in fact left a will. Ex. 17; Ex. 27 (142). The will is dated June 2, 1981. Ex. 17. It provided for a small bequest to a friend, and a small bequest to a charity, and left "the rest, residue and remainder" of the real and personal property to Gifford. Gifford was also designated executrix. Id.

20. Barry found and contacted the respondent who, as noted, was Gifford's guardian and conservator. Barry's April 1, 2013 letter reflects that he and the respondent had spoken earlier that day. Ex. 18; Tr. 3:38 (Respondent). The letter notes that the sale of the Noren property was scheduled for May 8 [2013], and asks the respondent to file a renunciation on Gifford's behalf, presumably of the executrix appointment, and requests a copy of the respondent's authority to represent Gifford. Id. Barry closed by noting that he had told Noren's heirs that if they wished to contest the will, they would have to hire another attorney since Barry's "responsibility now is to carry out the provisions of the will." Id. The letter purportedly enclosed bank statements and noted that these had not been updated, "so the actual balances are higher." Id.

21. On April 10, 2013, Barry filed a Petition for Formal Probate of a Will. Ex. 14, #11 (094); Ex. 19. The Petition identified Barry as the nominated PR. Ex. 19 (112). It listed as heirs two first cousins (one deceased), and a second cousin, none of whom was included in the will. It identified three devisees, Gifford among them, and noted that Gifford was incompetent and had a guardian. Ex. 19 (114). The respondent was listed as Gifford's conservator. Ex. 19 (115).

22. Although Barry asked to be appointed PR, he knew and indicated that he did not have priority and that "Mary Gifford (incompetent)" had prior or equal rights to appointment. Ex. 19 (117).

23. Also on April 10, 2013, on behalf of Gifford, the respondent filed an Assent and Waiver of Notice and Renunciation of the executrix nomination, nominating Barry to serve. Ans. ¶ 11; Ex. 14, #15 (094); Ex. 20.

24. The respondent retained Matthew Beaulieu, Esq., in early May 2013 "to secure her appointment as Personal Representative of the [Noren Estate]." Tr. 3:17 (Respondent); Ex. 73 (337).

25. Barry sent Beaulieu a letter on May 13, 2013, enclosing various documents, among them the cover sheet for the Purchase and Sale Agreement for Noren's property. Ex. 21.

26. On May 30, 2013, Beaulieu filed in the Probate Court a Notice of Appearance as attorney for the respondent, and an Objection to Barry's appointment as PR, citing an unspecified conflict of interest. Ex. 14, #16 (094); Ex. 22 (123).

27. On June 18, 2013, the respondent, through Beaulieu, filed her own Petition for Formal Probate of the Noren Estate ("Third Petition"), requesting that she be appointed as PR, and giving as her interest that she was the conservator of Gifford, the PR/devisee named in the will. Ex. 14, #17 (094); Ex. 23 (124). She filed a bond for $876,000, which she wrote was the estimated value of Noren's personal estate, incorrectly ascribing a $0 value to the real estate. Ex. 24 (130).

28. On June 19, 2013, the probate court issued a citation for the Third Petition, setting July 25, 2013 as the deadline by which any objections to the Noren will or to the respondent's appointment as PR had to be filed. Ex. 14 (094); Ex. 26 (135-138). The citation was served on the devisees and on all of the excluded heirs, and notice was published as ordered. Tr. 2:31-33 (Shirahama); Ex. 34. No objections to the Third Petition were filed. Ex. 14 (094-095). Barry wrote Beaulieu that he did not oppose the respondent's appointment. Ex. 33.

29. On June 27, 2013, Barry filed a motion for his own appointment as "special personal representative" ("SPR") for the purpose of selling the Noren residence, and for a license to sell same. Ex. 14, #28 (094); Ex. 25. As noted above, Barry had found a buyer for the

property. See Ex. 21. In the Affidavit filed with the motion, Barry wrote that a closing was scheduled for July 1, 2013; that all parties agreed to the sale; that all parties had assented to Barry's appointment as SPR; and that failure to promptly secure and execute the license to sell could result in the loss of the sale or the waste of the property. Ex. 25 (134).

30. At the same time, Barry filed the SPR's Inventory. Ex. 30. He listed a Mount Washington Bank checking account, containing $59,956.89,[3] and the Noren residence with a value of $876,000. Id.

31. On the same day, June 27, 2013, the probate court entered its Order Appointing Barry Special Personal Representative and granting Barry the license to sell the Noren residence. Ex. 14, #31 (095); Ex. 29. Barry was authorized to "retain the proceeds of the sale until such time as they may be delivered to the Personal Representative of the Decedent's Estate." Ex. 28 (144).

32. The sale of Noren's house occurred on July 17, 2013. Ex. 31. The Noren Estate netted $823,483.07. Ex. 31, ln. 803 (155). Barry deposited this amount into the Sovereign Santander estate account on July 19, 2013. Ex. 66 (291).

33. On October 1, 2013, the respondent and Barry filed a joint motion to dismiss Barry's petition for formal probate of the Noren will, writing that the respondent had statutory priority for appointment as PR, and that she had filed her own Petition for Formal Probate, to which no one had objected. Ex. 14, #40 (95); Ex. 36.

34. On November 26, 2013, the probate court entered a Decree and Order, approving the Third Petition and appointing the respondent PR of the Noren Estate. Ex. 14, #44 (095); Ex. 41. The Decree found the Noren will to be "valid and unrevoked," and admitted it to formal

[3] This sum had been the opening deposit, made March 3, 2013, into the Noren Estate Account that Barry had established at Sovereign Santander Bank. Ex. 66 (283).

probate. Ex. 41 (168). The effect of the Decree was that none of Noren's excluded heirs could file an objection to the will. Tr. 2:34-35 (Shirahama).

35. The court allowed the joint motion and dismissed Barry's petition for formal probate. Ex. 14, #47 (095); Ex. 39.

36. The respondent's November 26, 2013 appointment as PR of the Noren Estate effectively ended Beaulieu's participation. Until he was retained again, almost three years later, on September 23, 2016 for "representation associated with the administration" of the Noren Estate, he provided the respondent no substantive legal services. Tr. 2:156, 210-211, 3:182 (Beaulieu); Ex. 47; Ex. 73 (339-340).

37. On May 13, 2014, Barry turned over to the respondent the entire proceeds of the Sovereign Santander Estate Account in the amount of $829,054.70 (the "Noren Estate Funds"). Ex. 43; Ex. 66 (312). On May 14, 2014, the respondent deposited the Noren Estate Funds into an estate account. See Ex. 72 (333).

38. As PR of the Noren Estate, the respondent did not have Noren's mail delivered to herself or contact any banks directly to secure any bank statements. Tr. 4:7-9, 23-25 (Respondent). She also did not check the Massachusetts unclaimed property fund to see if Noren had any money there. Tr. 4:53 (Respondent).

**Gifford Dies Intestate, With Significant Assets in her Estate**

39. Mary Gifford died on May 29, 2014. Ans. ¶ 25; Tr. 3:53 (Respondent). No valid will was ever found. Tr. 3:47 (Respondent). She left six heirs at law. Tr. 1:49-50 (Eagan); Ex. 89 (452).

40. The respondent made the funeral arrangements, and notified one of Gifford's nieces, Martha Gill, about her death. Tr. 1:38 (Eagan); Tr. 3:53 (Respondent). That niece could not attend the funeral but notified her sister, Jane Eagan, who did attend. Id.

41. The respondent and Eagan met at the funeral home. Tr. 1:38 (Eagan). Eagan remembered that the respondent came up to her and told her there was no money left in Gifford's estate. Id. The respondent recalls the conversation differently, testifying that Eagan's husband asked her how much money was left in the estate. Tr. 3:54 (Respondent). The respondent said she did not know yet, and said nothing further. Tr. 3:54-55 (Respondent). We credit Eagan's testimony on this point. See Ex. 94 (462).

42. At the time Gifford died, the respondent held approximately $39,000 in the Gifford conservatorship account, and approximately $829,000 of Noren Estate funds. We credit that once Gifford died, "the Noren estate [was] payable to the Mary Gifford estate." Tr. 2:37 (Shirahama).

43. Because Eagan asked the respondent for family photographs, which the respondent sent to her some weeks later, we find that the respondent had Eagan's contact information either because Eagan gave it to her or because she secured it elsewhere. Tr. 1:39 (Eagan). And as noted above, the respondent already had contact information for another heir, Martha Gill.

44. Nonetheless, the respondent did not tell Eagan then or, as discussed below, did not reach out later to report, that she was holding significant funds, funds to which Gifford's heirs would be entitled. Tr. 4:48 (Respondent); Exs. 43, 44 (175). Although Gifford had died, until something was filed initiating proceedings and opening an estate, her probate estate existed

only "in theory" and was "latent." Tr. 4:164-165 (Dugan). As a result, for years, no probate estate was created for Gifford. See Tr. 1:89-91 (Kelaher); Ex. 69.

45. Gifford's death generated other duties for the respondent to perform in her guardianship and conservator capacities. As to the guardianship, MUPC at § 5-310 provides that "[t]he authority and responsibility of a guardian of an incapacitated person terminates upon the death of the . . . incapacitated person."

46. The respondent should have filed a death certificate with the Probate Court. Tr. 2:14-15 (Shirahama). She did not. We agree with Shirahama that a reasonably competent attorney would not have waited seven years, as the respondent did, to tell the Probate Court that Gifford had died. Tr. 2:46-47 (Shirahama).

47. As to the conservatorship, MUPC, § 5-429(e) dictates that the respondent was required to conclude the conservatorship estate by first delivering it to Gifford's successors, and filing a final accounting and petitioning for discharge within thirty days after distribution. See Tr. 4:162 (Dugan). From May 2014, when Gifford died, until September 2021, the respondent did not file any of the required inventories or accountings, necessary prerequisites to making any final distributions of Gifford's conservatorship funds. Ex. 13 (89-90); Tr. 2:26 (Shirahama); Tr. 4:14, 17-18 (Respondent).

48. Moreover, the respondent continued to use funds in the Gifford guardianship account, of which she was conservator, substantially after Gifford's death. Ex. 85 (420, 428, 438) (showing checks the respondent wrote to herself for $9,000 on April 26, 2021, $8,000 on March 31, 2021, $2,000 on February 8, 2021); Ex. 92 (467)) (showing post-death checks for the respondent's bond).

49. We find, consistent with Shirahama's testimony, that it was not proper for the respondent to spend Gifford's funds for years after her death. Tr. 2:43-44 (Shirahama); cf. Tr. 4:131-132 (Dugan) ("better practice" would have been to use Noren estate funds to pay post-death expenses).

**Meanwhile, the Noren Estate Stalls**

50. In their testimony before us, the respondent and Beaulieu blamed Barry for the delay in finalizing the Gifford and Noren Estates, claiming that they were unable to proceed with their accounting because Barry refused to file proper accounts, and to turn over back-up documentation. We review in some detail their activities from November 2013, when the respondent was appointed PR for the Noren Estate, and February 7, 2020, when Barry filed an Amended Final Account.

51. After Barry turned the Noren Estate funds over to the respondent in May 2014, he was required to file an Account for court approval. See Ex. 28 (143). He did not do so promptly.

52. The respondent insists she was diligent in trying to get Barry to fulfill his Noren Estate-related duties. We find otherwise. The respondent's bills, which she testified were an accurate reflection of her time, show only three calls with Barry to discuss his accounts in late 2013 and in early 2014. Tr. 4:21 (Respondent); Ex. 72 (333). As noted, the respondent received the Noren Estate check for $829,054.70 from Barry on May 13, 2014 when she went to his office in Sandwich. Ex. 43; Ex. 72 (333). She asked him at the time when he planned to do his accounts, and told him she wanted bank statements and backup. Tr. 3:66 (Respondent).

53. The respondent's bills reflect no further attempts to reach Barry in 2014, and no contact or attempted contact in 2015. Ex. 72 (333-334).

54. In 2016, the respondent called Barry twice, in February and again in May. Id. She drove to his office in Sandwich in July 2016 to meet with him a second time. Id.; Tr. 3:66-68 (Respondent). Her July 8, 2016 bill entry reflects that during the meeting, he gave her "a hand written incomplete accounting with no backup bank statements," and that he had not filed accounts to date. Ex. 72 (334).

55. The respondent retained Beaulieu again in September 2016, "in connection with . . . representation associated with the administration of the Estate of Veronica P. Noren." Ex. 47 (183). He exchanged correspondence with Barry on September 21, 2016, and spoke to him October 20. Ex. 73 (340). Beaulieu emailed the respondent on October 20, 2016, relaying that he had spoken to Barry, who had sent him "a schedule B from an account." Beaulieu explained to Barry that he needed an inventory and a schedule A. Ex. 48. Beaulieu met with Barry on November 16, 2016 in Sandwich to discuss the accounts and review materials Barry had provided, and to identify for him additional required information. Ex. 73 (340).

56. Beaulieu testified that Barry's office was "very disorganized, papers everywhere," and that Barry "always promised to provide information, but he never provided anything." Tr. 2:158, 159 (Beaulieu).

57. On January 5, 2017, Barry filed his Final Account as SPR of the Noren Estate. Ex. 51.

58. The following day, January 6, 2017, Barry sent Beaulieu a fax with a copy of his Final Account. Ex. 52. He also attached what appears to be a check register from August 2013 to May 2014, and something labeled "Deposit Record," with various entries by month and day, but with no year included.

59. Beaulieu reviewed Barry's Final Account on January 6, 2017. Ex. 73 (341). It showed a bank account at Mt. Washington, with an account number listed; a CD at Mt. Washington; and an estate account at Sovereign Santander. Ex. 51 (193).

60. Beaulieu filed an Appearance and Objection in the Probate Court shortly thereafter, on February 13, 2017, and checked a box signifying that his affidavit of objections would be filed within thirty days of the return date. Ex. 55 (207); Ex. 73 (341). The filing of this Objection meant that the respondent and Beaulieu had decided to get the Court involved. See Tr. 2:86 (Shirahama).

61. Beaulieu testified about the grounds for his Objection to the allowance of Barry's Final Account. Tr. 2:161 (Beaulieu). He explained: Schedule C of the Final Account has to balance to "zero," and this one showed a balance; Schedule A showed two Mt. Washington accounts, while only one had been listed on Barry's June 27, 2013 Inventory [Ex. 30]; the net proceeds from the sale of Noren's home did not account for a $50,000 deposit paid by the buyer; and there were "all kinds of legal fees and legal reimbursements charged with no kind of backup for it." Tr. 2:161-162 (Beaulieu).

62. After a February 21, 2017 "case conference with client," and with the exception of an April 12, 2018 "case conference with court clerk," requesting a pretrial conference, Beaulieu did no significant work on the Noren Estate until August 13, 2019, when he again had a "case conference with court clerk." Ex. 73 (341-343).

63. The respondent did little between February 22, 2017 and August 2019, spending one hour in total for a "conference to discuss status of objections" (.5 hours on January 5, 2018), and a meeting "with accountant for taxes" (.5 hours on February 2, 2018). Ex. 72 (334).

64. On August 13, 2019, likely in response to Beaulieu's urging earlier that day, the Probate Court issued a Pretrial Notice and Order, scheduling the pretrial for September 6, 2019. Ex. 14, #52 (095).

65. On September 6, 2019, Beaulieu filed an Affidavit of Objections for Objector, Albertina Cerveira-Hajjar. Ex. 58. This related to the Objection Beaulieu had filed on February 13, 2017 (Ex. 55), challenging Barry's January 5, 2017 Final Account (Ex. 51). Ex. 14, # 48, 49 (095). Beaulieu justified his failure to file this Affidavit for two-and-a-half years as follows: he had begun to suspect that Barry was not only incompetent but "also unethical"; he did not want to "show [his] hand" before he was "required to do so"; and he did not recall ever being served with a citation on the petition for allowance of account.[4] Tr. 2:166 (Beaulieu).

66. Beaulieu's Affidavit of Objections challenged Barry's Final Account as defective, noting among other things that the final account balance was not zero; that there were problems with some of the expenses connected with the sale of Noren's home; and that Barry had provided no back up documents for alleged expenses. Ex. 58.

67. Barry wrote to Beaulieu on October 2, 2019, describing a $50,000 discrepancy in the account relating to the real estate commission. Ex. 59. Although not entirely clear, Barry described two checks, one for $5,000 and one for $45,000, for the offer on Noren's property and the signing of the P&S Agreement, respectively, that were never delivered to him, and that were never deposited into the Esquire Real Estate account. Ex. 59 (219).[5]

[4] The docket shows a Petition for Allowance of Account filed October 27, 2017, a citation issued on November 6, 2017, and "Citation Filed; Served as Ordered" on December 15, 2017. Ex. 14, # 50, 51 (095); compare Tr. 2:166-167 (Beaulieu).

[5] Barry may have been simply mistaken here. He deposited $50,000 into the Noren Sovereign Santander account on March 27, 2013. Ex. 66 (283). This was shortly after the March 19, 2013 signing of the P&S. Ex. 21 (121).

68. Beaulieu's response was to move to attach Barry's real property, to the value of $100,000. Ex. 60 (223). In support of his request for relief, he cited the missing $50,000 as well as inadequacies in Barry's Final Account, among them an alleged double charge for $43,800 related to a real estate broker's commission, and $43,559.75 Barry had paid himself in fees and reimbursements, allegedly without supporting evidence. Ex. 60 (224-226).

69. By Order dated November 6, 2019, Barry was ordered to comply with an agreement he had made not to apply for a mortgage or encumber his real estate. Ex. 62. Over the respondent's objection, filed by Beaulieu, the case was transferred to the Fiduciary Litigation Session, the respondent arguing ironically that the delay this move would entail "will unduly prejudice the ultimate beneficiaries of the estate." Ex. 63 (242).

70. In response to an order of the Probate Court, on February 7, 2020, Barry filed an Amended First and Final Account of Special Personal Representative. Ex. 64, Ex. 65. The respondent did not object to this account, Beaulieu claiming he was never properly served with a citation. Tr. 2:207-208 (Beaulieu).[6]

71. Beaulieu followed up with Document Requests. Ex. 67. Barry did not respond, and Beaulieu proposed to the respondent that he file a motion to compel. Ex. 68.

72. At no point did the respondent (either herself or through counsel) file a petition to render an accounting to force Barry to produce his final account. Tr. 2:50-51 (Shirahama); see Ex. 14.

[6] Beaulieu explained that the Court will take no action on an Account unless a petition for allowance of account is also filed. Once that is accomplished, a citation issues from the Court with a return date, a date by when to file any objections. Tr. 2:163-165 (Beaulieu). The Noren Probate Docket shows that Barry's Amended Final Account was filed February 12, 2020, and that the "Citation on Petition for Allowance of First and Final Amended Account(s)" was issued, but not until October 27, 2020. Ex. 14 (096-097).

**Gifford's Heirs Are Notified, a Personal Representative is Appointed, the Gifford Estate is Settled, and the Noren Estate is Closed**

73. While the respondent and Beaulieu were spending estate money to battle Barry in court, the heirs remained wholly unaware of the existence and extent of their inheritance.

74. In or around June 2020, an asset recovery company contacted Eagan to advise her that, as a Gifford heir, she might be entitled to unclaimed assets that had escheated to the Commonwealth. Tr. 1:37 (Eagan); Ex. 92, ¶ 12 (463).

75. Eagan learned that almost $145,000 in funds belonging to the Gifford Estate had escheated to the Commonwealth. Tr. 1:99 (Kelaher); Ex. 93. Of the five escheated accounts, two were in Gifford's name alone, two were in the names of both Gifford and Noren, and one was in Noren's name for the benefit of Gifford. Ex. 93.

76. In or around June 2020, Eagan contacted the respondent to inquire about the Gifford Estate. Tr. 1:37 (Eagan). Only then, six years after Gifford's death, did the respondent tell her that Gifford had inherited money from Noren. Tr. 1:41-42 (Eagan); Ex. 92, ¶ 12 (463). We find that during that six-year period, prior to Eagan contacting her, the respondent never notified the heirs that Gifford had been named the beneficiary of the Noren Estate, or that she was holding substantial assets that they were entitled to. She never contacted them about opening a probate estate for Gifford. Tr. 1:39-40 (Eagan).

77. To give them some guidance, the heirs hired Jamie Kelaher, Esq. in June of 2020. Tr. 1:84-85 (Kelaher). Kelaher logged into the attorney portal of Massachusetts Courts and confirmed that the respondent had been appointed Gifford's conservator and guardian, but that she had filed no care plans, filed nothing regarding Gifford's death, and had filed no accountings in the conservatorship. Tr. 1:87 (Kelaher).

78. Kelaher contacted the respondent, who told her that Beaulieu was representing her. Tr. 1:89 (Kelaher). Kelaher contacted Beaulieu, and learned that no estate had been set up for Gifford, and that no PR had been appointed for the Gifford Estate. Id. Kelaher conveyed to both that the heirs were "very anxious" to get this wrapped up, and that they did not want to incur additional attorney's fees or personal representative fees. Tr. 1:96 (Kelaher). Presumably in response to the inquiries from Eagan and/or Kelaher, the respondent told Beaulieu in a June 9, 2020 email that she was "slowly" getting the addresses of the Gifford heirs from Jane Eagan and Ann Marie Hopkins, whom she described as "surviving nieces." Id.[7]

79. The respondent and Beaulieu pointed the finger at Barry as the cause for the delay, claiming that he was difficult to work with and that there was about $50,000 they believed was missing from his account. Tr. 1:89-90,107-108 (Kelaher).

80. Eagan testified to the heirs' frustration about how "everything had been withheld from us" and how the way this "was handled was wrong." Tr. 1:57-58 (Eagan). Emails among Eagan, Kelaher, the respondent and Beaulieu from July to October 2020 reflect Eagan's growing frustration. Ex. 93 (477-479).

81. On August 13, 2020, Kelaher filed a Petition for Late and Limited Formal Probate of the Gifford Estate. Ex. 69 (327). A late and limited proceeding was required because estate proceedings had not been commenced within three years of Gifford's date of death. See MUPC at § 3-108; Tr. 1:91-92 (Kelaher). Its purpose was twofold: to determine who the heirs were, and

[7] As we discuss in more detail below, this delay until **2020** is unfathomable. We noted above that the respondent had at least two addresses at or around the time of Gifford's funeral in May **2014**. In an email dated October 14, **2015**, she told Beaulieu that she thought she had found "all the heirs on Noren side and on Gifford side." Ex. 46. In an email dated February 11, **2017**, with the subject line "Gifford, Mary Petition to Expand Conservatorship," Beaulieu wrote the respondent that he was "working on the court paperwork necessary to get you the authority to administer Mary Gifford's estate. Please provide all information you have concerning Mary's legal heirs." Ex. 54 (206). And still, the respondent never contacted the heirs.

to "have a personal representative appointed to confirm title to the successors to the probate assets." Id.

82. On January 6, 2021, Kelaher was appointed PR of the Gifford Estate. Ex. 69, #s11,12 (327); Tr. 1:120 (Kelaher). Once appointed, she reached out to Barry to see what she could do to correct and file his accounting, so that the respondent could then file her own accountings. Tr. 1:107-108 (Kelaher).

83. Kelaher found Barry very responsive. He offered to come to her office and bring his paperwork. Tr. 1:108-109 (Kelaher); Ex. 66. He brought bank statements, notes of his expenses, and his time sheets. Tr. 1:110 (Kelaher). There were procedural flaws in some of his accounting, which he and Kelaher reviewed together. Tr. 1:110-111 (Kelaher).

84. Kelaher did not conclude that there was any money missing from Barry's account. Equally compelling, the heirs—the real parties in interest—had made clear to her that they "wanted [her] to do [her] best in looking at everything and did not want [her] to spend hours on end digging through documents," having already had a lot of their money "drained on the attorney fees." Tr. 1:111-112 (Kelaher).[8]

85. Barely a month after her appointment, in early February 2021, Kelaher obtained a partial distribution of $750,000 from the respondent for the Estate of Mary Gifford and the benefit of the Gifford Estate heirs, which worked out to almost $125,000 for each heir. Ex. 71; Ex. 89 (451-452); Tr. 1:116 (Kelaher); Tr. 1:65 (Eagan). And although the timing is unclear, Kelaher also succeeded in obtaining for the heirs the nearly $145,000 in unclaimed property money. Tr. 1:99-100 (Kelaher).

[8] In late 2019, Beaulieu billed over $10,000 in fees, including $6,345 between October and December 2019. See Ex. 73 (343-347), Tr. 3:184 (Beaulieu).

86. After Kelaher had assisted with and reviewed it, Barry signed and filed an Amended Final Account on April 9, 2021; this was filed October 20, 2021. Tr. 1:112-113, 125-126 (Kelaher); Ex. 76.

87. Gifford's heirs assented to Barry's Amended Final Account. Tr. 1:113 (Kelaher). The respondent did not assent. See id. Not until March 1, 2022 did Beaulieu, on the respondent's behalf, file a motion to withdraw the objection filed February 13, 2017, and to allow Barry's Petition for Complete Settlement. Ex. 14, #95 (098).

88. On September 10, 2021, over seven years after Gifford's death, the respondent filed the long-overdue documents in the Gifford conservatorship case: a Petition for Order of Complete Settlement; her temporary First and Final Account, for the period of August 4, 2011-April 18, 2012; the Inventory; the First Annual Account, for the period of April 19, 2012-August 31, 2012; the Second Annual Account, for the period of September 1, 2012 – August 31, 2013; and the Third Annual Final Account, for the period of September 1, 2013-May 29, 2014. Ex. 13, #s 20, 21, 22, 23, 24, 25 (090); Exs. 77, 78, 79, 80, 81.[9]

89. The respondent did not at the time file her accounts in the Noren Estate, and it continued to stagnate. On October 20, 2021, Kelaher had to file a Motion to Compel Filing of Accounts against the respondent in her capacity as Personal Representative in the Noren case. Ex. 14, #74 (097).

90. Finally, on October 28, 2021, the respondent filed seven Noren Annual Reporting Accounts, for the years 2013 through 2020, and an Inventory. Ex. 14, #s 83-90 (097). On

[9] A "Judgment/Decree of Complete Settlement" in the Gifford Conservatorship entered on October 31, 2023, and was docketed November 7, 2023. Ex. 13, #27 (090); Ex. 91 (458-459).

November 18, 2021, she filed her final (Eighth) Noren Estate Account for the period January 1, 2021-November 12, 2021. Ex. 14, #93 (097); Ex. 86 (440-444).

91. On April 12, 2022, the respondent turned over the remaining $59,643.33 in proceeds of the Noren Estate to Kelaher, who deposited them in the Gifford Estate account. Ex. 87; Ex. 89. Kelaher then made a final distribution to the Gifford heirs on May 13, 2022. Ex. 89 (453). Kelaher proceeded to file the remaining necessary Gifford Estate documents on or around June 23, 2022. Ex. 69 (328). A "Judgment/Decree on Complete Settlement entered on November 18, 2022. Id.

92. Beaulieu's bill through November 22, 2013, to get the respondent appointed PR of the Noren Estate, was $5,780.50. Ex. 42 (172-173). For the second representation, from September 2016 through March 2021, he billed $22,615.00 in legal fees and $858.50 in costs. Ex. 73 (337).

93. The Conservator's Reconciliation of Reserve Balance the respondent prepared in the Gifford matter, dated May 15, 2021, shows $14,331.20 in Surety Bond Payments. Ex. 84. The respondent admitted that she continued to pay these fees well after Gifford's death. Tr. 3:59-60 (Respondent). We find that a reasonably competent lawyer would not have waited until seven years after the client had died to close out the conservatorship and release the bond. See Tr. 2:45 (Shirahama).

94. By May 2021, the respondent had paid herself $22,108.47 in "partial payment of fiduciary fees." Ex. 84. She paid herself another $1,852.21 on November 12, 2021. Ex. 86, ln.17 (443). As noted, Beaulieu's affidavit for both representations states that he billed $22,615 in legal fees and $858.50 in costs. His bills, and checks to him, reflect that he was paid. Ex. 73; Ex. 86 ((443). While we are certainly not prepared to say that the respondent and Beaulieu did not

earn their fees, we do find that the respondent forced the heirs to incur significant fiduciary and attorney's fees that were not authorized, some of which might have been avoided had the respondent been more diligent and competent.

**The Respondent's Defenses**

95. We review in this section the respondent's explanations for her behavior.

96. The respondent concedes, as she must, that she did not file the mandated care plans in the Gifford guardianship. Ex. 11 (083); G.L. c. 190B, § 5-309(b); Tr. 4:11 (Respondent). We reject her excuse that the Court had all the information it needed because the GAL had filed a report in April 2012 in connection with the sale of the house. Tr. 3:31-33 (Respondent). The guardianship continued until late May 2014, when Gifford died. The respondent's failure meant that the Court was not made aware of Gifford's whereabouts after 2012, or even the fact of her death. That the Court could conceivably have found pre-2012 information about Gifford somewhere in its files is not a legitimate reason to ignore the terms of the guardianship appointment and the statute.

97. The respondent also concedes, as she must, that she should have notified the Gifford heirs of the Noren inheritance. Respondent's Request for Findings of Fact, Rulings of Law, and Proposed Sanction (Respondent's PFCs), ¶ 80 (16).

98. This concession is in some tension with the respondent's testimony and with another statement in the Respondent's PFCs, to the effect that in response to the question she was asked at Gifford's funeral about how much money was left in the estate, she "answered, truthfully, that she did not know." Respondent's PFCs, ¶ 46 (8); Tr. 3:55 (Respondent).

99. Although we rejected this testimony in favor of Eagan's testimony that the respondent had said at the funeral there was no money left, we strongly disagree with the

respondent's suggestion that it would have been truthful to say that she did not know what was in the estate. In context, that statement could only have been intended to mislead. "Statements that are 'technically accurate' or 'literally true,' but that nevertheless are 'clearly intended to mislead' or 'beg[] [a] false inference' amount, in appropriate cases, to false statements within the meaning of Mass. R. Prof. C. 3.3(a)(1) and 4.1(a)." Matter of O'Toole, 31 Mass. Att'y Disc. R. 511, 521 (2015) (citations omitted); Matter of Hession, 29 Mass. Att'y Disc. R. 338, 350-351 (2013). "'Fragmentary information may be as misleading . . . as active misrepresentation, and half-truths may be as actionable as whole lies.'" Kannavos v. Annino, 356 Mass. 42, 48 (1969) (citation omitted).

100. We also do not agree that the fact that the respondent did not know precisely how much money was going to go into the Gifford Estate justified her not opening a probate estate. See Tr. 2:38-39 (Shirahama). By the time Gifford died, the respondent was certain that there would be funds paid into the Gifford estate. Tr. 2:39 (Shirahama). She knew at least this: Noren's will had been allowed, naming Gifford as residual beneficiary; there had been no objections to the Noren will; and by the time of Gifford's death in May 2014, any objections would have been foreclosed. Id.

101. The heart of the respondent's defense to her failure for years to take any significant action is her claim, echoed forcefully by Beaulieu, that because she would have had to sign them under the pains and penalties of perjury, she could not file accounts in the Gifford Conservatorship or close the Noren Estate until she had accurate accounts from Barry, who consistently provided inaccurate and incomplete information. See Respondent's PFCs, ¶¶ 69,78 (12,14).

102. We agree that as a rule, Barry was not always prompt or careful. However, the respondent knew that there were heirs entitled to receive significant funds from Gifford. Knowing that the respondent was aware of this, we are struck by several omissions: her failure to recognize in a timely fashion that Barry was not likely to come through; the fact that she let years elapse with no effort to move things along; and by her failure to timely and appropriately seek the aid of the Court.

103. Once appointed PR for the Noren Estate on November 22, 2013, the respondent was entitled to "letters of authority." Ex. 41 (170). These would have enabled her to get bank records without initiating litigation. See Tr. 2:52-53 (Shirahama).

104. The respondent knew that Barry had an estate account for Noren at Sovereign Santander, and should have known, from the June 27, 2013 Inventory Barry filed in the Noren Estate, that Noren had had a bank account at the Mount Washington Bank. Ex. 30 (153).[10] At no point did she or Beaulieu attempt to get bank records directly from Mt. Washington or any other bank. Tr. 3:88-89, 4:22-24, 81 (Respondent); 3:150-153 (Beaulieu).

105. We reject as speculative testimony from Beaulieu and the respondent that the bank might not have cooperated with a request for account information. Tr. 3:151-152 (Beaulieu); Tr. 4:80-83 (Respondent). The bank opened Gifford's safe deposit box for the respondent when she showed it her paperwork. Tr. 3:36 (Respondent). There is no evidence to suggest, and no reason to believe, that the bank would not have respected duly issued letters of

[10] We reject the respondent's testimony that as of May 2014, she did not know of any Noren accounts except the Sovereign Santander Bank account from which the check she had received had been drawn. Tr. 3:90 (Respondent). We do not credit that the respondent did not see Barry's November 2013 Inventory at or around the time it was filed. See Tr. 3:86, 4:9-10 (Respondent). If she did not, she should have – it was docketed in the Noren Probate Docket shortly before she became PR later that year. Ex. 14 (095); Ex. 30 (153). We would expect a PR to check the docket to see what had been filed. We note further Beaulieu's testimony that he provided this inventory to her. Tr. 3:152 (Beaulieu).

authority when it came to bank statements and records. See Moroni v. Brawders, 317 Mass. 48, 52 (1944) ("[a]n inference of regularity and lawfulness may be drawn with respect to the internal proceedings of a private corporation").

106. Insofar as there were questions about the sale of Noren's home, and about some of the expenses listed on the HUD-1 Settlement Statement, the respondent and/or Beaulieu could have obtained at least some of the underlying materials from other sources, such as the purchasing or closing attorney. Tr. 2:53-54 (Shirahama). Barry sent Beaulieu the first page of the P&S on May 13, 2013, identifying the property and the buyer. Ex. 21. Beaulieu admits that he received a copy of the HUD-1, explaining that at the time of the closing in late 2013 he "wouldn't necessarily have had any reason to look into this document"; we note that the HUD-1 identifies the settlement agent. Tr. 3:133 (Beaulieu); Ex. 31.

107. There would still have been some documents missing, like Barry's expenses and the back-up materials. But what we have suggested would have been a significant start, and would have been far preferable to the approach the respondent chose, which was to allow years to pass without taking any meaningful action.

108. The respondent explains the inordinate time during which she did little by claiming that she had no way to know that Barry would be so noncompliant for so long. See Tr. 4:18-19 (Respondent). While this may be true, we find unreasonable her decision to keep waiting for Barry to produce the documents. Certainly in January 2017 at the absolute latest, after years of unsuccessful persuasion attempts and once Barry had filed a wholly inadequate Final Account for the Noren Estate, Ex. 51, she should have filed a petition to render an accounting. Tr. 2:51 (Shirahama).

109. Not only did she fail to do this, but she and Beaulieu delayed for more than two more years, not filing their Affidavit of Objections until September **2019**. We reject Beaulieu's justification for the delay – that he did not want to "show [his] hand" before he was "required to do so." Tr. 2:166 (Beaulieu). The resolution of the Noren Estate was not a competition between Beaulieu and Barry. This sort of litigation tactic was wholly inappropriate in the circumstances, especially where it meant that the heirs—still completely in the dark—were subject to more years of delay.

110. Our discussion above reflects our findings that there was much the respondent could have done to satisfy herself as to the accuracy and completeness of much of the Noren Estate and, accordingly, to largely allay concerns about signing her own statements under the pains and penalties of perjury. See Tr. 4:49-50 (Respondent).

111. If she still had lingering doubts, there was another approach she could have taken: a "hybrid account," where she explained to the Court her dilemma. We find Shirahama's testimony illuminating on this point: "you're accounting for the assets that you have received as personal representative." Tr. 2:97 (Shirahama). Shirahama stated explicitly that it would have been possible for the respondent to file, and that the court would have accepted, an accounting indicating that the respondent had "received X, . . . distributed Y, but . . . there were questions about Z." Tr. 2:121-122 (Shirahama). When asked to comment on the respondent's handling of the Gifford conservatorship, Dugan, the respondent's expert, said essentially the same thing, raising the possibility of filing what he termed "a hybrid account," with some explanation of what information had been included, what had not been included, and why. Tr. 4:154-155 (Dugan). We credit this testimony, and reject the respondent's defense.

## Conclusions of Law

112. Bar counsel charged that by failing to file the required inventories, accountings and other reports in both the **Gifford guardianship** and the **Gifford conservatorship** as required by statute and Court order, the respondent violated Mass. R. Prof. C. 1.1 (provide competent representation to a client), 1.3 (act with reasonable diligence and competence in representing a client, 3.4(c) (do not knowingly disobey an obligation under the rules of a tribunal) and 8.4(d) (do not engage in conduct prejudicial to the administration of justice).

113. We construe these allegations to relate to the respondent's activities before Gifford died; her post-death activities are charged separately and are discussed below.

114. Our discussion above makes clear that bar counsel has proved violations of Rules 1.1 and 1.3. The respondent did not file care plans, accounts or an inventory. She should have done so. The failure to do so was a failure to act with competence and diligence. While Rules 1.1 and 1.3 are phrased in terms of representation of "a client," we find that a lawyer does not stop being a lawyer when operating as a guardian, conservator or other fiduciary. See Preamble to the Rules of Professional Conduct, [1]: "A lawyer, as a member of the legal profession, is a representative of clients, an officer of the legal system and a public citizen having special responsibility for the quality of justice." We note further that the case law is not so limited. E.g., Matter of Gormley, 35 Mass. Att'y Disc. R. 228 (2019) (respondent lawyer appointed conservator); Matter of McGuirk, 29 Mass. Att'y Disc. R. 449 (2013) (respondent lawyer acting as guardian); Matter of Kydd, 25 Mass. Att'y Disc. R. 341 (2009) (respondent lawyer acting as executor).

115. The 3.4(c) violation is clear; contrary to statute, the respondent did not file reports and accountings. She also ignored the Court's November 16, 2015 Notice of Non-compliance of Account. Ex. 13 (089-090).

116. As to the 8.4(d) violation, we conclude that the failure to file mandated reports interfered with the administration of justice. So did the respondent's failure to inform the Court that Gifford had died. The Court was entitled to know Gifford's whereabouts and financial status at all times; that is the reason for the MUPC's detailed and strict requirements, set out above. The respondent's failure, for years, to follow the rules undermined the Court's interest in finding and protecting those subject to guardianships and conservatorships.

117. Bar counsel charged that by failing to collect the EBSB[11] funds from the jointly owned bank accounts **prior to Gifford's death**, the respondent violated Mass. R. Prof. C. 1.1, 1.3, 3.4(c), and 8.4(d).

118. We received no evidence that the respondent knew or should have known, prior to Gifford's death on May 29, 2014, that Gifford and Noren had had jointly owned bank accounts. Barry's SPR Inventory, filed in the Noren Estate on June 27, 2013, lists Noren's Mount Washington Bank Account, but there is no mention of Gifford. Ex. 30 (153). While the respondent knew at that point that Noren had left her estate to Gifford, she had no reason to assume that this account was a joint account, or that there might be joint accounts out there somewhere.

119. We agree that in general the respondent was not competent or diligent in her handling of the Noren Estate, and we observe that, among other things, she should have had Noren's mail delivered to her, and she should have checked the Massachusetts Unclaimed

[11] East Boston Savings Bank, of which Mt. Washington Bank was a division. Tr. 3:161-162 (Beaulieu).

Property Division to see if accounts of either Gifford or Noren had escheated to the state.[12] The failure to do so was not competent or diligent. But we do not think that that a general lack of competence or diligence is captured by these specific charges.

120. We are aware of case law to the effect that due process is not violated by a slight variation between an allegation and proof or by a shift in bar counsel's theory. See generally Matter of Abbott, 437 Mass. 384, 392, 18 Mass. Att'y Disc. R. 2, 11-12 (2002) (no due process violation where bar counsel challenged lawyer's handling of criminal appeal and charged that lawyer gave client a blank piece of paper to sign but proved he had given client a document client did not understand; lawyer's argument that this variation between charge and proof violated due process "splits hairs too finely"); Matter of Saab, 406 Mass. 315, 324, 6 Mass. Att'y Disc. R. 278, 287 (1989) (a shift in bar counsel's theory does not violate due process; no obligation to notify lawyer about particular theory under which case may be considered). In other words, we recognize that as long as a respondent is made "fully aware of," and given the opportunity to defend against, "the central charges against [her]," due process is satisfied. Matter of Looney, 13 Mass. Att'y Disc. R. 445, 465 (1997); Matter of Wilson, 17 Mass. Att'y Disc. R. 608, 613-614 (2001) (rejecting due process challenge where allegations in petition concerned lawyer's intentional misrepresentations in criminal motion and hearing committee instead found negligence and a subsequent failure to explain his misrepresentations, noting that lawyer "was not surprised by different charges . . . and that [his] representations violated the very disciplinary rules cited in the petition for discipline").

121. While bar counsel could have drafted a different or more expansive allegation, she did not. We do not think it is fair to the respondent to shoehorn into the highly specific

[12] Indeed, it appears that two small account of Giffords escheated to the state in 2012 and 2014. Ex. 93 (510). Failure to locate these is not reasonably captured by bar counsel's charge.

charges in this allegation, as to the discovery and collection, **prior to Gifford's death**, **of EBSB funds from the jointly-owned bank accounts**, general findings about incompetence and lack of diligence. Accordingly, we conclude that bar counsel has not proved these violations of Rules 1.1, 1.3, 3.4(c), and 8.4(d).

122. Bar counsel charged that by failing to file within a reasonable time **after Gifford's death** a final account with the probate court in both the Gifford guardianship and the Gifford conservatorship as required by statute, the respondent violated Mass. R. Prof. C. 1.1, 1.3, 1.15(d)(1) (upon final distribution of trust property or request by client or third person, promptly render a full written accounting), 3.4(c), and 8.4(d).

123. The respondent argues that she did not fail to file inventories and accountings; she did file them, but delayed them only because she did not believe she could file them if she did not believe the underlying information was accurate.

124. Above, we discussed and rejected these arguments. That discussion leads inexorably to our conclusion here that the respondent's post-death activities in the Gifford case were significantly sub-standard. We agree that bar counsel has proved violations of Rule 1.1 and 1.3.

125. The Rule 3.4(c) violation has been proved because the respondent failed to timely close the Gifford estate. We recognize that G.L. c. 190B, § 5-429(e) does not include a timeframe for a conservator's post-death duties to "conclude the administration of the estate by distribution to the person's successors" and then to "file a final accounting and petition for discharge within 30 days after distribution." We conclude that whatever a reasonable time to accomplish these things would have been, the respondent significantly exceeded it. Cf. Matter of Zinni, 31 Mass. Att'y Disc. R. 722, 734 (2015) (no need "to define the precise point at which

legal competence falls short under rule 1.1[; w]herever this line is drawn, the respondent's behavior fell substantially below it"); Matter of Buckley, 2 Mass. Att'y Disc. R. 24, 24-25 (1980) (Single Justice rejects argument that hearing committee needed evidence as to standard of quality expected in appellate brief, noting that public censure was not "sought because [the] brief might have been better [but because the] brief could hardly have been worse").

126. As to the Rule 8.4(d) violation, we specifically find prejudice to the administration of justice from the fact that both the Gifford Guardianship and the Gifford Conservatorship dockets remained open for far longer than they should have, for many years after Gifford's death. See Ex. 13 (final decree in conservatorship petition is 2023). We find that carrying inactive dockets for years takes a toll on a court's processes. We take particular note of the Probate Court's need to send the respondent a Notice of Non-Compliance of Account, to which she did not respond, on November 16, 2015, significantly after Gifford's May 2014 death.

127. We do not agree that bar counsel has proved the 1.15(d)(1) charge. That rule does not apply to untimely filings with a court. Rather, it requires a prompt rendering of a full written accounting to a client or third person upon final distribution of trust property. Even if we construe this charge to apply to the respondent's conduct towards the heirs, we find that it was not proved.

128. The respondent filed her Gifford conservatorship accounts on June 17, 2021, and her final account as personal representative of the Noren Estate on November 18, 2021. Exs. 78-81, Ex. 86.

129. She made the final distribution to Kelaher on April 12, 2022. Ex. 87. This post-dated the full written accounting. We think the evil this rule was designed to protect against is a final distribution of property with no accounting. The respondent's accounting preceded the

distribution. We find that having already produced the accounting, the respondent did not have to do so again. Bar counsel has not proved this rule violation.

130. Bar counsel charged that by failing to take appropriate action to **complete the probate of the Noren Estate**, the respondent violated Mass. R. Prof. C. 1.1, 1.3, and 8.4(d).

131. Our discussion above leads to the conclusion that bar counsel has proved violations of Rules 1.1 and 1.3. To reiterate, a reasonably competent attorney would not have waited seven years to report to the Probate Court that Noren's main beneficiary had died. Tr. 2:48-49 (Shirahama). A reasonably competent attorney would not have waited over two years to file an affidavit of objections to an account to which she and her counsel objected. Tr. 2:57 (Shirahama). A reasonably competent attorney would have had Noren's mail delivered to her, and would have checked the Massachusetts Unclaimed Property Division. See Tr. 2:58 (Shirahama).

132. We agree that bar counsel has proved a Rule 8.4(d) violation as the result of the respondent's failure to timely attend to the Noren Estate and failure to close it within a reasonable time. As noted above in connection with the Gifford estate, we find that the Noren docket remained open much longer than it should have. See Ex. 14 (098) (last entry is March 2022). Instead of moving things along, the respondent and Beaulieu wasted the Court's time with expensive litigation that went nowhere. Bar counsel has proved this rule violation.

133. Bar counsel charged that by failing to promptly notify and **deliver the Noren Estate funds to the Gifford Conservatorship**, the respondent violated Mass. R. Prof. C. 1.15(c) (upon receipt of trust property in which client or third person has an interest, promptly notify client or third person and promptly deliver funds client or third person is entitled to receive).

134. The facts we found above lead directly to a conclusion that bar counsel has proved this rule violation. It is undisputed that the respondent did not deliver any Noren Funds until 2021, significantly after the November 22, 2013 Decree and Order on Petition for Formal Adjudication, after which no one could have challenged Noren's will. Tr. 2:34-35 (Shirahama); Ex. 14, #44 (095); Ex. 41; Ex. 71.

135. We specifically find that the respondent should have promptly located and contacted the heirs, then should have taken all necessary steps to make sure that a probate estate for Gifford was opened, and then should have made a partial distribution as soon as possible. Tr. 2:62-63 (Shirahama). This is precisely what Kelaher did. Beaulieu had identified $100,000 as the upper end of the disputed amount. Tr. 2:173, 185-186 (Beaulieu); Tr. 4:52 (Respondent); Ex. 60 (223).[13] That left significant funds for distribution. To the extent that there were legitimate, lingering questions about missing money, the amount at issue could have been held back. Cf. Mass. R. Prof. C. 1.15(b)(2)(ii) ("[a] lawyer who knows that the right of the lawyer or law firm to receive [a portion of fees that] is disputed shall not withdraw the funds until the dispute is resolved").

136. Bar counsel charged that **by failing to take any action** regarding the Gifford Estate, including without limitation, failing to contact the Gifford Estate heirs for more than seven years after Gifford's death and failing to petition the probate court for authority to act as Gifford's personal representative, the respondent violated Mass. R. Prof. C. 1.1, 1.3, and 8.4(d).

137. We do not agree that the respondent failed to take *any* action; she did take action, but it was not timely or sufficient. This charge is imprecisely worded, but because of the specific

[13] We reject as unsupported and speculative Beaulieu's testimony that there may have been "significant amounts" of missing money, to the extent that he is referencing something over and above the $100,000 figure noted above. See Tr. 2:171 (Beaulieu).

clause, challenging the respondent's failure to contact the Gifford Estate heirs for more than seven years after Gifford's death, we do not see a due process violation. See Matter of Abbott, supra, 437 Mass. at 392, 18 Mass. Att'y Disc. R. at 11-12, and other cases cited above at ¶ 120.

138. We find that the respondent did not *ever* reach out to the Gifford heirs to notify them that she was holding funds for them; they learned about this only in June 2020 when Eagan was contacted by someone from Assets International. Tr. 1:37 (Eagan); Ex. 92, ¶ 12 (463).

139. We have reviewed and rejected the respondent's explanations, and find inexcusable her failure to contact the heirs. What makes her conduct truly remarkable is that she had at least two names by 2014, Martha Gill and Jane Eagan. She told Beaulieu in October 2015, when he was not formally representing her, that she had found all the Gifford heirs. Ex. 46. Beaulieu had known there were heirs from the date he filed the Petition for Guardianship. Ex. 4 (013). He jogged her memory in February 2017 by asking her for the heir information. Ex. 54 (206). She told him in 2020 that she was "slowly" getting the addresses of the Gifford heirs from surviving nieces. Ex. 68. We cannot fathom why she delayed so long, and conclude, manifestly, that her conduct violated Rules 1.1 and 1.3.

140. We do not agree with bar counsel's charge, set out supra, ¶ 136, that the respondent should have petitioned the probate court for authority to act as Gifford's personal representative. We find convincing the testimony of both experts that this would have presented a conflict of interest, with the respondent as PR reviewing her own conduct and accounts as conservator. See generally Tr. 2:104-105 (Shirahama); 4:114-116 (Dugan).

141. We do not find another Rule 8.4(d) violation. We have not been directed to post-death misconduct, beyond what we found above in ¶ 126, to support an additional finding of a Rule 8.4(d) violation.

## Matters in Mitigation and Aggravation

### Mitigation

142. The respondent argues in mitigation that at all times, she was represented by counsel and acted upon recommendation of counsel, and that at all times the respondent and her counsel took appropriate action to settle the dispute regarding the incomplete and unsupported accounts of Barry by seeking court intervention.

143. As a matter of law, reliance on the advice of counsel is not a defense to a charge of unethical conduct. Matter of Hilson, 448 Mass. 603, 616, 23 Mass. Att'y Disc. R. 269, 285 (2007); Matter of Lupo, 447 Mass. 345, 357, 22 Mass. Att'y Disc. R. 513, 531 (2006);.

144. As a matter of fact, the respondent was not always represented by Beaulieu. His first representation ended on November 26, 2013. He was not again retained until September 23, 2016. During the interval, the respondent unilaterally failed to comply with her statutory and Court-ordered obligations and, as noted above, did not act with competence and diligence. We reject this as a mitigating factor.

145. The respondent argues that delay caused by the Court was outside her control. We take administrative notice that the Covid-19-related restrictions did not begin until March 2020. The respondent's inactivity predated and post-dated these restrictions. And while we agree that the courts can sometimes be slow, we received very little evidence that the respondent or Beaulieu did anything to nudge the Probate Court along.

146. Matter of Gross, 435 Mass. 445, 450, 17 Mass. Att'y Disc. R. 271, 277 (2001), states that while delay in bringing disciplinary proceedings does not result in their dismissal, "delay may be considered in mitigation."

147. Gross described the need to show prejudice as the result of the delay to warrant a finding of mitigation. Gross, id. The respondent has shown no prejudice as a result of the delay such as, for instance, necessary witnesses dying or becoming unavailable in the interim. See Gross, supra at 451, 278-279. We do not agree that there was significant delay that was not caused by the respondent or that, if there was, it was mitigating.

**Aggravation**

148. The respondent is an experienced attorney. Experience is an aggravating factor. Matter of Moran, 479 Mass. 1016, 1022, 34 Mass. Att'y Disc. R. 376, 387 (2018); Matter of Luongo, 416 Mass. 308, 311-312, 9 Mass. Att'y Disc. R. 199, 203 (1993). We agree that this is a factor in aggravation.

149. The respondent violated many disciplinary rules. This is a factor in aggravation. Matter of Saab, supra, 406 Mass. at 325-326, 6 Mass. Att'y Disc. R. at 289-290.

150. Bar counsel argues that the respondent failed to recognize the nature, effects and implications of her misconduct, an established factor in aggravation. See Matter of Bailey, 439 Mass. 134, 152, 19 Mass. Att'y Disc. R. 12, 34 (2003); Matter of Eisenhauer, 426 Mass. 448, 456, cert. den., 524 U.S. 919, 14 Mass. Att'y Disc. R. 251, 260 (1998). In response to a question from her counsel on the last day of the hearing, the respondent admitted that there were things she would have done differently, like moving more quickly to have someone appointed as Gifford's PR, notifying the heirs, and filing care plans and an inventory. Tr. 4:74-75 (Respondent). A majority of our members contrasts this eleventh-hour admission with the respondent's conduct throughout the course of the hearing, where she rarely accepted responsibility for her misconduct or acknowledged harm to the heirs.[14] On balance, the majority

[14] Indeed, she argues in her PFCs that there was no harm to the heirs. Respondent's PFCs, p. 32.

finds that bar counsel has proved this factor in aggravation. Our Chair disagrees. See **Dissent of Carolyn Francisco Murphy** ("**Francisco Murphy Dissent**"), below.

151. Bar counsel argues in aggravation that the respondent blamed Barry for her misconduct. Blaming others is a factor in aggravation. Matter of Cobb, 445 Mass. 452, 480, 21 Mass. Att'y Disc. R. 93, 126 (2005). While we agree that the respondent cast significant blame on Barry, we also note that Barry was reluctant, recalcitrant, and sloppy in his accounting. His activities were an integral part of some of the respondent's defenses, and we find that she was entitled to cite them in that context. See Matter of Zankowski, 487 Mass. 140, 153, 37 Mass. Att'y Disc. R. 554, 571 (2021); Matter of Eisenhauer, supra, 426 Mass. at 456, 14 Mass. Att'y Disc. R. at 261. As noted above, we did not find compelling the respondent's arguments to this effect, but it was not unreasonable to make them. We conclude that bar counsel did not prove that the respondent's blaming of Barry was a factor in aggravation.

152. The respondent was untruthful when she reported to Jane Eagan that there was no money left in the estate. She was not charged with a violation of Mass. R. Prof. C. 4.1(a) (while representing a client, do not make false statement of material fact or law to a third person) or 8.4 (c) (conduct involving dishonesty, fraud, deceit or misrepresentation), and we will not find a rule violation based on conduct that could have been but was not charged. Matter of Foster, 492 Mass. 724, 762, n.18, 39 Mass. Att'y Disc. R. __, __ (2023). Nor do we find her dishonesty so pervasive as to constitute a lack of candor to us. See Matter of Zankowski, supra, 487 Mass. at 153, 37 Mass. Att'y Disc. R. at 571.

153. The weightiest factor we find in aggravation is the significant harm the respondent caused the heirs. See Matter of Foster, supra, 492 Mass. at 752, 39 Mass. Att'y Disc.

R. at __ ("the more culpable a respondent is in causing harm . . . the more heavily the harm weighs in aggravation").

154. In a misguided battle with Barry, the respondent and Beaulieu billed thousands of dollars to the Noren Estate, without ever alerting the Gifford heirs and soliciting their opinions as to whether it was worth spending money to chase potentially missing money. It is worth noting that Kelaher found no missing money. Tr. 1:107-108, 111-112 (Kelaher).[15] When finally consulted, the heirs were explicit that they did not want "additional attorney fees or personal representative fees coming out of the estate." Tr. 1:96, 111-112 (Kelaher).

155. As noted above, the respondent's lack of diligence meant that she had to continue to pay bond premiums well after the Gifford conservatorship had ended, another waste of the heirs' money and a further example of harm. Also, due to her misconduct, the heirs had to pay fees of $10,052.64 to Assets International to recoup the escheated funds. Tr. 1:99-100 (Kelaher); Ex. 92 (452).

156. In addition to having their money wasted, the money due to the heirs was earning only "basic" interest and was not invested. Tr. 1:77 (Eagan); Tr. 2:60 (Shirahama).

157. Further and most obvious, the heirs were deprived of their money for years. We disagree vehemently with any suggestion that the heirs may not have been close to Gifford, and accordingly were somehow unworthy of an inheritance. See Tr. 1:66 (Counsel asks Eagan when she had last spoken to Gifford prior to her death). We agree wholeheartedly with Eagan's testimony that the "upwards" of $150,000 that each heir finally received represents "a lot of things to a lot of people." Tr. 1:49 (Eagan).

[15] Nor had the respondent. Tr. 4:53 (Respondent).

158. Perhaps most compelling, we find harm to the heirs from the respondent's violation of their trust, beginning with her misrepresentations to Eagan at Gifford's funeral, and continuing for years. There is harm in the fact that the heirs were blindsided, eventually learning not from the respondent but from the asset recovery company that money rightfully theirs was languishing in the respondent's account. See generally Matter of Foley, 439 Mass. 324, 337, 19 Mass. Att'y Disc. R. 141, 156 (2003) (finding harm from effect of lawyer's conduct "on the profession and the public's confidence in its integrity"); Matter of Goodman, 22 Mass. Att'y Disc. R. 352, 366 (2006) ("misconduct constitutes harm to the profession in the dishonor it brings to all of us in the eyes of the public."). Over and over, and for years on end, the respondent kept from the heirs the fact of their substantial inheritance. These factors, considered together, constitute significant harm.

**Majority's Recommended Disposition**

Bar counsel recommends a suspension of at least six months. The respondent, citing the lack of harm, recommends an admonition or at most, if there is a finding of serious injury, a public reprimand. She has agreed to work with Attorney Dugan as her mentor, and he has agreed to serve in that role. A majority of us recommend a six-month suspension. The Chair recommends a public reprimand and mentorship by Attorney Dugan, with regular check-ins with bar counsel, as detailed below. See **Francisco Murphy Dissent**, below.

We all agree that in recommending a sanction, we are guided by the mandate that "[e]ach bar discipline case is decided on its own merits. . . ." Matter of Zankowski, supra, 487 Mass. at 149, 37 Mass. Att'y Disc. R. at 566. "[E]ach attorney receives the discipline that is 'most appropriate in the circumstances,' taking into account 'what measure of discipline is necessary to protect the public and deter other attorneys from the same behavior.'" Id. (citations omitted). It

goes without saying that we will not find a case precisely like this one, but certain themes are reflected in the case law, and we are attuned to the rule that our recommendation should not be "'markedly disparate' from judgments in comparable cases." Matter of Foster, supra, 492 Mass. at 746, 39 Mass. Att'y Disc. R. at __(citation omitted).

We were unanimous in finding significant misconduct in two estates, spanning years. Our starting point is Matter of Kane, 13 Mass. Att'y Disc. R. 321 (1997). Kane teaches that absent aggravating and mitigating factors, a public reprimand "is generally appropriate where a lawyer has failed to act with reasonable diligence in representing a client or otherwise has neglected a legal matter and the lawyer's misconduct causes serious injury or potentially serious injury to a client or others." Id. at 328. "Suspension is generally appropriate for misconduct involving repeated failures to act with reasonable diligence, or where a lawyer has engaged in a pattern of neglect, and the lawyer's misconduct causes serious injury or potentially serious injury to a client or others." Id.; see Matter of Nealon, 26 Mass. Att'y Disc. R. 437 (2010) (stipulation to three-month suspension for prolonged delays in handling cases, failure to cooperate with bar counsel, and other misconduct, with mitigation).

We think a six-month suspension is the most appropriate sanction for the respondent's misconduct. While we have found no case on all fours with this one, the respondent's misconduct hews more closely to that described in the suspension cases. Perhaps most pertinent is Matter of Kasilowski, 31 Mass. Att'y Disc. R. 357, 364 (2015) (three-month suspension to be imposed after lawyer's reinstatement from administrative suspension, with further conditions). Kasilowski committed misconduct as counsel for two estates. His delay in filing tax returns caused significant interest and penalties, about which he did not tell his clients. His misconduct was aggravated by experience, and caused financial harm to the beneficiaries. We are struck by

the observation of the Single Justice that "at least with respect to the income tax returns, the respondent displayed no sense of obligation to the estate. Instead, he pointed an accusatory finger at the return preparer [and] sought to shift blame to the public accounting firm for not prodding him to answer their inquiries").

The respondent behaved in a similar manner. While she admitted that she should have notified the beneficiaries sooner than she did, we never heard anything about a "sense of obligation to the estate," or a full-throated admission that the beneficiaries' wait for funds clearly due them had caused them harm. Like Kasilowski, the respondent ascribed blame to others, in her case to Barry and the Court.

Other suspension cases feature misconduct analogous in severity and effect. E.g., Matter of McLaughlin, 40 Mass. Att'y Disc. R. __ (2024) (three-month suspension for lawyer's misconduct in roles as estate lawyer and personal representative for estate; lawyer knew client was dying, and failed to respond promptly and appropriately to her increasingly desperate requests to effect proper transfer of her property to friends before she died; also made misrepresentation to client, and continued representation after conflict of interest developed; misconduct was aggravated by several factors, including prior discipline; harm to friends, who had to spend over $100,000 to effect client's wishes; and client's vulnerability); Matter of McGuirk, supra (stipulation to year-and-a-day suspension for misconduct in two guardian matters; in first, lawyer did not file an inventory or yearly accounts from 2003-2010, did not comply with Medicaid requirements, resulting in temporary denial of benefits; did not timely pay bills for ward's care; did not file an account despite Court order, and was found in contempt; and did not file inventory and accounting until 2012; second matter featured similar misconduct over shorter period of time, with mitigation (illness) and aggravation (2010 public reprimand for

similar misconduct)); Matter of Kydd, supra (three-month suspension stayed for one year, with condition, for repeated neglect in estate where lawyer served as executor; did not return calls, intentionally misrepresented status to a beneficiary; did not file timely income tax returns with result that estate did not have sufficient funds, although he repaid estate with his own money and waived some outstanding fees; and did not cooperate with bar counsel; conduct mitigated by inexperience; beneficiaries were not harmed); Matter of Lansky, 22 Mass. Att'y Disc. R. 443 (2006) (six-month suspension for neglect and conflict of interest in two estate matters; although lawyer's malpractice carrier reimbursed the estate for the interest and penalties the respondent had caused, this did not occur until two years after the complaint to bar counsel; beneficiaries had to wait more than eight years for their share of estate assets and lost out on two years of interest due to respondent's actions; estate was found to have suffered serious injury even though the respondent eventually made it whole financially).

The public reprimand cases we have reviewed generally involve misconduct similar to the respondent's, but less sharp and more bumbling than what we have found. Most feature mitigation or repayment, both lacking here, or a shorter period of misconduct. E.g., Matter of Gormley, supra (public reprimand, by stipulation, for lawyer acting as conservator starting in 2013 who failed to file inventories or annual account; did not put real estate proceeds in separate account; eventually filed non-compliant pleadings; and was found in contempt in 2017 for willfully violating two Court orders, after which he filed the outstanding documents); Matter of Harvey, 31 Mass. Att'y Disc. R. 254 (2015) (public reprimand, by stipulation, for extended lack of diligence, failure to keep beneficiaries informed, failure to provide accountings upon request and collecting excessive fees; after lawsuit, lawyer and firm eventually disgorged most of fees; while beneficiaries received some money, they did not receive all assets due them until eleven

years after testator's death); Matter of Tierney, 28 Mass. Att'y Disc. R. 850 (2012) (public reprimand, by stipulation, for misconduct as administratrix beginning in 2000; lawyer did not promptly identify all heirs; between 2003 and 2011, despite multiple requests by some heirs for her to distribute estate assets, she did not do so; estate had to pay additional surety bond premiums and incurred accounting fees as the result of her delay; after partial distribution in May 2011, and after bar counsel became involved, she engaged a professional heir-finder, made another distribution in late 2011, and had her first and final account approved; in mitigation, she made restitution to the estate for a portion of her fee, and reimbursed the estate for expenses incurred due to her delay); Matter of Vidette, 23 Mass. Att'y Disc. R. 737 (2007) (public reprimand with probation agreement; lawyer appointed conservator and failed to reinstate erroneously-stopped social security payments; failed to retrieve bank account that had escheated to Commonwealth; failed to file inventory or accounts for ten years, then filed thirteen inaccurate accounts, aggravated by length of misconduct and risk of financial harm, mitigated by illness); Matter of Norton, 19 Mass. Att'y Disc. R. 333 (2003) (public reprimand, by stipulation; lawyer was co-executor of will of decedent who died in 1992; he did not commence probate until 1994; was late in paying taxes and incurred interest and penalties; did not put proceeds of real estate sales in interest-bearing estate account; and despite repeated request of father of beneficiaries, did not conclude administration of estate until 2001; misconduct was aggravated by overwork, and mitigated by lawyer's payment of all penalties, waiver of his executor's fee, and finding of no harm to the life beneficiary of a trust that was part of the estate).[16]

[16] We do not find In the Matter of the Discipline of an Attorney, 489 Mass. 1018, 1023, 1024, 38 Mass. Att'y Disc. R. 648, 657, 659 (2022) particularly helpful. The range of misconduct there was much narrower than what we found here. There was no finding of harm or its potential. The Court cited as relevant if not mitigating the context of the misconduct: the lawyer's undertaking multiple roles at the request of a long-term client, and his situation in the "middle of a squabble between a dysfunctional family."

## CONCLUSION

The cases we have described above support our recommendation for a suspension. So does Kane. We find that the respondent engaged in repeated failures to act with diligence, and that this constituted a pattern of misconduct. Year after year, she neglected her duties. We are especially troubled by the respondent's misleading comments at Gifford's funeral, which actively dissuaded any heirs from contacting her to open an estate. Telling none of the heirs about the money in Gifford's estate—a circumstance not featured in any of the public reprimand cases we have found—allowed her and Beaulieu unfettered discretion to pursue a protracted and fruitless strategy that enriched them at the heirs' expense. We are mindful of the fact that both were paid for their efforts, that no money has been returned to the estate, and that there has been no reimbursement of interest lost as a result of the failure properly to invest estate funds.

Accordingly, we recommend a six-month suspension from practice.

Dated: August 13, 2024

Respectfully submitted,
By the Hearing Committee

Lynn Montague
Lynne Montague, Member

Andrew M. Stern
Andrew M. Stern, Esq., Member

## Dissent of Carolyn Francisco Murphy, Esq. Chair

I agree with the majority's findings of fact and conclusions of law, except for one particular: I do not find that the respondent failed to recognize the nature, effects and implications of her misconduct. See above, ¶ 150. I interpret her testimony that she would have done things differently, given another chance, as an acceptance of some responsibility for her acts and her failures to act. Therefore, I would not find this to be an aggravating factor.

My fundamental disagreement with the majority is with its sanction recommendation. I think a public reprimand is the appropriate sanction for the respondent's misconduct. Many of the public reprimand cases described above also featured long delays and significant misconduct. Perhaps the closest factually is Matter of Tierney, 28 Mass. Att'y Disc. R. 850 (2012). Tierney received a public reprimand, by stipulation, for misconduct after she was hired to serve as an administratrix in 2000. As of December 2002, she still had not identified all the estate's heirs. Between 2003 and 2011, despite multiple requests by some heirs for her to distribute estate assets, she did not do so, and she was not diligent in her search for the rest of the heirs. Some died without receiving their shares. The estate had to pay additional surety bond premiums and incurred accounting fees as the result of her delay. She made a partial distribution in May 2011. After bar counsel became involved, she engaged a professional heir-finder, made another distribution in late 2011, and had her first and final account approved. Her fee of $22,500 was deemed clearly excessive because of the small size of the estate, her delay, and the harm to the beneficiaries. In mitigation, she made restitution to the estate for a portion of her fee, and reimbursed the estate for expenses incurred due to her delay.

Other public reprimand cases are less similar factually, but also feature the same general constellation of misconduct we found here. E.g., Matter of Gormley, supra (public reprimand, by stipulation, for lawyer acting as conservator starting in 2013 who failed to file inventories or annual account; did not put real estate proceeds in separate account; eventually filed non-compliant pleadings; and was found in contempt in 2017 for willfully violating two Court orders, after which he filed the outstanding documents); Matter of Harvey, 31 Mass. Att'y Disc. R. 254 (2015) (public reprimand, by stipulation, for extended lack of diligence, failure to keep beneficiaries informed, failure to provide accountings upon request and collecting excessive fees;

after lawsuit; lawyer and firm eventually disgorged most of fees; while beneficiaries received some money, they did not receive all assets due them until eleven years after testator's death); Matter of Vidette, 23 Mass. Att'y Disc. R. 737 (2007) (public reprimand with probation agreement; lawyer appointed conservator and failed to reinstate erroneously-stopped social security payments; failed to retrieve bank account that had escheated to Commonwealth; failed to file inventory or accounts for ten years, then filed thirteen inaccurate accounts, aggravated by length of misconduct and risk of financial harm, mitigated by illness); Matter of Norton, 19 Mass. Att'y Disc. R. 333 (2003) (public reprimand, by stipulation; lawyer was co-executor of will of decedent who died in 1992; he did not commence probate until 1994; was late in paying taxes and incurred interest and penalties; did not put proceeds of real estate sales in interest-bearing estate account; and despite repeated request of father of beneficiaries, did not conclude administration of estate until 2001; misconduct was aggravated by overwork, and mitigated by lawyer's payment of all penalties, waiver of his executor's fee, and finding of no harm to the life beneficiary of a trust that was part of the estate).

I agree with the majority's description of the cases involving suspensions, stayed or otherwise, but I conclude that they feature more serious misconduct. E.g., Matter of McLaughlin, 40 Mass. Att'y Disc. R. __ (2024) (three-month suspension for lawyer's misconduct in roles as estate lawyer and personal representative for estate; lawyer knew client was dying, and failed to respond promptly and appropriately to her increasingly desperate requests to effect proper transfer of her property to friends before she died; also made misrepresentation to client, and continued representation after conflict of interest developed; misconduct was aggravated by several factors, including prior discipline; harm to friends, who had to spend over $100,000 to effect client's wishes; and client's vulnerability); Matter of Kasilowski, 31 Mass. Att'y Disc. R.

357, 364 (2015) (three-month suspension to be imposed after lawyer's reinstatement from administrative suspension, with further conditions, for misconduct as counsel for two estates; lawyer's delay in filing tax returns caused significant interest and penalties, about which lawyer did not tell clients; misconduct was aggravated by experience and caused financial harm to beneficiaries; as to one of estates, Single Justice notes that "at least with respect to the income tax returns, the respondent displayed no sense of obligation to the estate. Instead, he pointed an accusatory finger at the return preparer [and] sought to shift blame to the public accounting firm for not prodding him to answer their inquiries"); Matter of McGuirk, supra (stipulation to year-and-a-day suspension for misconduct in two guardian matters; in first, lawyer did not file an inventory or yearly accounts from 2003-2010, did not comply with Medicaid requirements, resulting in temporary denial of benefits; did not timely pay bills for ward's care; did not file an account despite Court order, and was found in contempt; and did not file inventory and accounting until 2012; second matter featured similar misconduct over shorter period of time, with mitigation (illness) and aggravation (2010 public reprimand for similar misconduct)); Matter of Kydd, supra (three-month suspension stayed for one year, with condition, for repeated neglect in estate where lawyer served as executor; did not return calls, intentionally misrepresented status to a beneficiary; did not file timely income tax returns with result that estate did not have sufficient funds, although he repaid estate with his own money and waived some outstanding fees; and did not cooperate with bar counsel; conduct mitigated by inexperience; beneficiaries, in the end, were not harmed); Matter of Lansky, 22 Mass. Att'y Disc. R. 443 (2006) (six-month suspension for neglect and conflict of interest in two estate matters; although lawyer's malpractice carrier reimbursed the estate for the interest and penalties the respondent had caused, this did not occur until two years after the complaint to bar counsel;

beneficiaries had to wait more than eight years for their share of estate assets and lost out on two years of interest due to respondent's actions; estate was found to have suffered serious injury even though the respondent eventually made it whole financially).

## CONCLUSION

The language quoted above from Kane recognizes that a public reprimand may be appropriate even where, as here, there has been serious injury. I am aware that the Kane protocol assumes no aggravation, but I do not think the aggravation we found in this case nudges the sanction from a public reprimand to a suspension. Rather, Kane prescribes a suspension only for repeated failures to act with diligence, or a pattern of neglect. I do not think either was proved here. While the respondent's neglect went on for years, it was all part of two interconnected and related matters (estates), with one set of beneficiaries. Therefore, I cannot conclude that the neglect was repeated, or that it formed a pattern. The public reprimand cases cited above seem to me to support my conclusion that bar counsel has not proved repeated, or a pattern of, neglect.

There is no case law squarely pointing the sanction in one direction or another, and this is indeed a close case. I am mindful that "[e]ach case must be decided on its own merits and every offending attorney must receive the disposition most appropriate under the circumstances." See Matter of Zankowski, supra. Given that (1) bar counsel did not charge the respondent with misrepresentation; (2) the aggravating factors here are not of the more serious type cited in Kane, see id. at 13 Mass. Att'y Disc. R. at 328; (3) under Kane a public reprimand may be appropriate even when the misconduct causes serious injury; and (4) I do not find that bar counsel has proved repeated, or a pattern of, neglect, I think a public reprimand is the most appropriate sanction.

That I disagree with the majority with respect to the sanction recommendation in no way diminishes my agreement with them that the respondent's misconduct was serious. However, a public reprimand is a significant sanction that will remain with the respondent for the rest of her career. Given my findings and conclusions above, I believe it is the appropriate outcome in this matter. I therefore recommend a public reprimand, with Attorney John G. Dugan as the respondent's mentor. I recommend that the respondent and Attorney Dugan enter into a mentoring agreement that provides that they shall meet as often as Attorney Dugan deems necessary, but not less than once per month during the first six months, and thereafter once every two months for eighteen months, and that Attorney Dugan shall make quarterly reports to bar counsel as to the respondent's legal practice.

Dated: August 13, 2024

Respectfully Submitted,

Carolyn Francisco Murphy

Carolyn Francisco Murphy, Hearing Committee Chair