IN RE: MATTER OF ANNA SHAPIRO
BBO NO. 666221

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

BAR COUNSEL,	)	**BBO File Nos.**
Petitioner	)	**C2-20-00265843**
	)	**C2-21-00269435**
	)	**C2-21-00271474**
v.	)	**C2-22-00275557**
	)	
ANNA SHAPIRO, ESQ.	)	
Respondent	)	
	)	

HEARING REPORT

On June 29, 2022, bar counsel filed a petition for discipline against the respondent, Anna Shapiro, Esq. The three-count petition charged the respondent with misconduct related to three separate clients, primarily alleging that she had charged and collected clearly excessive fees from each client. The petition further charged that the respondent had made a knowingly false statement of fact to the court and/or failed to correct a false statement of material fact previously made to the court in one matter. Finally, the respondent was charged with violating various rules related to the filing of an allegedly frivolous motion to compel a polygraph examination on another client's behalf. Represented by counsel, the respondent filed her answer on August 2, 2022.

On December 9, 2022, bar counsel filed a motion to amend the petition for discipline to add a fourth count, alleging that the respondent had charged and collected clearly excessive fees from a fourth client, which the respondent did not oppose. The motion was allowed on December 15, 2022 and the respondent filed her answer to the amended petition on January 13, 2023.

The hearing was held over six days: June 5, 6, 7, 8, 27, and 28, 2023. Forty-four exhibits

were admitted (comprising almost 9,500 pages of documents).[1] Ten witnesses testified: the respondent; her former clients, Michelle Melanson, Nia Rollins-Lyons, Erik Kometti, and Linda Zullo; her former employees, Ashley Walsh, Esq., and Diane Nordbye, Esq.; counsel for Mr. Doe, Leah Anne Weinrich, Esq.; bar counsel's expert, Rosemary Purtell, Esq.; and respondent's expert, Alfred P. Farese, III, Esq.

On November 6, 2023, the hearing committee issued an Order and Notice of Reopened Hearing, pursuant to B.B.O. Rules, § 3.60, directing the parties to produce the audit report issued by the Law Office Management Assistance Program ("LOMAP") in connection with the respondent's prior discipline. On November 7, 2023, bar counsel produced LOMAP's March 2019 report to the committee.

Following multiple requests for extensions, the parties filed their proposed findings of fact and conclusions of law on December 11, 2023. The respondent filed Amended Proposed Findings of Fact on January 8, 2024 ("Respondent's Amended PFCs").[2]

[1] After the start of the hearing, the parties worked together to cull the exhibits to include only the necessary documents. The exhibits cited herein are the Amended Exhibits which are 5,059 pages. We note that it would have been more efficient for the parties to have done this before the start of the hearing.

[2] The respondent's original posthearing brief cited to exhibits that were not offered, or admitted, into evidence at the hearing. In addition, with respect to exhibits that were admitted, the respondent did not correctly identify them by their hearing exhibit number. Motion practice followed. Ultimately, the chair of the hearing committee gave the respondent leave to file amended proposed findings on January 8, 2024, which she did.

FINDINGS OF FACT COMMON TO ALL COUNTS[3]

1. The respondent, Anna Shapiro, was admitted to the Massachusetts bar on December 1, 2006. Ans. ¶ 2. She opened her own firm in January of 2007. Tr. I:34, II:226 (respondent).

2. At all relevant times, the respondent was the sole owner and Chief Executive Officer of Shapiro Law Group, PC ("SLG"), located in Woburn, Massachusetts. Ans. ¶ 3; Tr. I:33-35, Tr. II:228 (respondent).

3. The respondent described herself as running a general practice during the time period at issue in these proceedings (2019-2022), but she primarily handled family law and some litigation. Tr. II:228-229 (respondent).

4. The respondent employed two partners, Diane Nordbye, Esq. (who testified before us) and Vivian Crowell, Esq. Ex. 43. The respondent's partners did not have equity ownership in the firm but functioned as salary partners. See Tr. III:17-18 (respondent); Tr. V:154-155 (Nordbye).

5. In addition, during the time period at issue, the respondent generally employed two to four associates, at least two paralegals, and an administrative assistant. See Tr. I:37, Tr. II:228-229, Tr. III:19-20 (respondent).

[3] The transcript is referred to as "Tr. [vol.]:[page]"; the matters admitted in the answer to the amended petition are referred to as "Ans. ¶_"; and the amended 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.

6. The respondent frequently hired recent law school graduates as associate attorneys.[4] Tr. V:150 (Nordbye) ("…so often they had no idea what it meant to be an attorney"); Tr. II:118, 130 (Walsh). At our request, the respondent provided a list of names and position of each timekeeper appearing in the client invoices at issue. Ex. 43.[5] We take administrative notice that all of the associates who appear on the list were admitted to the bar of the Commonwealth between November 2019 and December 2021. Therefore, no associate working on any of these matters had more than three years of experience during the relevant time period; the majority had far less than three years.

7. In addition to the relative inexperience of the firm's associates, there was a significant amount of turnover among the associates during the time period at issue. Tr. V:133-134 (Nordbye) (twenty to perhaps thirty different lawyers who came and left during her five years at the firm); Tr. II:119-121 (Walsh). The respondent's employees testified that turnover was due to a variety of reasons including pay and hours. Tr. V:134 (Nordbye); Tr. II:135-136 (Walsh). We credit this testimony.

Timekeeping and Billing Practices

A. Billing Rates

8. Before us, the respondent testified that hourly billing rates for attorneys and paralegals at SLG were informed by a 2014 marketing study commissioned by the firm (Ex. 44 (Tribal Vision Plan)), as well as by discussions between the respondent and her partners at the time. Ex. 44; Tr. I:40-41; III:194-195 (respondent).

[4] There was conflicting testimony offered about how much training new attorneys received at the firm. We do not discuss it here because it is largely irrelevant to our findings.

[5] This list is incomplete as we discuss at relevant times infra.

9. The respondent initially testified that she was not the "sole decision-maker on the rates" because she discussed the firm's hourly rates with her partners. Tr. I:39-41 (respondent). However, Attorney Nordbye testified that even though they did have partner meetings discussing the rates, and the respondent always consulted the partners, the respondent was the ultimate decision-maker. Tr. V:155-156 (Nordbye) ("She was the boss…at the end of the day we all knew [the respondent] signed our paychecks.") We credit Attorney Nordbye's testimony both because we found her testimony to be truthful on this issue and because it is common sense that the sole equity partner would hold the decision-making authority.

10. We find that, at all times, the respondent was ultimately responsible for setting the hourly rates for attorneys and paralegals that were charged to clients of her firm.

11. During the time period at issue, the respondent's billing rate was between $335 - $385 per hour. Exs. 7, 16, 23, 31 (Client Invoices). Both experts that testified in this matter, discussed in more detail below, found the respondent's hourly rate to be reasonable based on her experience, firm-size, and location. See Tr. IV:154 (Purtell); Tr. V:195-198 (Farese). We agree and so find.

12. During the time period at issue, the respondent's associates' hourly rates ranged from $245 to $305.[6] Exs. 7, 16, 23, 31 (Client Invoices).

13. During the time period at issue, the respondent's paralegals' hourly rates ranged from $155 to $185. Id.

[6] "TH" appears on one invoice in Count I (Melanson) and one invoice in Count III (Kometti). See Ex. 7, at 00397; Ex. 23, at 01810. TH is not identified in Exhibit 43. However, there is an email in the Kometti matter from Tiffany Haines to Mr. Kometti. Ms. Haines' email signature block identifies her as a "Senior Associate" at SLG. Ex. 25, at 01967.

B. Billable Hour Requirement

14. The employment contracts used by SLG during the relevant time period included a quarterly billable hour requirement for attorneys. Ex. 35; Tr. II:134-135 (Walsh); see also Tr. V:134 (Nordbye). In November 2019, that requirement was 533 billable hours per quarter, or approximately 2,132 billable hours per year. Tr. II:135 (Walsh); Ex. 35, at 05061. Based on the combined knowledge and observations of the two attorneys on the committee, we note that this billable hour requirement is quite substantial, especially for a small firm.

15. Immediately preceding the section setting forth the billable hour requirement, the employment contract stated that "[f]ailure to meet the Firm's expectations as memorialized in this Agreement shall be grounds for formal disciplinary action, including termination of the Attorney by the Firm." Ex. 35, at 05061.

16. Before us, the respondent repeatedly denied that she had a billable hour requirement in 2019. Tr. I:46-47 (respondent). We found this testimony not credible. As the sole owner of the firm, and given her intimate involvement in every aspect of the billing practices and procedures described infra, it is implausible that she would not have known or remembered having a billable hour requirement at her firm. We find that her testimony before us on this point was knowingly false.

17. Once confronted with Attorney Walsh's employment contract from November 2019 (Ex. 35), which contains the firm's billable hour requirement, the respondent did not admit the point, nor issue a mea culpa for her prior testimony. Rather, she attempted to justify it by claiming that "nobody ever followed these requirements. And we never did anything about it." See Tr. I:102-103 (respondent). Attorney Nordbye corroborated this, testifying that the billable hour requirement was not enforced; no attorneys were terminated or otherwise "punished" for

not meeting their daily billing requirements. Tr. V:134, 144-145 (Nordbye). But we note that Attorney Walsh received a written warning from the respondent that referenced Attorney Walsh's failure to bill sufficient hours on a single day. Ex. 36 ("…despite having requested a full day to telecommute and being aware that work was required on the Sur-Reply, you only billed 4.70 hours of work, which was woefully insufficient for the time requested."). We acknowledge that the dearth of hours was largely a peripheral matter in the warning. However, the fact that the respondent mentioned, in a warning letter, the failure to meet a daily billable hour requirement is some evidence of enforcement, as well as a revealing glimpse into the culture at the firm.

18. Regardless of whether any official enforcement action was ever taken, Attorney Nordbye did admit that the firm wanted and expected the attorneys to bill a certain number of hours per day (it fluctuated between eight or nine hours per day at various points in time). Tr. V:144, 164 (Nordbye). We generally credit Attorney Nordbye's testimony and found her testimony on this issue to be believable. Based on the above, we find that the firm's billable hour expectations were clearly established by the respondent and communicated to her employees.

C. Daily Timekeeping

19. Attorney Walsh testified that attorneys had to arrive each day at 8:30 a.m. and stay until a minimum of 6:30 p.m. Tr. II:120 (Walsh); see Ex. 35 (SLG Employment Agreement defining "Workdays" as Monday – Friday from 8:30 a.m. to 6:30 p.m.). Although the respondent equivocated on this before us, testifying that the workday was from 9 a.m. to 5 p.m. (Tr. I:41-43 (respondent)), in her statement under oath she admitted that the "general workday is from 8:30 to 6:30." Ex. 5, at 00248-49. We credit that attorneys at SLG were expected to work from 8:30 a.m. to 6:30 p.m. each workday.

20. In order to capture all of their time spent on all tasks throughout the workday – both billable and nonbillable – the respondent's employees, attorneys and paralegals alike, were expected to utilize SLG's timekeeping software on their computers. Tr. II:122 (Walsh). The timekeeping software was called AdvoLogix (which was a version of Salesforce made for attorneys (Tr. V:124 (Nordbye)). Tr. I:43-44 (respondent). According to the respondent,

> The system has access to all the [client] matters that we have open…So when they were working on the matter, their front screen when they logged in [to their computer] would have an opportunity to start a timer. So when you start a timer, you pick a matter, you do a description and you work.

Tr. I:44 (respondent).

21. The software brought up client and administrative timers (similar to a stopwatch) on the employees' computer screens and employees were expected to be running timers for each separate client matter during the entirety of the day. Tr. II:122-123, 127 (Walsh) ("We could have multiple [timers] lined up, but we were supposed to have one going always unless we went to the bathroom…there was little room to go to the bathroom or just have, like, a normal conversation, because you had to make up for it at the end of it. We would have to stay later."). Employees would start and stop the timers as they worked on each matter. Tr. V:124-125 (Nordbye). At the end of the day, it was expected that their collection of timers, including administrative work, would approximately equal the amount of time spent in the office. See Tr. V:144 (Nordbye); see also Tr. II:126-128 (Walsh).

22. Attorneys were expected to close out their timers and upload their time entries on a daily basis. See Tr. I:44-45 (respondent). By uploading the time entries to the system, the employees' entries were saved to each separate client matter. Tr. V:124-125 (Nordbye).

23. After the employees uploaded their time entries, partners were required to review associates' and paralegals' billing entries daily, either at the end of each day or the following

morning. Id.; Tr. I:139-140; Tr. IV:10-12 (respondent). At that point in the process, each partner could see how much time was spent on each individual task performed by an associate or paralegal. Tr. I:139-140 (respondent). The partner would decide to either approve the time entry or to reduce the time. See id. at 140. The respondent testified that if time needed to be reduced, she would do that daily and it would appear either as a courtesy discount on the invoice or it would be removed in a way that was not be visible to the client. Tr. IV:7-12 (respondent). The respondent testified that there is no way on the system to keep permanent track of any adjustments or reductions in time. Id.

D. Weekly Invoices to Clients

24. Client invoices were sent out weekly. Tr. I:49 (respondent); Tr. V:125 (Nordbye). At least two partners reviewed the client invoices before they were sent to the clients. Tr. V:125, 129 (Nordbye).

25. The respondent personally reviewed all invoices, on every case, before they were sent to clients. Tr. I:48-49 (respondent). Further, as detailed infra, the respondent personally represented the four clients whose cases are at issue here so she would have been reviewing her employees' time entries on these matters on a daily basis. See Tr. V:124-125 (Nordbye); Tr. I:139-140; Tr. IV:10-12 (respondent) (partners were required to review associates' and paralegals' billing entries daily).

26. The weekly invoices showed one entry per attorney, per day. If an attorney completed multiple tasks over the course of one day, the invoice would include the description of every task but only one cumulative unit of time for the day. Tr. I:137, 139 (respondent). In other words, there was no breakdown or itemization on the client's invoice of how much time was spent on each discrete task. See Tr. III:204-205 (respondent) ("…a lot of these time entries still

have that line continue drafting, but that could've only been like five minutes, these other five or six tasks that were done that day. Because it's just a block of time. Like everybody's time is just one entry on the bill. So it doesn't necessarily mean that the three hours were spent on the financial statement and ten minutes on other five tasks. That's not how it really works.").

27. The respondent explained that if each person's tasks were not listed as one block of time per day "…there would be many entries on the invoice and the invoice is going to be 10 to 15 pages, which we don't want to see." Tr. I:137-138 (respondent). She claimed such a long invoice would be too "cumbersome" for the client. Id. We infer from this testimony that the respondent chose for her clients' invoices to be structured in this way. We find that this is a classic example of "block billing" which we discuss in more detail infra.

28. Further, the respondent claimed that, once the invoice was created, there was no way to see the original time entries, which separated out each task and the time that was spent. See id. at 143-144 ("…once the bill gets produced, everything just is gone.").

29. The respondent admitted in her Answer that she was "ultimately responsible for agreeing to the amount of fees charged to clients of the firm, the establishment and enforcement of the firm's timekeeping and billing practices, her involvement in reviewing and approving invoices, and the supervision over junior attorneys and staff in regard to their timekeeping and billing practices." Ans. ¶ 4. We so find.

30. In addition to timekeeping capabilities, the respondent's timekeeping software, Advologix, allowed her and her employees to create and maintain a central repository of client case information on the computer system. See Tr. I:73-76 (respondent). The respondent and her staff kept detailed notes on each case and she testified, "Anything that happens on the case, whether there's a phone call with a client, a meeting, a review note, when we review documents,

notes are used for a lot of things…" Id. at 73; see Ex. 10, at 00724 (example of a note in the respondent's computer system). Other software programs allowed the respondent and her employees to upload emails, text messages, and voicemails with clients and other people involved in the various cases into the notes on Advologix. See Tr. I:74 (respondent).

31. Advologix did not allow users to copy and paste information from another document into a note on the system. In order to have information from a document appear in a note on a case, someone had to manually type the information into a note. Tr. I:207 (respondent).

E. Expert Testimony Relevant to All Counts

32. Each of the four counts in this proceeding, described below, involves an allegation, inter alia, that the respondent violated Mass. R. Prof. C. 1.5(a) (do not charge or collect a clearly excessive fee). Both bar counsel and the respondent presented expert testimony at the hearing regarding the reasonableness of the hourly rates charged by the respondent and her firm as well as the reasonableness of the overall fees charged to each client.

33. Bar counsel's expert witness was Rosemary Purtell, Esq. She testified before us concerning the services provided by the respondent and the fees that the respondent charged. She has been practicing family law in Massachusetts for thirty-five years at a mix of mid-size to small firms. Tr. IV: 146-147 (Purtell). She opened her own practice in 2006. Since 1993, Attorney Purtell has volunteered on the Fee Arbitration Board of the Massachusetts Bar Association. Id. at 148. She is often the chief arbitrator on a panel of three and has worked on approximately 100 cases in that time. Id. at 148, 150. The main function of the fee arbitrator is to "look at all of the evidence that comes in and determine what is a fair and reasonable fee for the [legal] services. And if they're expenses, what is a fair and reasonable total of expenses." Id. at

150-151. The panel utilizes a checklist of the eight factors described in Mass. R. Prof. C. 1.5 to make its determinations. Id. at 151.

34. Attorney Purtell reviewed the entirety of the case files, including invoices, for each of the respondent's four clients.[7] Id. at 145-146, 152.

35. The respondent's expert witness was Alfred P. Farese, III, Esq. He has been practicing family law in Massachusetts for twenty-six years. Tr. V:189-190 (Farese). He has published various manuals and MCLE publications over the years as well as taught between 30-50 seminars on family law over the last fifteen years. Id. at 190-191. He has been appointed in almost every fiduciary capacity by the Probate Court: special master, guardian, guardian ad litem, conciliator, trustee, etc. Id. at 192.

36. To prepare for this matter, Attorney Farese reviewed the billing records of each of the respondent's four clients, "some" of the pleadings, some emails and text messages, and the online dockets for each case. See Tr. VI:6-7, 39-40 (Farese). He did not review the complete case files for any of the four cases. Id. at 90.

37. As noted supra, the two experts agreed that the hourly rate charged by the respondent for her services was reasonable. We so found. However, the experts disagreed about whether the hourly rates that the respondent charged for work done by her employees – specifically her associates and paralegals – were reasonable.

[7] The respondent's full client files, including client invoices, are exhibits in this matter. Ex. 10 (Count One: Melanson); Ex. 18 (Count Two: Rollins-Lyons); Ex. 25 (Count Three: Kometti); Ex. 33 (Count Four: Zullo). The invoices for each of the four clients are also separate exhibits. Ex. 7 (Melanson Invoices); Ex. 16 (Rollins-Lyons Invoices); Ex. 23 (Kometti Invoices); Ex. 31 (Zullo Invoices).

38. Attorney Farese, the respondent's expert, testified that similar-sized firms on the North Shore of Massachusetts generally charge between $250 and $320 per hour for associates and between $150 and $320 per hour for paralegals. Tr. V:195-196 (Farese).

39. By contrast, Attorney Purtell testified that new associates, with one to three years of experience,[8] in small firms in the suburbs of Boston, do not usually charge more than $175 per hour. Tr. IV:160-161 (Purtell). With respect to paralegals, her opinion is that very experienced paralegals typically bill around $100 per hour. See id. at 154.

40. We credit and accept Attorney Purtell's testimony concerning her determination, as discussed above, that the rates charged for SLG's paralegals and associates were too high. Id. at 154-155, 160-161. As she explained, there is a difference between the rates charged by small firms outside of Boston and the rates charged by firms located in Boston. Id. at 154-155. Given Attorney Purtell's breadth of experience in fee arbitrations throughout Massachusetts, we find her testimony on this issue to be more solidly supported and credible.

41. We also credit Attorney Purtell's testimony, described infra, concerning what amount of fees would have been fair and reasonable in each of the four client matters. In addition to her experience in fee arbitrations, we note and value that Attorney Purtell reviewed the entire case file for each of the four client matters and Attorney Farese did not.[9] We think this was a critically important step in determining whether or not the fees in each particular matter were reasonable or not based on the issues presented and the work that was done. For these reasons, as

[8] We took administrative notice supra that, during the relevant time periods, the respondent's associates had between zero and three years of experience. See Ex. 43.

[9] Attorney Farese opined that the fees charged in each matter were "reasonable based upon the work performed." Tr. VI:13, 21, 25, 33 (Farese). We give very little weight to this testimony. In the first instance, he admitted that he did not review the entire case file for any of the four matters so he cannot make a complete assessment of what work was performed. Further, as he admitted, in weighing the reasonableness of an attorney's fee, the quality of the work also matters – something he could not fully form an opinion on without having reviewed the entire case files. Id. at 105.

well as our own review and analysis of the case files and SLG's invoices, we credit and agree with Attorney Purtell's testimony.

COUNT ONE
FINDINGS OF FACT

Melanson Matter

A. Petitions for Appointment as Guardian and Conservator

42. On December 18, 2019, the respondent began representing Michelle Melanson on an hourly fee basis pursuant to a written fee agreement. Ans. ¶ 6; Ex. 6. The respondent had previously represented Ms. Melanson in a divorce-related matter. Tr. V:76-77 (Melanson); Tr. I:49-50 (respondent).

43. As a returning client, the respondent gave Ms. Melanson a ten percent reduction in her rates. Ex. 10, at 00680.

44. Ms. Melanson retained the respondent because she wanted to be appointed as a guardian and conservator over her close friend, "John Doe." Ans. ¶ 5. Mr. Doe was suffering from dementia. Id. Ms. Melanson sought these appointments so that she could, among other things, move him out of the hospital and into a nursing home. Id. Ms. Melanson characterized it as an "emergency guardianship." Tr. V:77 (Melanson).

45. Ms. Melanson was already designated as Mr. Doe's health care proxy. Ex. 10, at 00424.

46. Mr. Doe was unmarried but had two adult children who lived out of state. Ans. ¶ 5. Ms. Melanson had been in contact with Mr. Doe's daughter and she testified that the daughter "wanted [Ms. Melanson] to do everything [she] could do for her father." Tr. V:85 (Melanson). We credit this testimony.

47. According to Ms. Melanson, Mr. Doe did not have any assets available to pay for

the expenses of the guardian or conservator. Id. at 106. Mr. Doe's home had already been foreclosed. Ans. ¶ 5.

48. On January 8, 2020, the respondent filed two petitions with the Essex Probate and Family Court seeking the appointments of Ms. Melanson as (1) guardian, and (2) conservator for Mr. Doe (collectively, "the Petitions"). Ans. ¶ 7; Ex. 10, at 00417-00523; see Tr. I:54 (respondent).

49. The Guardianship Petition was for a Rogers Guardianship. Tr. I:51-52 (respondent). This type of guardianship was needed because Mr. Doe was taking antipsychotic medicine. In this situation, an attorney needs to be appointed for the ward (Mr. Doe) because the guardian, if appointed, will have the authority to direct the administration of antipsychotic medicine to the ward. See id.

50. The filing for the Guardianship Petition included a six-page pre-printed form (Petition for Appointment of Guardian), a bond, an affidavit in support from Ms. Melanson, a medical certificate from Mr. Doe's doctor, an affidavit as to competency and treatment from Mr. Doe's doctor, a proposed treatment plan from Ms. Melanson, and a proposed decree and order for the judge to sign. Ex. 10, at 00418-54; see Tr. I:55-56 (respondent).

51. The filing for the Conservator Petition included a similar pre-printed six-page form (Petition for Appointment of Conservator), a bond, and a proposed decree and order for the judge to sign. Ex. 10, at 00455-00465.

52. The respondent also filed a Motion for Expeditious Hearing and Short Order Notice along with a proposed order to attempt to have the Petitions heard quickly. Ex. 10, at 00465.

53. At the time of these filings, the respondent had billed Ms. Melanson for approximately eighteen hours of legal services. Ex. 7, at 00366-74 (Invoices). This amounted to approximately $4,600 in fees. Id. After reviewing the testimony and the documents introduced in this matter, we find that after the Petitions were filed with the court, the bulk of the substantive legal work was completed.

54. After filing the Petitions, the Court issued citations for each petition to be published in the newspaper, served on various governmental organizations, and served on Mr. Doe. Tr. III:33-34 (respondent); Ex. 10, at 00470-00538. The returns of service, showing that the citations were published as required, were filed with the court on February 4, 2020. Ex. 10, at 00529-38.

55. Due to this being a Rogers Guardianship, the court appointed Leah Weinrich, Esq. as counsel for Mr. Doe in January 2020. Tr. V:171 (Weinrich). Although the respondent knew that counsel had been appointed on January 28, 2020, neither the respondent nor anyone else from her firm reached out to Attorney Weinrich until April 2, 2020. Tr. III:48 (respondent); Ex. 10, at 00719. This delay was unfortunate because it was Attorney Weinrich's first notice that she was appointed as counsel; she had not yet received notice from the court. See Tr. V:171-172, 174 (Weinrich). At that point, Attorney Weinrich met with the ward. Id. at 175.

56. Following the publication of the citations, the respondent assured Ms. Melanson that the court would automatically assign a hearing date. See Ex. 10, at 00605 (Email from the respondent to Ms. Melanson dated February 4, 2020). However, this advice was not accurate.

57. On March 12, 2020, over a month after the returns of service for the citations were filed with the court, the respondent's paralegal spoke to the clerk at the court regarding a date for a hearing on the petitions. Ex. 10, at 00705 (Computerized note in file by paralegal, JH,

dated March 12, 2020). At that time, the paralegal learned that the court did not automatically assign a date and, rather, the party seeking appointment had to request a date from the court. Id. Further, based on the experience of the two attorneys on the committee, we find that an attorney experienced in such matters, which the respondent held herself out to be, would have known that.

58. Once requested, the hearing was ultimately scheduled for April 28, 2020. Id. at 00706.

59. During his telephone call with the clerk, the paralegal also learned that the court needed assent forms to the petitions from Mr. Doe's children (indicating that they gave their consent to Ms. Melanson's appointments). Id. The respondent testified that she did not send the assent forms to the children right away because "they're not always necessary" and "some judges don't care." However, later in her testimony she admitted, "When you get the assents, the judge just goes through the assents…She puts them aside and she signs off on the temporary [guardianship]. It's a lot easier with the assents, but some cases don't have them." Tr. I:91 (respondent). By contrast, both experts agreed that the process of getting the assent forms signed by the children should have started "early on" (Tr. VI:94 (Farese)) or "immediately" (Tr. IV:164 (Purtell)). We credit the experts' testimony. Again, we find that an attorney experienced in such matters, which the respondent held herself out to be, would have known that.

60. We take administrative notice of the fact that, a few days following the paralegal's phone call with the clerk, in mid-March 2020, the courts in the Commonwealth were closed to the public for a period of time due to the COVID-19 pandemic. We discuss this below in our section on Mitigation.

61. On March 20, 2020, the respondent mailed assent forms to Mr. Doe's children for their signatures. Ex. 10, at 00539-44; Tr. I:78-79 (Shapiro). The packages were received by both children on March 23, 2020. Id. at 00544-46.

62. Approximately a week after the children received the assent forms, starting on April 1, 2020, the respondent's associate, VD[10], made efforts to contact Mr. Doe's children to investigate whether they had signed the assent forms. She left voicemails for both of them on April 1, 2020. Ex. 10, at 00711 and 00714. On April 2, 2020, she texted the daughter with no response. Ex. 10, at 00718. On the same day, she had a series of text messages with the son. She asked him to sign the assent and waiver form and mail it back to her. He replied, "What is a [sic] assent and waiver form? I'm not going to sign something I don't know what it is. I've been meaning to call u just been a lil crazy with everything." Ex. 10, at 00716. VD responded, in part, "this is basically confirming that [Ms. Melanson] can continue taking care of [Mr. Doe] but just making it official through the Court system and easier on him and her." The son stated in return, "I still don't understand what that has to do with me? I'm not his guardian or even nearby..you are probably closed by now so I will call tomorrow & find out more b4 signing something I don't [sic]. Thanks." Id.

63. Before us, the respondent repeatedly characterized the above text message exchange as evidence that Mr. Doe's son said that he was not going to sign the assent forms. Tr. I:78, 81-82, 84 (respondent). We disagree with this characterization. We find that the son's words are clear: he was trying to find out what the assent form was before he decided if he was going to sign it. He was not refusing to sign it.

[10] "VD" does not appear on Exhibit 43, the respondent's list of names and positions of timekeepers. However, the respondent identified VD as her associate during her testimony. Tr. I:71 (respondent). We take administrative notice that VD was admitted to the bar of the Commonwealth in June 2019.

64. There is no evidence of any further communications with Mr. Doe's children after the text messages described above. See Ex. 10, generally.

B. Motion to Dismiss Petitions

65. On April 5, 2020, Ms. Melanson emailed the respondent to express her frustration and disappointment at the cost of the proceedings in conjunction with the lack of results. See Ex. 10, at 00636. Ms. Melanson wrote:

> I have given you more or just about 11000.00 and there have been no results…You seem to have a turnover of staff and I am having to reiterate my story over and over to new people who have no idea what is going on with this case, and in the meantime it's costing me money and [Mr. Doe] is in limbo and continuing to deteriorate, because we are waiting for you. I suggest that you go to court and do what you need to do to get this resolved with the money I have given you as I am canceling the credit card on which you are drawing funds.

Id.

66. Ms. Melanson testified credibly, and consistently, before us that it was costing her too much money to pursue her appointment as Mr. Doe's guardian and conservator and she could not afford it. Tr. V:82 (Melanson).

67. During a phone call on April 8, 2020, the respondent offered Ms. Melanson a flat fee to complete the matter. Ex. 6, at 00363; Ans. ¶ 8. The offer included erasing Ms. Melanson's outstanding balance of $2,752.59 and completing both petitions for a maximum flat fee of an additional $6,000 ($4,500 for "Stage 1" and $1,500 for "Stage 2" if the second stage (an additional hearing) became necessary). Ex. 6, at 00363 (Amendment to the Hourly Fee Agreement); Ex. 10, at 00721 (the respondent's note from the telephone call); Tr. I:65-66 (respondent); see Tr. V:82 (Melanson).

68. It is undisputed that during the phone call Ms. Melanson initially accepted the respondent's offer. Tr. V:86 (Melanson). That same day the respondent emailed Ms. Melanson

the written Amendment to the Hourly Fee Agreement. The agreement included language that Ms. Melanson would agree to waive "any and all disputes of the legal representation performed…including all claims related to the nature or charges of the legal services performed." Ex. 6, at 00363.[11]

69. The next day, April 9, 2020, Ms. Melanson had a change of heart. She called the respondent back, declined the respondent's offer, refused to sign the Amendment, and reiterated that she wanted to dismiss the Petitions. Ex. 10, at 00723.

70. Ms. Melanson testified: "I told her it's too expensive. I can't keep doing this. And she ended up writing an agreement, whatever it was, that you know, the children were not cooperating and this is why I wanted out. But the fact was, I wanted out because it was costing me too much money." Tr. V:83 (Melanson). We credit Ms. Melanson's testimony and find that she wanted to dismiss the Petitions because of the lack of progress and the mounting legal fees.

71. On April 10, 2020, VD, the respondent's associate, contacted the court to obtain guidance concerning the procedure to voluntarily dismiss the petitions. She was instructed to file a motion to dismiss both cases and state Ms. Melanson's reason for seeking dismissal. Ans. ¶ 9. The motion and accompanying affidavit from the client, both drafted by SLG, stated that the reason for the dismissal was a "lack of agreement" between the client and Mr. Doe's children. See id.; Ex. 10, at 00556 (Motion), 00559 (Affidavit of Ms. Melanson).

[11] The respondent testified that she advised her client to consult separate counsel before signing the Amendment. Tr. III:182 (respondent). We do not credit this testimony. We note that this alleged advice, which could be required by Mass. R. Prof. C. 1.8(a), was not contained within the Amendment nor was it memorialized anywhere else. However, bar counsel did not charge the respondent with a violation of Rule 1.8(a). Cf. S.J.C. Rule 4:01, § 10 (lawyer shall not, "as a condition of settlement, compromise or restitution, require the complainant to refrain from filing a complaint, to withdraw the complaint, or to fail to cooperate with bar counsel"). To the extent that any of this constitutes misconduct, we will not consider it. See generally Matter of Foster, 492 Mass. 724, 762, n.18, 39 Mass. Att'y Disc. R. __ (2023); Matter of Parker, 39 Mass. Att'y Disc. R. __, __ (2023) (Board Memorandum) (declining to find misconduct that could have been, but was not, charged).

72. The affidavit was sent to Ms. Melanson for review and approval before she signed it. Tr. I:66 (respondent). When asked if she had any discussions with the respondent about what the documents stated as a reason for the dismissal, Ms. Melanson testified: "I did bring up this is getting too expensive and it was costing me too much money. And if she wanted to blame it on the kids, fine." Tr. V:85 (Melanson). We credit Ms. Melanson's testimony and find that Ms. Melanson signed the inaccurate affidavit because she simply wanted the mounting legal fees to stop.

73. According to the respondent, the motion to dismiss did not address Ms. Melanson's inability to continue to pay her legal expenses because "that was not why [Ms. Melanson] wanted to dismiss the two cases." Tr. I:65 (respondent). We do not credit this testimony. At the very least, the respondent knew that the legal expenses were a significant factor in Ms. Melanson's decision to dismiss the Petitions and the respondent chose not to share this information with the court.

74. The motion to dismiss, with accompanying affidavit signed by Ms. Melanson, was filed with the court on April 13, 2020. Ex. 10, at 00670 (Email from respondent to court filing motion).[12]

75. On April 15, 2020, after filing the motion to dismiss but before any ruling on the motion, the respondent received signed assents from Mr. Doe's daughter. The respondent notified Ms. Melanson of the receipt of the signed assent forms. Ans. ¶ 10. Ms. Melanson remained committed to dismissing the case. Ex. 10, at 00728.

[12] The cover letter to the court for filing the motion to dismiss package was dated April 10, 2020 (see Ex. 1, at 00142). However, the email from the respondent to the court filing the motion to dismiss package was sent on April 13, 2020.

76. A few weeks later, on May 7, 2020, the respondent received the signed assents from Mr. Doe's son and emailed Ms. Melanson to notify her of their receipt. Id. at 00677. It is unclear if Ms. Melanson responded to the respondent's email.

77. The respondent did not forward the children's signed assents to the court or otherwise notify the court that the children had assented to the petitions. Tr. IV:30 (respondent).

78. We find the fact that Ms. Melanson did not change her mind about dismissing the Petitions after the respondent received the signed assents from the children is further evidence that Ms. Melanson's reason for desiring dismissal was not "lack of agreement" with the children but rather the legal costs of seeking to be appointed guardian and conservator over Mr. Doe.

79. Shortly after the filing of the motion to dismiss, the hospital where Mr. Doe was being treated filed a motion with the court to affirm Ms. Melanson's health care proxy and she was ultimately appointed his guardian through that separate process. Tr. V:178-179, 183 (Weinrich); Tr. V:111 (Melanson) (she was appointed Mr. Doe's guardian). Attorney Purtell testified that the respondent could have pursued this option on Ms. Melanson's behalf and notes that when the hospital did so, its petition was allowed in thirteen days. Tr. IV:167 (Purtell). Attorney Farese agreed that an affirmation of the health care proxy was "absolutely one of the options, sure." Tr. VI: 96 (Farese). We credit their testimony and find that an experienced practitioner, as the respondent held herself out to be, would have investigated and/or pursued this option at the start of the matter.

80. We take administrative notice of the court dockets in these matters which show that the Petitions were not dismissed until August and October 2023, subsequent to the instant disciplinary hearing in this matter, when they were dismissed due to inactivity under the Court's

rules. It is worth noting that the respondent failed to follow-up her filings and confirm dismissal, thereby not completing the task for which she billed the client.

C. Fees Charged and Collected

81. The respondent's representation of Ms. Melanson lasted approximately four months[13] and the respondent billed her $15,624.70. Tr. I:93-95 (respondent). This amount reflects the ten percent reduction in SLG's hourly rates that the respondent gave Ms. Melanson for being a returning client. Ex. 10, at 00680.

82. Ms. Melanson paid the respondent $12,872.11. Tr. I:94-95 (respondent).

83. The respondent testified that she "wrote off" and did not invoice Ms. Melanson for another $6,200-$6,300 in charges (allegedly related to the work the respondent did to dismiss the petitions). See id. at 93-94. As noted supra, the respondent had charged Ms. Melanson approximately $4,600 at the time the petitions were filed; the remaining amounts were charged after the bulk of the substantive work was completed.

84. In reviewing the respondent's invoices across all four matters we note three distinct themes: (1) overstaffing of the case with multiple timekeepers leading to potentially duplicative billing, (2) block billing, and (3) vague descriptions of tasks on invoices. See Exs. 7, 16, 23, 31.

85. With respect to the staffing of the Melanson case, one partner (the respondent), four associates (AT, KD a/k/a KY[14], TH, and VD), and two paralegals (JH and MG) worked on the case over the course of four months. Exs. 7 and 43 (List of Names and Positions of Each

[13] The respondent testified that the representation lasted from December 18, 2019 through April 24, 2020. Tr. I:94 (respondent). She characterized this as being "[o]ver five months" but that is incorrect. See Tr. I:95 (respondent).

[14] "KY" and "KD" are the same person; one set of initials is the associate's maiden name and the other set is her married name. Tr. I:125 (respondent).

Timekeeper)[15]; Ex. 1, at 00021 (Email indicating that Amani Tuffaha is the respondent's associate working on Ms. Melanson's case); Ex. 25, at 01967 (Email indicating that Tiffany Haines is a Senior Associate at SLG). We find that this is an unusually high number of timekeepers for one relatively routine matter that occurred over a short time span.

86. As discussed supra, the respondent utilized block billing in her weekly invoices to clients, including Ms. Melanson. All of Ms. Melanson's invoices show only one entry per attorney per day no matter how many separate tasks the attorney or paralegal had completed on the case that day. See Ex. 7. For example, in the Melanson matter, three timekeepers together billed approximately 15.5 hours for drafting and readying the two Petitions for filing with the court. See Ex. 7, at 00366-00374. The estimated cost, including the expenses for filing, was almost $5,000. See id. There were multiple instances of block billing for these Petitions as shown in the table below, which made it difficult to determine exactly how much time was being spent on each discrete task:

Date	Staff	Description	Hours	Unit Price	Total
12/26/2019	AS	Began drafting Guardianship Petition documents	0.2	$335	$67
12/30/2019	AT	Telephone calls with Client concerning Petition. Began drafting Guardianship Petition and Bond. Began preparing for Client Meeting.	2.3	$245	$563.50
12/30/2019	AS	Corresponded with Client concerning updates. Began preparing Petition for Guardianship to be filed in Court.	0.2	$335	$67
12/31/2019	JH	Assisted Attorney with preparing Guardianship Petition to be filed in Court. Meeting with Client concerning Petition and filing.	0.9	$155	$139.50

[15] We note that this list provided by the respondent is missing the names of Amani Tuffaha and Tiffany Haines.

12/31/2019	AT	Telephone calls with Ward's Daughter concerning Guardianship Petition. Continued preparing Guardianship Petition to be filed in Court.	1.1	$245	$269.50
12/31/2019	AS	Continued work on Guardianship Petition.	0.2	$335	$67
1/1/2020	AS	Continued work on Guardianship Petition documents. Began work on Emergency Motion for Speedy Hearing.	0.4	$335	$134
1/2/2020	AT	Continued drafting Petition for Guardianship. Began drafting Order and Decrees, Affidavits, Motion for Short Order and Treatment Plan.	2.6	$245	$637
1/2/2020	AS	Continued work on the Guardianship Petition and Client's Affidavit. Continued preparing Guardianship Petition package to be filed in Court.	0.2	$335	$67
1/3/2020	AS	Continued drafting Petition for Guardianship	0.1	$335	$33.50
1/3/2020	AT	Telephone calls with Client concerning Petition and Case update. Continued drafting Petitions for Guardianship and Conservatorship and all related documents. Began preparing for Meeting with Client.	2.3	$245	$563.50
1/6/2020	AS	Continued preparing to file Guardianship and Conservatorship Petitions.	0.2	$335	$67
1/6/2020	AT	Continued preparing for Meeting with Client. Meeting with Client concerning Petition. Continued work on Client's file after Meeting with Client. Telephone call with Client concerning Petition. Continued drafting Petition documents and preparing Petitions for filing.	2.0	$245	$490
1/7/2020	AT	Telephone call with Client concerning Petition. Meeting with Client concerning Petition. Continued preparing Guardianship and Conservatorship Petitions Package to be filed in Court.	2.3	$245	$563.50
1/7/2020	AT	COURTESY DISCOUNT FOR PREPARATION	-0.2	$245	($49.00)
1/7/2020	AS	Continued drafting Guardianship Petition and Conservatorship Petitions.	0.7	$335	$435.50

		Corresponded with Ward's Doctor concerning Medical Report. Finalized Petitions for Guardianship and Conservatorship. Continued preparing for Court filing.			
1/8/2020	AS	Appearance at Essex Probate Court to file Petitions for Guardianship and Conservatorship (travel split with another Client).	1.3	$335	$435.50
Total:			16.8		$4,551

See id.

87. Thereafter, the citations had to be served on Mr. Doe and published in the newspaper. Inexplicably, the respondent's associate, AT, rather than her paralegal, handled the telephone calls and correspondence with both the constable regarding service on Mr. Doe and the newspaper concerning publication, at a rate of $245 per hour for multiple hours. See Ex. 7, at 00384. Again, due to block billing on the invoice, it is impossible to ascertain how much time was spent on each discrete task listed in the description. However, what is clear is that this is a task that could, and should, have been handled by a paralegal or an administrative assistant at a nonlegal rate.

88. In conjunction with block billing, we find through our own independent review that many of the respondent's invoices to her clients, across all four matters described below, included vague, insufficiently detailed billing descriptions.

89. For example, the date for the guardianship hearing in the Melanson matter was not scheduled until March 12, 2020 (at which time the hearing date was set for April 28, 2020). See Ex. 10, at 00706-07. Yet, on January 29, 2020, MG, a paralegal, billed 1.5 hours (reflecting a 0.2 courtesy discount) for "Assist[] Attorney with preparing for Guardianship Hearing." There was no further description for what MG did in preparation for a hearing that was not, at that time, even scheduled. Ex. 7, at 00384. On February 7, 2020, JH, another paralegal, billed 0.6 hours for

"assisting Attorney with preparing for Guardianship Hearing." Id. at 00389. On March 3, 2020, KD, an associate, "Continued preparing for Guardianship Hearing" for 1.2 hours at a cost of almost $300. On March 5, 2020, TH, another associate, used the same description for 0.6 hours of work at a cost to the client of almost $175. Id. at 00397. Prior to those dates, neither associate had worked on this matter, and they did not work on it at any point afterwards. Again, at the time all of these entries were recorded, no hearing date had even been scheduled.

90. As another example, on many occasions, one or more timekeepers, including the respondent herself, would indicate that they "continued work on Client's file" or "assisted attorney with work on client's file" without any indication at all of what work was being done. See Ex. 7 (Melanson), at 00373, 00376, 00384, 00387, 00389, 00397, 00399, and 00401. With so many persons handling the matter, these vague descriptions hindered Ms. Melanson's, and our, ability to discern what work was being done on any particular day, and whether or not work was being duplicated.

91. As we wade deeper into the invoices to analyze how the charges on this matter could have increased so substantially following the filing of the Petitions (at which time the bulk of the work was complete), we note entries that indicate an unreasonable expenditure of time. For example, on March 20, 2020, the respondent mailed assent forms to Mr. Doe's children for their signatures. Ex. 10, at 00539-44; Tr. I:78-79 (Shapiro). The assent forms were one-page pre-printed forms which required minimal information to be filled in by the respondent. See Ex. 10, at 00540-41 and 00543-044. The respondent's invoices to Ms. Melanson indicate that the respondent billed her for over three hours of work and some portion of $805 for this task, as shown below:

Date	Staff	Description	Hours	Unit Price	Total
3/13/2020	AS	Began work on packages to Interested Parties with Assent Forms.	0.1	$335.00	$33.50
3/13/2020	JH	Began assisting Attorney with preparing packages to Interested Parties with Assent Forms.	0.5	$155.00	$77.50
3/16/2020	AS	Continued drafting Assent Forms. Continued preparing packages to Interested Parties with Assent Forms.	0.3	$335.00	$100.50
3/16/2020	JH	Continued assisting Attorney with preparing packages to Interested Parties with Assent Forms.	1.5	$155.00	$232.50
3/20/2020	AS	Continued drafting Findings of Fact and Conclusions of Law. Telephone call with Court concerning Assent Forms, per Court's request. Continued work on Client's file after telephone call with Court. Continued drafting and finalized packages to Interested Parties with Assents. Corresponded with Court concerning Assent Forms.	0.8	$335.00	$268.00
3/20/2020	JH	Assisted Attorney with preparing Assent packages.	0.6	$155.00	$93.00
Total			**3.8**		**$805**

Ex. 7, at 00401, 00403. The combination of the vague billing descriptions and block billing means that we cannot determine the exact amount of time spent or costs billed to this task on March 20, 2020.[16]

[16] On March 13 and 16, 2020, both the respondent and her paralegal, JH, billed a combined 2.4 hours (at a cost of $444) for drafting and "preparing packages to Interested Parties with Assent Forms." Ex. 7, at 00401. Yet, curiously, the respondent did not receive the blank assent forms from the court until days later on March 20, 2020. Ex. 10, at 00612 (Email from court clerk to the respondent attaching the assent form dated March 20, 2020); see also Ex. 10, at 00710 (Notes entered into computer system by the respondent dated March 20, 2020 indicating that she had spoken to the clerk and requested he email her the specific forms the court prefers). This discrepancy was not explained to us. We note, without finding, that if the respondent realized late that she was not using the correct form, she should have written off all of the time spent drafting the incorrect forms before the correct form was received. We further note, based on both experts' testimony as well as the knowledge of one attorney member of our committee, that these assent forms were readily available on-line on the court's website, which an experienced practitioner would have known. See Tr. IV:164-165 (Purtell); Tr. IV:93-94 (Farese).

92. As another example, the respondent and her paralegal billed a combined 0.5 hours for reviewing the returns of service from the constable. Ex. 7, at 00387. The returns of service were two two-page documents containing just the name of the server and the date, time, and place that service was made. See Ex. 10, at 00531-34. They then spent a combined one hour of time (reflecting a courtesy discount of 0.4) preparing to file the returns of service with the court. Ex. 7, at 00387. This expenditure of time, although small in the grand scheme, is still manifestly unreasonable and offers insight into how this pattern, repeated over time, adds up to excessive costs for a client.

COUNT ONE
CONCLUSIONS OF LAW

93. Bar counsel charged that by charging and collecting a clearly excessive amount of fees in her representation of Ms. Melanson, the respondent violated Mass. R. Prof. C. 1.5(a).[17] In considering the Melanson invoices as a whole, we conclude that bar counsel has proved this charge. See Twin Fires Inv., LLC v. Morgan Stanley Dean Witter & Co., 445 Mass. 411, 428

[17] Rule 1.5(a) provides:

> A lawyer shall not enter into an agreement for, charge, or collect an illegal or clearly excessive fee or collect an unreasonable amount for expenses. The factors to be considered in determining whether a fee is clearly excessive include the following:
>
> (1) the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;
>
> (2) the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer;
>
> (3) the fee customarily charged in the locality for similar legal services;
>
> (4) the amount involved and the results obtained;
>
> (5) the time limitations imposed by the client or by the circumstances;
>
> (6) the nature and length of the professional relationship with the client;
>
> (7) the experience, reputation, and ability of the lawyer or lawyers performing the services; and
>
> (8) whether the fee is fixed or contingent.

(2005) (holding the court is not required to review the description of each line of attorney time records to allow or disallow each item, but may instead consider the bill as a whole).

94. Bar counsel's expert, Rosemary Purtell, Esq., testified that a reasonable cost to secure Ms. Melanson's appointment as both a guardian and conservator of Mr. Doe would have been around $7,500. Tr. IV:175 (Purtell). This would have included the publication of the citations which were over a thousand dollars combined. Id.; Ex. 7, at 00387 (showing expenses for the fees for publication of the two citations). We credit this testimony.

95. By contrast, the respondent's expert, Attorney Farese, testified that there is "no norm" for attorney's fees in these types of cases because there are too many different factors involved. Tr. VI:12-13. He opined, without having reviewed the case file, that the fees charged here were reasonable. Id. at 13. We do not credit his testimony.

96. We find that a fair and reasonable fee for all services rendered by the respondent is approximately $7,500, inclusive of costs. See Tr. IV:175 (Purtell). Our finding is supported by the evidence with reference to the applicable factors listed in Rule 1.5(a):

1. The Petitions themselves were simple and straightforward or, at least, should have been to an experienced practitioner. They required no unusual expenditure of time and labor, posed no issues of particular novelty or difficulty, and required no unusual skill to administer.
2. Handling the Petitions did not adversely affect the respondent's ability to obtain or conduct other work and she did not testify as such.
3. We credit Attorney Purtell's testimony that the fair and reasonable fee for these services in the locality was roughly half of what the respondent charged Ms. Melanson, $7,500.

4. The respondent obtained zero results for Ms. Melanson, who ultimately attempted to withdraw the Petitions, due to the legal costs, before any hearing was held. Ms. Melanson was ultimately appointed Mr. Doe's guardian through a separate process initiated by the hospital's attorney—which was accomplished in a matter of weeks. See Matter of Woodhouse, 23 Mass. Att'y Disc. R. 787 (2007) (holding that by charging $10,000 for his legal services "which had little value", the lawyer charged a clearly excessive fee). The respondent, as discussed supra, should have, at the very least, investigated this process.
5. While the situation was urgent, according to Ms. Melanson, we find that the respondent did not treat it that way and there was no evidence that the fees charged were higher than usual to account for any client-imposed time limitations.
6. The respondent had represented Ms. Melanson previously and the excessive fees charged reflected a ten percent discount from the respondent. In other words, without this discount, the charged fees would have been even higher.
7. As discussed supra, while the respondent was experienced and charged a reasonable rate for her services, she employed a variety of associates and paralegals without much experience and whose abilities did not justify their hourly rates. Haddad v. Wal-Mart Stores, Inc., 455 Mass. 1024, 1025-26 (2010) ("A determination of a reasonable hourly rate begins with 'the average rates in the attorney's community for similar work done by attorneys of the same years' experience.'") (citations omitted).
8. The fee was not fixed or contingent so this final factor does not apply.

97. As discussed supra, in reviewing the respondent's invoices we note three themes

which led directly to the excessive fees charged: overstaffing of the case with multiple timekeepers, block billing, and vague descriptions of tasks.

98. As we noted, there were multiple timekeepers completing work on the Melanson matter. This was far in excess of the typical team composed of partner, associate, and paralegal that many law firms use. For example, this matter, which spanned approximately four months, included the following timekeepers: one partner (the respondent), four associates (AT, KD, TH, VD), and two to three paralegals (JH, MG and potentially AW). See Exs. 7 and 43. While some of this overlap may have been a result of the firm's high turnover, there were also clear instances where multiple paralegals and associates had their hands on cases simultaneously. See Ex. 7, at 00397-00401 (invoices showing one partner, three associates, and one paralegal working on the case in a two-week span).

99. Further, based on the firm's marketing report from TribalVision, it appears that SLG intentionally staffed each case with an "entire team of lawyers." See Ex. 44, at p. 25. This overstaffing of cases created a scenario ripe for employees potentially duplicating work (e.g., reviewing the same set of documents that was already reviewed by someone else or multiple timekeepers billing time to get up to speed on the background of a case – time that should not be charged to the client). Coupled with the consistent use of vague billing descriptions, it was frequently impossible to determine who was doing what and when.

100. There were also multiple instances, discussed supra, where the respondent's employees were billing legal or paralegal rates for non-legal administrative work (e.g., communicating with the newspaper or constable). The clients should not have been billed at legal or paralegal rates for these services. See Matter of Moran, supra (snow shoveling, moving and house cleaning, shopping, and making funeral arrangements are not legal services); Matter

of Moore, 29 Mass. Att'y Disc. R. 461, 462 (2013) (appraising and selling the decedent's flea market merchandise, attending an auction, hiring various contractors and supervising their work, and making arrangements with brokers are not legal services); Matter of Chignola, 25 Mass. Att'y Disc. R. 112, 112-113 (2009) (transporting client to and from treatment, paying client's bills, depositing client's funds, collecting client's mail, and storing and maintaining client's belongings are not legal services); Matter of Harbeck, 23 Mass. Att'y Disc. R. 262 (2007) (paying bills, arranging for health and personal care, organizing the repair and cleaning of home and moving and disposing of household items so that the home would be marketable are not legal services).

101. Most of the respondent's invoices in the Melanson matter, as well as the other three client matters at issue, feature "block billing." Block billing is "listing multiple tasks within a single large block of time or listing a vague description of a single activity within a large block of time." Evans v. Lorillard Co., 29 Mass. L. Rptr. 226, 2011 WL 7090715 (Mass.Super., Dec. 2, 2011, Fahey, J.) (citations omitted); Ellis v. Varney, 19 Mass. L. Rptr. 260, 2005 WL 1009634 at *3 & n.6 (Mass.Super. Mar. 22, 2005, Fecteau, J.) (providing examples of vague descriptions including "research," "trial preparation," "conference" or "document review"). In civil cases where parties have sought the statutory award of attorney's fees, the SJC has indicated that block-billing is "disfavored." See Haddad v. Wal-Mart Stores, Inc., supra at 1026.

102. Because block billing prevents or at least hinders the effective evaluation of the reasonableness of the fees charged, courts in the fee-shifting context have frequently reduced block bills where there has been insufficient detail or itemization. Evans v. Lorillard, supra (25% reduction due to block-billing; total fee was 56.6% of requested hourly billing); Ellis v. Varney, supra at 6 (reducing fee request by one-third in part because of block-billing); Roberts v.

Dept. of State Police, 15 Mass. L. Rptr. 462, 2002 WL 31862711 at *4 (Mass.Super. Sept. 26, 2002, Houston, J.) (reducing loadstar hours by 15% to compensate for vague block-billing).

103. Further, we note that ambiguities in fee agreements are typically construed against the lawyer who drafted it – we recommend that ambiguities in a lawyer's invoices, especially those caused by block billing and vague billing descriptions, be treated the same. See Matter of Kerlinsky, 406 Mass. 67, 73 n.5 (1989); Grace & Nino, Inc. v. Orlando, 41 Mass. App. Ct. 111, 114 (1996) (construing an "obscurity" in a contingent fee agreement against the attorneys who drafted it).

104. Bar counsel charged that by knowingly misrepresenting to the court Ms. Melanson's reason for seeking dismissal of the Petitions, and thereafter failing to correct such misrepresentation, the respondent violated Mass. R. Prof. C. 3.3(a)(1).[18] We conclude that bar counsel has proved this charge. The respondent made a knowing false statement of fact to the court in filing the motion to dismiss the Petitions, and the supporting affidavit from Ms. Melanson, which stated that there was a "lack of agreement" between Ms. Melanson and Mr. Doe's children.

105. In her Answer, the respondent stated that "Doe's children were unresponsive to the Petitions, there was, by default, a lack of agreement to proceed." Id. However, as also noted by the respondent, the children had only received the assent forms on March 23, 2020. Id. It was an unreasonable leap of logic for the respondent to interpret the children's failure to return the signed assents within a few short weeks, at the very start of the COVID-19 pandemic, to mean that the children did not agree with the Petitions. We find this explanation not credible. Further,

[18] Rule 3.3(a)(1) provides that "A lawyer shall not knowingly…make a false statement of fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer."

the respondent knew, at the very least, that the rising legal fees were a significant factor in Ms. Melanson's decision to dismiss the Petitions but she chose to omit this reason from the motion or affidavit. See Matter of O'Toole, 31 Mass. Att'y Disc. R. 511 (2015); Matter of Hession, 29 Mass. Att'y Disc. R. 338 (2013), citing Kannavos v. Annino, 356 Mass. 42, 48 (1969) ("Fragmentary information may be as misleading…as active misrepresentation, and half-truths may be actionable as whole likes…" [citation omitted]); Matter of Pemstein, 16 Mass. Att'y Disc. R. 339, 348 (2000) (court observed that letter to client concerning deposit of funds, while literally true, "begged the false inference that the funds were still in the account").

106. Finally, when the signed assent forms were received by the respondent, clearly illustrating that there was no "lack of agreement," the respondent did not file the forms with the court or otherwise correct or amend the false statements in the motion to dismiss and affidavit previously filed with the court.

COUNT TWO
FINDINGS OF FACT

Rollins-Lyons Matter

A. Defending Complaint for Contempt and Pursuing Complaint for Modification

107. Beginning in May 2021, the respondent represented Nia Rollins-Lyons in a Probate and Family Court proceeding involving her four-year-old son. The respondent undertook this representation on an hourly fee basis pursuant to a written fee agreement signed and dated May 24, 2021. Ans. ¶ 14. The fee agreement was labeled a Limited Representation Agreement.[19] Id.; Ex. 15.

[19] Counts Two, Three, and Four all include fee agreements that were labeled as Limited Assistance Representation Agreements (LARs). See Exs. 15, 21, 29. In the Rollins-Lyons and Kometti matters, the clients also signed one or more "Change in Scope Letters" to amend the LARs. See Ex. 15, at 01162-65; Ex. 21, at 01787-90; Ex. 22. The clients universally did not understand how a LAR differed from a traditional legal fee agreement. See

108. On May 17, 2021, Ms. Rollins-Lyon's ex-husband filed a Complaint for Contempt against her alleging that she had been withholding visitation with their son since May 8, 2021, in violation of a judgment from the Probate and Family Court. Ans. ¶ 15; Ex. 18, at 01193.

109. In response, on May 19, 2021, before retaining the respondent, Ms. Rollins-Lyons filed, pro se, a Complaint for Modification and an Emergency Motion to Stop Visitation. Ex. 18, at 01209-01213. Ms. Rollins-Lyons alleged that she was withholding visitation because her son began exhibiting sexual behaviors and she suspected that her child was being sexually abused while in the father's care.[20] Id.; Tr. III:90-93 (respondent). In brief, Ms. Rollins-Lyons alerted her ex-husband to the disturbing behavior and felt that he "became very defensive rather than alarmed" which raised her suspicions. Ex. 18, at 01235, ¶¶ 6 and 8. We find that this was a highly emotional, contentious, and urgent situation.[21]

110. The respondent agreed to represent Ms. Rollins-Lyons on both matters and the fee agreement covered both the modification and the defense of the contempt complaint. Tr. I:106 (respondent); see Ex. 15.

111. On June 9, 2021, the respondent filed a Verified Answer to the Complaint for Contempt and the client's affidavit in support. Ex. 18, at 01196-01202, 01272-01275.

Tr. V:59-60 (Rollins-Lyons); Tr. IV:124-125 (Kometti); Tr. II:16-17, 19 (Zullo). Although these fee agreements were labeled as LARs, we make no finding as to whether they satisfied the criteria for LARs under the courts' rules. Further, because bar counsel did not allege any misconduct in connection with the respondent's use of LARs and/or her communications with her clients about them, we decline to discuss them in any greater detail.

[20] Both Ms. Rollins-Lyons and her mother were long-time social workers for the Department of Children and Families ("DCF"). Tr. V:16-17 (Rollins-Lyons). Ms. Rollins-Lyons testified that she had been trained on the signs exhibited by children who have experienced sexual abuse. Tr. V:57-58 (Rollins-Lyons). We credit this testimony.

[21] We note that these suspicions were ultimately determined by DCF to be unsubstantiated (Tr. V:23-24 (Rollins-Lyons)) and Ms. Rollins-Lyons's son was later diagnosed with a condition that might explain the previously troubling behaviors. Tr. V:18-19 (Rollins-Lyons).

B. Review of Records

112. Ms. Rollins-Lyons provided various records to the respondent for her review. The records that were reviewed included: (1) Records from Boston Children's Hospital dated May 17, 2021 (8 pages) (Ex. 18, at 01423-30); (2) Occupational and Speech Therapy Evaluations from Encompass Health dated November 5, 2020 (17 pages) (Ex. 18, at 01431-01438, 01440-48); and (3) Records from Boston Public Schools Student Services including Individualized Education Program ("IEP") assessment and recommendations (63 pages) (Ex. 18, at 01449-01512).

113. Ms. Rollins-Lyons also sent the respondent various photographs and videos of her child as well as text messages between the parties. The respondent testified that she received fourteen videos from her client to review. Tr. III:100-101 (respondent). The length of the videos is unclear but associate, JG's, note from June 2, 2021, is illustrative. Ex. 18, at 01330. He describes four videos he reviewed and the descriptions suggest that the videos were not lengthy, e.g., "Video of Client asking her son if he wants to go to his father's house and him saying no." Id. On June, 17, 2021, JG reviewed five additional videos which appear to be different videos based on their descriptions. Ex. 18, at 01388. Similarly, although the lengths of the videos are not noted, the descriptions lead to the inference that they were not unduly long. See id.

C. Motion for Polygraph Examination

114. Undisputedly, Ms. Rollins-Lyons arrived at the respondent's door with the urgent desire to have her son's father submit to a polygraph examination. Tr. V:18-19 (Rollins-Lyons). As the respondent phrased it in her Answer, the purpose of the polygraph examination was "to dispel the mother's fear that the child was being abused." Ans. ¶ 16.

115. Before she had retained the respondent Ms. Rollins-Lyons had asked her son's father to take a polygraph test; he had refused. Tr. III:111-113 (respondent); see also Ex. 18, at 01235, ¶ 8.

116. On June 11, 2021, the respondent filed a motion to compel the father to take a polygraph examination. Ans. ¶ 16. The motion was titled "Mother's Motion for Polygraph Examination." Ex. 18, at 01234-01236.

117. Before us, the respondent testified that the motion was "not to compel. It's [Ms. Rollins-Lyons's] motion for polygraph examination. And when we filed it, the hope was that [the father] would agree to take it, then we could use that for evidence." Tr. I:118 (respondent). She further testified: "Nowhere in this motion do I see compel, no. It's not a motion to compel. When we do motions to compel they're called motion to compel. This motion is mother's motion for polygraph examination." Tr. I:119 (respondent). We do not credit this testimony because it is both contradictory to what the respondent clearly admitted in her answer filed with the Board and nonsensical. See Ans. ¶ 16 ("…the Respondent admits that the firm drafted and filed a Motion to Compel the father to take a polygraph examination to dispel the mother's fear that the child was being abused."). The plain language of the motion requests the Court to grant Ms. Rollins-Lyons "an Order [sic] the Defendant to complete a Polygraph Examination." Ex. 18, at 01236.

118. In the motion, which was signed solely by the respondent, she cited Commonwealth v. Vitello, 376 Mass. 426 (1978) for the puzzling proposition that "[p]olygraphic evidence's reliability is established by proof in a case that a qualified tester who conducted the test had in similar circumstances demonstrated [sic]." Ex. 18, at 01236. The respondent did not alert the Court that the Vitello case had been overturned by Commonwealth v. Mendes, 406

Mass. 201 (1989) (finding that, due to its lack of reliability, polygraphic evidence is inadmissible in criminal trials "either for substantive purposes or for corroboration or impeachment of testimony").

119. The respondent testified before us that she knew at the time she filed the motion that the court could not order the son's father to take a polygraph examination. Tr. I:120, 152, Tr. III:42-44 (respondent). She further testified that she knew, at that time, that the results of a polygraph examination are not admissible in Massachusetts court proceedings, absent an agreement between the parties. Ans. ¶ 16; Tr. I:149-151 (respondent). We do not credit that the respondent knew either of these things as described below.

120. Nevertheless, despite claiming to know that the court could not order the examination, the respondent stated that she filed the motion because Ms. Rollins-Lyons "was very persistent" about wanting to do so. See Tr. I:120, 153-153 (respondent). The respondent further claimed that she "discouraged" Ms. Rollins-Lyons from seeking to compel her son's father to take a polygraph examination and that she told Ms. Rollins-Lyons "it's a very slim option" during their first meeting. Id. at 127; see also Tr. III:113-114 (respondent) ("I explained to [Ms. Rollins-Lyons] that while we can file the motion, there's a great chance it will not be approved and we won't even be able to get a court order.").

121. By contrast, Ms. Rollins-Lyons testified that the respondent never advised her that her son's father could not be ordered to take a polygraph examination. Tr. V:19-20 (Rollins-Lyons). She testified:

> I'm not an attorney, but I do know if an attorney tells you you can't do something, you don't push back and pay them to do it anyway. You take their advice. I was not once advised by Ms. Shapiro that I could not subpoena [the child's father] for a lie detector test. I would have never went [sic] against her legal advice. Never. And spent that kind of money.

Id. Under questioning from us, Ms. Rollins-Lyons further explained that her understanding, based on her conversations with the respondent, was that if her son's father did not agree to take the test, he could be "subpoenaed" to take the test. Id. at 56. We credit this testimony because we found Ms. Rollins-Lyons credible and do not credit the respondent's contrary testimony. Our credibility finding is further supported by the documentary evidence described below.

122. Prior to filing the motion to compel, on June 1, 2021, about a week after being retained, the respondent had a telephone call with Ms. Rollins-Lyons. The respondent's associate, KY, also participated in the call. KY took notes during the call and entered them into SLG's computer system. The notes state, in part: "***GET AN ORDER FOR POLYGRAPH TEST, do a Motion to Court." KY also noted, "We can ask for a polygraph test from the Court. Would love that. She'd take a test too then, no question. We can maybe have the Court do that. If negative, would've done this as a team." Ex. 18, at 01315. Although not a model of clarity, the notes do not reflect an accurate analysis of the law. The respondent testified before us that she knew that the court could not order the father to take a polygraph examination; it was not something that they could "maybe" have the court do. Tr. I:120, 152, Tr. III:42-44 (respondent). In addition, there is no discussion of the respondent's alleged attempts to dissuade the client from this course of action.

123. That same day, June 1st, the respondent began drafting the motion to compel. Ex. 16, at 01171. Doing so at this early point in the representation contradicts the respondent's later assertion that she only filed the motion due to her client's dogged persistence and their "multiple conversations" about it over time. Tr. III:111-114, 191-194 (respondent) ("…sometimes it's a very difficult task to explain to the client that we really shouldn't do this, but the client is adamant and I'm – let's just try. Let's just try. Okay.").

124. The respondent claimed that her strategy was to file the motion to compel and "hope" that perhaps the father would voluntarily agree to take the polygraph examination. Tr. I:116, 120-121 (respondent). We find that this strategy defies common sense: why would the filing of a motion, legally doomed to failure, cause the father to change his mind and agree to take the test? Further, the respondent admits that she never reached out to opposing counsel for the father to negotiate with him or request that the father submit to a polygraph. Id. at 117, Tr. III:198-199 (respondent). We find that the fact that the respondent never spoke, or attempted to speak, to opposing counsel about the polygraph examination significantly detracts from the respondent's argument that the filing of the motion was part of a strategy.

125. The respondent's testimony is also inconsistent with a telephone call between the respondent, the client, and the respondent's associate that was memorialized in notes taken by the associate two weeks later on June 14, 2021 (a few days after the motion was filed). The associate wrote, "[The associate] and [the respondent] to talk about options. ***Will send authorization for DCF record. Court can order polygraph, he'll probably object." Ex. 18, at 01376.

126. In addition, there are no notes, letters, emails, or memoranda in the case file indicating that Ms. Rollins-Lyons was specifically informed that the motion to compel would be unsuccessful or that the "strategy" for filing the motion was as described above.

127. On June 14, 2021, the father's attorney filed an Opposition to the Motion for Polygraph Examination. Ex. 18, at 01268-01270. The Opposition set forth that polygraph evidence is inadmissible and that the case cited by the respondent in her motion had been overturned decades earlier. Id. at 01268. The Opposition requested that the mother's motion be

denied and that the court enter sanctions of $1,000 against the mother and/or her attorney for "submitting a frivolous and baseless motion." Id. at 01269.

128. On June 18, 2021, the respondent's associate, KY, made a note in the file that she "Researched Whether Polygraph Testing Has Been Abolished." Ex. 18, at 01403. She concluded that polygraph testing had not been abolished but that it "[p]robably should be done voluntarily." Id. The timing and results of this research, in conjunction with the case notes described above, support our finding that, contrary to the respondent's testimony, neither the respondent nor anyone else at her firm knew that the caselaw that the respondent relied upon in her motion had been overturned. Further, we find that no one at the respondent's firm had competently, diligently, or adequately researched the polygraph examination issue before they filed the motion with the Court.

D. Hearing on June 18, 2021

129. On June 18, 2021, the case was scheduled for a Contempt Hearing. Ex. 11, at 01014.

130. The respondent and Ms. Rollins-Lyons attended the hearing remotely, via Zoom. Tr. III:120 (respondent). The respondent attempted to have the motion to compel heard that day but the judge declined. Id. at 120-122. Only the father's Complaint for Contempt was heard. Id. at 122.

131. Following the hearing on June 18th, Ms. Rollins-Lyons was found in contempt for withholding visitation from the father. She was ordered to immediately resume the father's parenting time as well as to pay $2,000, plus costs, to the father for his attorneys' fees. Ex. 18, at 01239 (Judgment).

132. Ms. Rollins-Lyons terminated the respondent's representation on June 21, 2021. Ex. 11, at 01138 and 01140.

133. The polygraph motion was never heard or decided by the court. Tr. I:119 (respondent).

E. Fees Charged and Collected

134. The respondent's representation of Ms. Rollins-Lyons lasted from approximately May 25, 2021 to June 22, 2021. See Ans. ¶ 19. For those four weeks, the client was billed, and the client's mother paid on her behalf, $22,308.85 for legal services and expenses to the respondent's firm. Ans. ¶ 19; Tr. V:22 (Rollins-Lyons); see Ex. 16 (Invoices).

135. In reviewing the respondent's invoices in the Rollins-Lyons matter we again note the three themes we set forth above in Count One: (1) overstaffing of the case with multiple timekeepers leading to potentially duplicative billing, (2) block billing, and (3) vague descriptions of tasks. See Ex. 16. Below we provide a non-exhaustive list of examples of excessive fees charged in this matter.

136. One partner (the respondent), one senior associate (AD), four associates (KY, HK, JG, MAS[22]), and one paralegal (MG) worked on this matter over the course of four weeks. See Exs. 16 and 43. We find this is an unusually high number of timekeepers given the relatively common issues involved in the matter (even accounting for the urgent situation presented).

137. Most of the time spent on this matter consisted of multiple timekeepers reviewing records and then typing that information, in enormous detail and often essentially verbatim, into

[22] MAS is Megan Siegal. Tr. II:187 (respondent). Megan Siegal was identified by the initials "MS" on Exhibit 43.

the respondent's online system. Compare Ex. 18, at 01384-85 with 01462-69; compare also Ex. 18, at 01385-87 with 01451-59. For example, on June 2, 2021, the respondent's associate, JG, reviewed text messages between Ms. Rollins-Lyons and her ex-husband. His notes are largely verbatim copies of the texts and last for three pages. Ex. 18, at 01323-25. For what essentially amounts to data entry, JG billed 2.7 hours, at a cost of $769.50, for "[c]ontinued reviewing documents and videos provided by Client." Ex. 16, at 01172.[23]

138. In attempting to justify the steep costs for document review in this matter, the respondent testified before us that her client provided the firm with fourteen videos as well as "hundreds and hundreds of pages" of documents to review. Tr. III:100-101 (respondent). She repeatedly testified that the documents were "extensive." Id at 100-102. However, according to the case file, there were only approximately one hundred pages of documents. See Ex. 18; ¶ 112 supra.

139. On June 8, 2021, the same associate, JG, spent 3.6 hours, at a cost of $1,026.00, to "Continued reviewing text messages with Opponent provided by Client, Son's IEP, and Son's Medical Records." Ex. 16, at 01174. The notes JG entered into the system span a little over three pages and it appears that he straight-typed much of the medical information from the reports into the system. Most of the information is irrelevant and extraneous. See Ex. 18, at 01345-48. For example, he noted that one of the child's listed goals was "…will snip with scissors in 5/10 opportunities." Id. at 01346. Another note indicated that the child was "[a]ble to build and stack a tower of up to 11 cubes tall." Id. at 01347. It is unclear how this type of "notetaking"--or, more accurately, data entry--is helpful at all. It would have been easier and less costly to simply refer to the original documents. See also Ex. 18, at 01349 (June 8, 2021 notes by JG describing text

[23] It is unclear why his description starts with "continued" as he had not previously billed any time on this matter. See Ex. 16.

messages between client and her ex-husband). Further, this is not legal work and should not have been completed by an associate (or, arguably, by anyone) let alone billed at an associate's hourly rate.

140. On June 9, 2021, JG billed 1.1 hours, at a cost of $313.50 for "Continued reviewing son's IEP." Ex. 16, at 01174. His notes from this review appear to again be virtually verbatim from the IEP. Ex. 18, at 01356-59. For example, he typed:

> ABA: The Adaptive Behavior Skills Assessment is used by Boston Public Schools to evaluate students for services related to Applied Behavior Analysis. This rating scale looks at a student's ability to independently demonstrate a variety of academic readiness skills, play and leisure skills and follow classroom routines and participate in instructional activities. This rating scale concludes with a highlight of current challenging behaviors that [redacted] displays in the school setting.

Id. at 01357. This mirrors the IEP, word for word, and provides no additional analysis, legal or otherwise. See Ex. 18, at 01475.

141. On June 17, 2021, JG "[c]ontinued reviewing videos, Occupational Therapy, and Speech Therapy evaluations" for 2.7 hours and at a cost to the client of almost $770. Again, the "notes" are multiple pages long and are largely verbatim typing from the reports. Ex. 18, at 01384-87. It is difficult for us to find any legal value at all in this work.

142. Perhaps most disturbingly, the respondent admitted that, "[a]ll notes entered into a client's matter, whether from research, a phone call, or a records review, are automatically emailed to the Attorney(s) assigned to the matter, so that they are kept up to date as the matter progresses." Respondent's Amended PFCs, ¶ 27; see also Tr. III:116-117 (respondent). Therefore, the respondent would have seen every single one of these "notes" in real time as soon as they were completed.

143. The block billing on this matter was also repeated and consistent. See Ex. 16. On a weekly basis, for the entirety of the four-week representation, multiple timekeepers were billing hours long blocks of time that cannot be parsed. At least five timekeepers (the respondent and four associates: KY, HK, MAS, JG) reviewed the documents and videos provided by the client (some of which were described above) without specifically identifying or describing those documents or videos in any detail that would allow the client to determine whether or not everyone was reviewing the exact same material, over and over. See Ex. 16. Many simply billed for "reviewing documents provided by Client." See e.g., Ex. 16, at 01171-72. Given that the materials consisted of approximately one hundred pages of medical and school records, text messages, and fourteen videos, we are led inexorably to the conclusion that there was vast duplication of effort here.

144. Finally, we see the same use of vague descriptions like "continued preparing for contempt hearing" or "continued work on client's file" throughout the invoices. See Ex. 16, at 01171-72, 01174-75, 01177-79.

145. With respect to the motion to compel, the, the respondent and her firm billed Ms. Rollins-Lyons some portion of 6.5 hours. See Ex. 16, at 01171, 01177. The motion was short (ten paragraphs over three pages), cited one case (that had been overturned and was no longer good law), and was not accompanied by a brief. Ex. 18, at 01234-36.

COUNT TWO
CONCLUSIONS OF LAW

146. Bar counsel charged that by charging and collecting a clearly excessive amount of fees in her representation of Rollins-Lyons, the respondent violated Mass. R. Prof. C. 1.5(a). For the reasons stated in our conclusions of law for Count One, which we incorporate by reference, we conclude that bar counsel has proved this charge.

147. Attorney Purtell testified that defending a complaint for contempt should have cost approximately $7,500. Tr. IV:230 (Purtell). We credit this testimony.

148. We find that a fair and reasonable fee for all services rendered by the respondent is approximately $7,500, inclusive of costs. Id. Our finding is supported by the evidence with reference to the applicable factors listed in Rule 1.5(a)[24], discussed above in Count One:

1. Although the matter was urgent and involved a sensitive issue, the documents were not voluminous, and defending a complaint for contempt should not have required any unusual infusion of time and labor, certainly not one partner and four associates' time.
2. On one hand, there were only a matter of weeks between when the respondent was retained in this case and the hearing that was scheduled on the husband's complaint for contempt. On the other hand, because the documentary evidence was not voluminous, preparing for the hearing should not have been as time-consuming as the respondent's invoices reflect. Therefore, we conclude that this factor balances out and we do not consider it either way, positive or negative, in our decision-making.
3. We credit Attorney Purtell's testimony that the fair and reasonable fee for these services in the locality was roughly one-third of what the respondent charged Ms. Rollins-Lyons as described above.
4. The respondent obtained zero results for Ms. Rollins-Lyons who was found in contempt and ordered to pay sanctions. In addition, she was billed for an

[24] It is unnecessary for us to discuss the Rule 1.5(a) factors that are irrelevant in coming to the conclusion that the fee is clearly excessive. Matter of Barach, 22 Mass. Att'y Disc. R. 43 (2006).

inordinate amount of time for the Motion to Compel, which was both short and, as described below, frivolous.

5. We give the respondent some credit due to the urgent nature of this matter but we find that there was no evidence that the fees charged were higher than usual to account for any client-imposed time limitations.

6. As discussed supra, while the respondent was experienced and charged a reasonable rate for her services, she employed a variety of associates and paralegals without much experience and whose abilities did not justify their hourly rates. Haddad v. Wal-Mart Stores, Inc., supra.

149. For example, there were many instances of attorneys charging legal rates for typing documents, word for word, into the firm's computer system. The respondent wanted her computer system to be a central repository for all information on a case but apparently the system did not allow for scanning documents into the "notes" feature. Therefore, the information from the documents was typed into the system verbatim; they were not summarized or analyzed in any worthwhile way. There is no value to the client in this type of document management system and certainly not when they are being charged legal rates for an administrative task. Charging a legal rate for non-legal services constitutes charging a clearly excessive fee. Matter of Moran, supra at 1021 ("A 'lawyer may not bill nonlawyer services at lawyer rates, no matter who performs them.'") (internal citations omitted).

150. Bar counsel charged that by filing and prosecuting the motion to compel the father to submit to a polygraph examination when competent and diligent legal research would have revealed that such relief was unavailable under Massachusetts law, the respondent violated Mass. R. Prof. C. 1.1, 1.3, and 3.1.

151. Mass. R. Prof. C. 3.1. provides that in bringing a claim, there must be "a basis in law and fact for doing so that is not frivolous, which includes a good faith argument for an extension, modification or reversal of existing law." We conclude that bar counsel has proved this charge.

152. As discussed supra, polygraph evidence is inadmissible in Massachusetts. Commonwealth v. Tanso, 411 Mass. 640, 651 (1992), cert denied, 505 U.S. 1221 (1992); Commonwealth v. Mendes, 406 Mass. 201, 212 (1989). In the Mendes decision, the SJC reversed a line of cases holding that such evidence was admissible. The respondent did not explain in her motion that the court could not order the relief she sought. She cited the Vitello case without mentioning that it had been overturned by Mendes. Further, the motion cannot be read as a request for an extension, modification or reversal of existing law under the rule, as there is no language in the motion that could be construed as such.

153. We conclude that the claim in the Motion for Polygraph Examination was frivolous. The authority cited by the respondent, Commonwealth v. Vitello, had been overturned. Based on the contemporaneous notes by the respondent's associate, and her research on the issue after the motion had been filed and an opposition was served, we find that the respondent was unaware of the current state of the law with respect to the inadmissibility of polygraph examinations at the time she filed the motion to compel. For this failure of competence and diligence, we also conclude that bar counsel proved a violation of Rules 1.1 (competence) and 1.3 (diligence). Mass. R. Prof. C. 1.1, comment [5]. We also conclude that any time charged to the client for time spent on this frivolous motion was excessive.

154. Bar counsel charged that by failing to advise her client as to the lack of a reasonable, good faith basis in law upon which the father could be ordered to take a polygraph

test, the respondent violated Mass. R. Prof. C. 1.4(a)(2) and (b). We conclude that bar counsel proved this charge.

155. Before us, the respondent claimed that she advised Ms. Rollins-Lyons that her son's father could not be compelled to take a polygraph examination. Tr. I:127; III:113-114 (respondent). As discussed, we do not credit this. Moreover, given the respondent's well-established practice of documenting, and, frankly, often over-documenting, her cases, the fact that there is no note or letter memorializing this advice to Ms. Rollins-Lyons is conspicuous in its absence. See Matter of Zankowski, 487 Mass. 140, 149, 37 Mass. Att'y Disc. R. 554, 565 (2021) (adverse inference warranted "from the respondent's failure to offer materials, readily available to her, that would presumably support her version of the facts if true"). Further, we credit Ms. Rollins-Lyons' testimony that the respondent never gave her this advice and, if the respondent had told her that a motion to compel would fail, she "would have never went [sic] against [the respondent's] legal advice." Tr. V:19-20 (Rollins-Lyons).

156. Finally, the respondent cannot hide behind the excuse "but the client wanted it!" It was the respondent's obligation to explain to the client why her desires could not be achieved. See generally Mass. R. Prof. C. 2.1 ([i]n representing a client, a lawyer shall exercise independent professional judgment and render candid advice"). It was the respondent's responsibility to give advice and manage her client's expectations. Matter of Rafferty, 26 Mass. Att'y Disc. R. 538 (2010).

COUNT THREE
FINDINGS OF FACT

Kometti Matter

A. Defending Complaint for Contempt and Filing Complaint for Modification

157. From approximately February 11, 2020 to April 7, 2021, the respondent represented Erik Kometti. She defended him in a Complaint for Contempt that was filed against him and she filed a Complaint for Modification on his behalf regarding issues of child custody, visitation, parenting time and child support. See Ans. ¶23; Tr. IV:109 (Kometti).

158. The representation was undertaken on an hourly fee basis pursuant to a written fee agreement signed and dated February 10, 2020.[25] Id.; Ex. 21.

159. When Mr. Kometti first contacted the respondent, he had been served with a Complaint for Civil Contempt alleging that he had not paid monies due to his child's mother, Ms. Moss, under their custody order. Ex. 25, at 03031-34 (Complaint for Contempt).

160. Mr. Kometti and Ms. Moss were never married, but had lived together for many years and had a young daughter. Tr. IV:102 (Kometti). While they were together, Mr. Kometti claimed that he paid almost all of their expenses. Id. at 103-104. Their relationship ended in September of 2019; he moved out of their home, and then he lost his job shortly thereafter. Id. at 102-104, 126. In or around late 2019, due to his changed economic circumstances, Mr. Kometti stopped making payments to Ms. Moss. Id. at 126-127.

161. Ms. Moss claimed to be owed over $42,000 for expenses including child support, extracurricular activities, summer camps, uninsured medical expenses, and rent. See Ex. 25, at 03031-34 (Complaint for Contempt).

[25] LAR with four change in scope letters over the course of the representation. Tr. I:181 (respondent); Exs. 21-22.

162. The respondent filed an Answer to the Contempt Complaint on March 11, 2020. Id. at 03090-03101.

163. Settlement discussions occurred following this filing but were not fruitful. Id. at 02891 (Letter from opposing counsel to the respondent regarding settlement discussions dated April 17, 2020) and 02962 (Kometti's Settlement Offer dated April 29, 2020).

164. On May 12, 2020, the respondent filed a Complaint for Modification on Mr. Kometti's behalf. Id. at 02942-58. Mr. Kometti was seeking to (1) decrease the amount of weekly support he owed Ms. Moss, (2) joint legal custody of his child, and (3) parenting time. Id. at 02949-58.

165. On June 5, 2020, Ms. Moss filed an Answer and Counterclaim to Mr. Kometti's Complaint for Modification. Id. at 03518-21. The respondent filed an Answer to Ms. Moss's Counterclaim and an Opposition to Ms. Moss's Motion for Attorney's Fees. Id. at 03431-34, 03477-83.

166. On July 30, 2020, opposing counsel served discovery requests: one set of interrogatories and one set of document requests. Id. at 03035; Tr. III:57 (respondent). The respondent characterized this as "extensive discovery." Tr. III:155-156 (respondent). We do not credit this testimony or agree with her characterization; they appeared to be standard requests. Further, the responses ultimately drafted and served by the respondent on behalf of Mr. Kometti were bare bones; many of the requests were objected to and no information was provided. See Ex. 25, at 03063-82. Yet, the respondent's invoices for drafting the discovery responses amounted to over $2,000. Id. at 01874-75.

167. Opposing counsel objected to the respondent's discovery responses as inadequate. Id. at 02892-02915. This resulted in additional time spent by the respondent and her employees

in discussing the responses with opposing counsel and then ultimately filing supplemental discovery responses. Id. at 03104-18; Ex. 23, at 01878 and 01880.

168. There was a hearing on both the contempt complaint and the modification complaint on the same day, September 16, 2020. Tr. III:145-147 (respondent). The judge did not issue any decisions and the parties agreed to attend conciliation. Id. at 147.

169. Four sessions of conciliation occurred remotely between December of 2020 and February of 2021. Tr. I:199 (respondent). Conciliation was unsuccessful, but the respondent reported that progress was being made. Tr. III:159-160 (respondent). However, Mr. Kometti did not appear at the last session. Id.

170. Unbeknownst to the respondent, Mr. Kometti filed for bankruptcy on January 29, 2021. Tr. I:200-202 (respondent); see Tr. IV:132-133 (Kometti). Mr. Kometti terminated the representation before the issues were resolved. Id.

171. Although Mr. Kometti testified before us that he did not blame the respondent for his troubles, he acknowledged that these legal proceedings caused him severe financial hardship. See id. at 119-123 ("Can I add that I had to liquidate my 401(k), I had to basically destroy my whole life because of this…It was [Ms. Moss's] fault…It's not [the respondent's] fault what happened."). He further testified, credibly, about the amount of anxiety his mounting legal bills were causing him. Id. at 129-130 ("Q: At some point along the way while [the respondent] was representing you, did you become concerned about the amount of legal fees you were accruing? A: Well yeah, that was always a concern. I mean, at that time I had an unbelievable amount of anxiety each and every day because of the whole ordeal.").

B. Fees Charged and Collected

172. The respondent's representation of Mr. Kometti lasted approximately fourteen months and Mr. Kometti was billed $75,773.62 for legal fees and expenses. Ans. ¶ 25.

173. Mr. Kometti paid the respondent $49,371.57. Ans. ¶ 26.

174. In reviewing the respondent's invoices in Mr. Kometti's matter, we note the three themes we set forth above in Count One: (1) overstaffing of the case with multiple timekeepers leading to potentially duplicative billing, (2) block billing, and (3) vague descriptions of tasks. See Ex. 23. In addition, we note numerous instances of the respondent's charging Mr. Kometti legal rates for nonlegal work. Below we provide a non-exhaustive list of examples of excessive fees charged in this matter.

175. Three partners (the respondent, Attorney Nordbye, and VSC), four associates (KD, TH, VD, and KG[26]), and two paralegals (MG, JH) worked on this matter over the course of approximately fourteen months. See id. We find this is an unusually high number of timekeepers for the common issues involved in the matter over a relatively short period of time for litigation.

176. In an example of both overstaffing and block billing, in early March 2020, at least five timekeepers (the respondent; her partner, VSC; her associate, KD; and two paralegals, MG and JH) billed some portion of time (for a maximum time of 5.5 hours) for "preparing" or "finalizing" the package to the Court to file the Summons and Answer. See id. at 01810-12.

177. We find that the respondent's and her firm's practice of block billing made it difficult, if not impossible, for Mr. Kometti to understand how much time was being spent on each discrete task. For example, in February 2020, the parties agreed to move to extend the

[26] None of these associates are identified on the respondent's list of timekeepers. See Ex. 43. As discussed supra, KD and KY are the same person and KY was identified on Exhibit 43 as an associate. VD and TH have been identified as associates within other exhibits supra. Given KG's billing rate of $275 per hour, which is the same as associate KD's billing rate, we assume that KG is also an associate attorney.

scheduled contempt hearing. Although coordinating this took some back and forth with opposing counsel, the motion itself was one page. See Ex. 25, at 03439. Yet, two different timekeepers (the respondent and her associate, KD), each billed some portion of 4.1 hours towards drafting and filing this routine motion. Ex. 23, at 01807. Unbelievably, after the motion was already filed, on March 3, 2020, the paralegal, MG, billed 0.2 hours towards "Assisted Attorney with reviewing Assented-to Motion to Extend Contempt Hearing Date." Id. at 01810. The following day, the associate, KD, spent some portion of 0.6 hours towards "Continued reviewing Assented-to Motion to Extend Contempt Hearing Date." Id.

178. Similar to our findings with respect to Count Two, we find that the respondent's invoices in Mr. Kometti's case illustrate many occasions where the respondent's employees were billing for typing documents, essentially verbatim, into SLG's computer system. For example, on February 21, 2020, the respondent's associate, KD, entered notes into the SLG computer system on the Kometti case. Ex. 25, at 03250-03251. She indicated that she was reviewing and summarizing the parties' prior custody agreement. In doing so, she also typed the full list of expenses sought by Ms. Moss as set forth in Ms. Moss's Complaint for Contempt (containing approximately fifty different line items described by name and dollar amount, e.g. "Dance Center 196.00"). Id. Many of the items were expenses in different dollar amounts to the same place, e.g. Dance Center, Lifetime Fitness, Hipstich, so they could have been totaled and listed as one item rather than separately listing all fifty.

179. The respondent insisted that this straight-typing of information into the system by an associate was actually a time saver because Attorney Yoon is a "fast typist" and that way the respondent does not have to look at the complaint for contempt itself. Tr. I:206-208 (respondent). As previously noted, the SLG computer system does not allow someone to copy and paste from a

document into a note. Id. at 207. The invoice dated February 27, 2020, shows that KY and KG (both associates) spent three hours that same day reviewing documents. Ex. 23, at 01807. What the invoice does not reveal, however, is that at least some of that time consisted of an associate simply doing data entry by typing the contents of the documents into the internal computer system. Nor does the invoice reflect exactly which documents, or how many pages, the respondent or her firm were reviewing.

180. Another example of this occurred on February 28, 2020, when KY billed for "[r]eviewed additional documents provided by Client" for two hours at a cost of $550. Id. at 01810. KY's notes reflect that she reviewed Mr. Kometti's pay stubs and checking account statements. Ex. 25, at 03260. Her summary states that the pay stubs show that $1,100 was taken out of the client's direct deposit for each earning statement. Id. We find that these documents needed to be reviewed and KY's summary should have been sufficient. However, KY did not stop there. Rather, she continued to type into the computer system the amount for each bi-weekly earning statement from January 16, 2017 – December 31, 2019. Id. at 03260-64. For example, a typical entry read:

> Jan. 16 – 31, 2017
> Net pay:
> 1,807.11 to Acct x5190
> $1,100.0 to Acct x5068

Id. at 03260. She repeated this for each statement for a period of almost three years.

181. In addition, she reviewed Mr. Kometti's checking account statements for the period July 7, 2018 – December 5, 2019. Id. at 03264-66. For each month she listed the balance and the utility charges. Again, it is unclear why she had to spend two hours inputting these numbers into the system rather than reviewing, making a general summary, and having the

original documents available for reference. See also id. at 03275 (KY notes on reviewing offer of settlement dated April 2, 2020 in which she re-typed all of the expenses listed in the settlement offer letter).

182. Yet again, in April 2020, both the respondent and her associate, KD a/k/a KY, reviewed Mr. Kometti's Citizens Bank records that they received as a result of opposing counsel's keeper of records ("KOR") subpoena to the bank. Ex. 23, at 01820; Ex. 25, at 03281-89. KY, again, in a note that lasts for nine pages, typed into the computer system the balances of each of three accounts, and "notable" transactions. For one account, the statements cover almost three years between October 2015 – March 2020. Ex. 25, at 03282-03287. KY then typed into the system the amount, payee, and date of every single check image from September 2015 – March 7, 2020. Id. at 03287-88. It is extremely difficult to discern what the possible benefit could be to the client in partaking in this type of "note-taking" especially at the high rate charged for the respondent's associate. The client was being billed at a legal rate for, at most, administrative work.

183. In another egregious example, on June 4, 5, 8, and 10, 2020, the respondent's paralegal, JH, reviewed records received from Mr. Kometti's employer and "summarized" them in a note in the computer system. His notes illustrate that he straight-typed into the system: each of the employer's separate objections to opposing counsel's twelve document requests; all of the information contained on Mr. Kometti's W-2s from 2015 through 2019; each pay date and amount of pay Mr. Kometti received from 2017-2019; and other completely extraneous information that would have been much easier, and less costly, to review in the original documents. Id. at 03294-03299; see id. at 03883 (the employer's letter to opposing counsel with

objections dated June 1, 2020). He billed 6.6 hours for this work at a cost to the client of $1,155. Ex. 23, at 01838-41.

184. On September 10, 2020, the respondent's associate, KY, reviewed a letter from opposing counsel concerning Mr. Kometti's discovery responses. Ex. 25, at 03323. Her note in the system summarizes the letter and then, inexplicably, lists what each document request and interrogatory were seeking. Id. There cannot be any reason this needed to be typed into the system rather than referring to the discovery requests themselves. For this work, KY billed some portion of 3.7 hours for a cost of $906.50. Ex. 23, at 01877-78.

185. We find that the respondent's and her employees' use of vague billing descriptions also hindered her client's ability to discern what work was being done on his matter. For example, on March 25, 2020, three different timekeepers (the respondent; one associate, KD; and one paralegal, JH) billed significant hours (3.6 hours at a cost of approximately $910) towards preparing for or assisting an attorney with preparing for a contempt hearing that was not yet scheduled. No further description of what exactly they were doing to prepare, or assist, was given. Id. at 01816. Similarly, on Mr. Kometti's invoices dated May 14, 21, 28, and June 11, 18, 25, 2020, multiple timekeepers billed for preparing for, or assisting with preparing for, a contempt hearing that was not imminent without any further detail or description. See id. at 01830, 01833, 01835, 01840-41, 01843, 01845.

186. Finally, we see the same use of "continued work on client's file" throughout the invoices. See id. at 01805, 01810, 01812, 01814, 01816, 01818 (this is a non-exhaustive list).

COUNT THREE
CONCLUSIONS OF LAW

187. Bar counsel charged that the amount of fees and expenses charged by the respondent was clearly excessive under the factors set forth in Mass. R. Prof. C. 1.5(a). For the

reasons stated in our conclusions of law for Count One, which we incorporate by reference, we conclude that bar counsel has proved this charge.

188. According to Attorney Purtell, the representation should have cost $25,000 to $30,000. TR. IV:229 (Purtell). We credit this testimony and find that a fair and reasonable fee for all services rendered by the respondent is approximately $25,000 to $30,000. Id. Our finding is supported by the evidence with reference to the applicable factors listed in Rule 1.5(a), discussed below:

1. The matters required no unusual infusion of time and labor, posed no issues of particular novelty or difficulty, and required no unusual skill to administer. On the contrary, they were relatively uncomplicated.
2. Handling the matters did not adversely affect the respondent's ability to obtain or conduct other work.
3. We credit Attorney Purtell's testimony that the fair and reasonable fee for these services in the locality was roughly one third of what the respondent charged Mr. Kometti.
4. The respondent obtained zero results for Mr. Kometti although we give the respondent some credit because it was Mr. Kometti who failed to attend the last session of conciliation. Considering Mr. Kometti's bankruptcy filing before that last session, however, it is unlikely that the final session would or could have led to resolution of the matters. The amount charged by the respondent greatly exceeded the amount of money that Ms. Moss was seeking from Mr. Kometti which was approximately $42,000.

5. As discussed supra, while the respondent was experienced and charged a reasonable rate for her services, she employed a variety of associates and paralegals without much experience and whose abilities did not justify their hourly rates. Haddad v. Wal-Mart Stores, Inc., supra.

COUNT FOUR
FINDINGS OF FACT

Zullo Matter

A. Complaint for Divorce

189. Ms. Zullo contacted the respondent in or about October 2021 regarding her divorce. Tr. II:13 (Zullo); Ex. 33, at 004239 (SLG Notes from meeting with Ms. Zullo dated October 25, 2021). She had been married for a relatively short time (five and a half years) and there were no children from the marriage. Tr. II:20-21 (Zullo); Tr. I:214-216 (respondent).

190. A written fee agreement was signed by Linda Zullo on November 30, 2021. Ans. ¶ 29; Ex. 29.

191. The one asset of the marriage was the marital home. Tr. II:21 (Zullo). The couple had joint checking and savings accounts but otherwise their finances, including retirement accounts, were separate. Id. The parties did not initially agree on how to split this property. In brief, Ms. Zullo had contributed more money to the down payment on the home ($250,000 vs. $30,000) and had lent her husband $20,000 for repairs on his prior home. Tr. II:232-234 (respondent); Ex. 33, at 04239. Further, Ms. Zullo's husband had been paying alimony to his former spouse out of his and Ms. Zullo's joint bank account. Tr. II:235-236 (respondent); Ex. 33, at 04239.

192. At the outset, the respondent filed the Complaint for Divorce and drafted a Joint Stipulation and Joint Motion for Temporary Orders. Ms. Zullo's husband refused to sign the joint documents. Therefore, the Complaint for Divorce was filed as a contested divorce filing on January 6, 2022. Ex. 33.

193. However, as noted above, the only things that were really at issue in the divorce were the division of the funds from selling the marital home and the alimony that her husband had been paying his ex-wife out of their joint checking account. See id. at 04279 (Notes on KH's telephone call with Ms. Zullo) ("Also I'm not intending to take any of his annuity or pension and neither does [the husband] intend to touch my IRA or brokerage account but if I feel that the marital home has not been divided the way I think and strongly feel it should be, I may be looking at other options. I'm hoping not to have to go that route.")

194. On February 3, 2022, the husband, through his attorney, filed an Answer and Counterclaim with affirmative defenses. Id. at 04184.

195. The respondent filed Ms. Zullo's Answer to the Counterclaim on February 21, 2022. Id. at 04187.

B. Financial Statement and Four Way Conference

196. Ms. Zullo's financial statement was prepared in preparation for the parties' mandated four-way conference and exchange of Rule 410 documents. The Rule 410 exchange is the automatic exchange of certain documents between the parties at the beginning of a divorce. Tr. IV:179-180 (Purtell); Tr. II:246 (respondent). It includes three years of bank account statements and retirement account statements. The party who carries the health insurance has to produce what benefits he/she has. Tr. IV:179-180 (Purtell).

197. The respondent, in her PFCs, acknowledges that the financial statement "is one of the most important documents in the Family and Probate Court, and it is important to ensure that the Client files an accurate document." Respondent's Amended PFCs, ¶ 280, citing Tr. II:193 (respondent). Attorney Farese agreed and explained that the financial statement is "what the judge will rely upon to set alimony, child support, obligations for attorney fees, division of assets." Tr. VI:5 (Farese).

198. Ms. Zullo's financial statement was the "short form" so the form itself was four pages long (as opposed to 7-9 pages). Tr. III:202 (respondent).

199. A "four-way conference" took place on March 3, 2022 at which time an agreement was reached between the parties. Ms. Zullo testified, "We walked out [of the four-way conference] agreeing that he was going to walk out [of the marriage] with what he came in with and I'm going to walk out with what I came in with. End of story." Tr. II:23-24 (Zullo).

200. Contrary to Ms. Zullo's simplified characterization, after the conference, there was some back and forth as the parties worked to finalize the terms and reduce the agreement to writing. For example, the parties negotiated over whether Ms. Zullo should receive the first $230,000 or the first $250,000 from the proceeds of the sale of the marital home.[27] See id. at 94-

[27] There was lengthy testimony concerning whether or not this divorce was amicable or acrimonious. See Tr. II:21-24 (Zullo); Tr. I:215-217 (respondent). Ms. Zullo testified that the divorce was "very amicable" and points to the fact that the couple continued to live together until they sold the home in May 2022. Tr. II:22 (Zullo). In fact, they drove to court together the day that their divorce was finalized. Id. at 22, 26. This is supported by SLG's own notes from a telephone call between the respondent's associate, MAS, and Ms. Zullo on February 23, 2022 in which the associate recorded that "Client explained how even now, they are amicable. She's She's still cooking, etc." Ex. 33, at 04319. In addition, in a text message from Ms. Zullo to the respondent on April 7, 2022, Ms. Zullo stated, "him and I are very amicable….We are fine. The marriage just didn't work out." Ex. 33, at 04375. The respondent counters that the divorce was "hotly contested" (Respondent's Amended PFCs, ¶ 258) and that Ms. Zullo and her husband "disagreed and fought over marital assets" including the marital home, the husband's pension, various retirement accounts, and alimony issues. Id. at ¶¶ 259-263.We largely find this dispute irrelevant because most divorce cases involve some level of acrimony; there is no evidence here that this particular divorce was unduly acrimonious to a level that would have required heightened legal fees.

95; Ex. 33, at 04723 (Email thread beginning with email from husband's attorney, Sandy Pesiridis, to the respondent dated March 14, 2022).

201. On approximately April 8, 2022, the parties executed and filed a separation agreement with the court. Ex. 33, at 04953-76.

202. The only hearing in this matter was held on June 30, 2022. Tr. I:227 (respondent). During the hearing, the judge asked the respondent to clarify the amount of attorney's fees listed on Ms. Zullo's financial statement.[28]

203. Section nine of the financial statement asks for information related to the party's "Counsel Fees." Ex. 33, at 04429. In short, we find that the respondent failed to fill out this section completely or accurately.

204. For example, by the time of the hearing on June 30th, Ms. Zullo had paid the respondent / SLG a total of $48,500. Ex. 40. Section nine of the financial statement was not updated at that time to accurately reflect Ms. Zullo's legal fees or deposits as of that date. Tr. II:208 (respondent). In fact, when asked to list "[l]egal fees incurred, to date, against retainer(s)", the respondent simply answered "Ongoing." The respondent testified that it was "common practice in probate court" not to report a number on this line. Tr. II:205 (respondent). By contrast, Attorney Purtell testified that in her experience an attorney would include the legal fees and expenses that have been incurred as of the date that the parties go to court. Tr. IV:183-184 (Purtell). Attorney Farese also testified that he fills this out with what has been billed up to date or "up to the most recent billing cycle." Tr. VI:67-68 (Farese). We credit their testimony and note that, given the respondent's weekly invoicing structure, it would have been very easy for her to include an accurate and up to date number on this important document. We infer that

[28] Bar counsel did not charge the respondent with any misconduct related to her responses to the judge at the hearing. Therefore, we do not discuss the hearing or make any findings about it.

the respondent did not do so because she knew her fees were high for this routine divorce and she wanted to avoid the court's close scrutiny.

205. The Judgment of Divorce Nisi entered on August 1, 2022. Ex. 32 (Case Docket).

C. Fees Charged and Collected

206. The respondent's representation of Ms. Zullo lasted approximately eight months and the respondent charged Ms. Zullo $42,000 in legal fees. Ans. ¶ 29; Ex. 31. This amount reflects the ten percent reduction in SLG's hourly rates that the respondent gave Ms. Zullo because she was considered a returning client.[29] See Tr. II:219-220 (respondent).

207. In reviewing the respondent's invoices in Ms. Zullo's matter we again note three distinct themes: (1) overstaffing of the case with multiple timekeepers leading to potentially duplicative billing, (2) block billing, and (3) vague descriptions of tasks on invoices. See Ex. 31.

208. With respect to the staffing of the Zullo case, two partners (the respondent and Attorney Nordbye[30]), three associates (AD, KH, MAS), and one paralegal[31] (KK) worked on the case over the course of four months. Exs. 31 and 43 (List of Names and Positions of Each Timekeeper). We find that this is an unusually high number of timekeepers for one relatively routine matter that occurred over a short time span.

209. As discussed supra, the respondent utilized block billing in the majority of her weekly invoices to clients, including Ms. Zullo. See Ex. 31. The respondent filed Ms. Zullo's Answer to the Counterclaim on February 21, 2022. Ex. 33, at 04187. This two-page document involved two timekeepers to review and draft over the course of many days and many hours. Ex.

[29] The respondent had previously represented Ms. Zullo's mother. Tr. II:219-220 (respondent).

[30] VSC, the other partner, had one time entry noted on this matter for a telephone call which was deducted from the invoice as a courtesy discount. Ex. 31, at 04127.

[31] "MB" appears for one time entry in this matter. MB is not identified on Exhibit 43 but his/her billing rate of $165 per hour indicates that MB was a paralegal. See Ex. 31, at 004135.

31, at 04090-95. The respondent and her firm's practice of block billing makes it impossible to discern how much of each time entry was devoted to the task. This does not count the additional time spent to file it with the court.

210. For an example of the intersection of overstaffing and block billing, on one single day, February 25, 2022, four separate timekeepers (two partners, one associate, and one paralegal) billed a total of 10.8 hours (reflecting courtesy discounts totaling -0.7 for "strategic meetings") to Ms. Zullo for drafting and finalizing her financial statement and preparing her Rule 410 documents to exchange. See Ex. 31, at 04099. As a reminder, the financial statement was a four-page form in a relatively light asset divorce.

211. Further, in the week leading up to February 25th, those same timekeepers had each block billed many additional hours on reviewing or preparing the Rule 410 documents. See Ex. 31, at 04095-97. In fact, the two invoices dated February 24, 2022 and March 3, 2022 alone totaled over $20,000. Ex. 31, at 04095-04101.

212. Contributing to the high balance on the February 24th invoice, was the "note-taking" that occurred on February 18, 2022. The respondent's associate, KH, and her paralegal, KK, reviewed and took notes in the computer system on Ms. Zullo's Rule 410 Documents. Ex. 33, at 04166-67 (Note is created by KH and last modified by KK). They reviewed the client's account statements for multiple accounts including an IRA, two annuities, and multiple bank accounts. For the IRA, they typed in the opening and closing value of the account for each month from 2019 – 2021. They billed a total of 6 hours and over $1,100 to the client for their review and typing. Ex. 31, at 04095.

213. In addition to block billing, we find through our own independent review that many of the respondent's invoices to her clients, across all four matters described above,

included vague billing descriptions that are insufficiently detailed. For example, block billing for multiple tasks including "preparing for 4-Way Meeting" or "assisted attorney with preparing for 4-Way meeting" without any other details with respect to what the preparation entailed. See Ex. 31, at 04096, 04099-04100.

214. As another example, on many occasions, one or more timekeepers, including the respondent herself, would indicate that they "continued work on Client's file after [telephone call with someone]" or "assisted attorney with work on client's file" without any indication at all of what work was being done. See id. at 04081-82, 04092, 04096, 04099, 04129, 04139, 04144, 04148, 04161. These vague descriptions hindered Ms. Zullo's, and our, ability to discern what work was being done on any particular day.

COUNT FOUR
CONCLUSIONS OF LAW

215. Bar counsel charged that by charging and collecting a clearly excessive amount of fees in her representation of Ms. Zullo, the respondent violated Mass. R. Prof. C. 1.5(a). For the reasons stated in our conclusions of law for Count One, which we incorporate by reference, we conclude that bar counsel has proved this charge.

216. Attorney Purtell testified that, in her opinion, a reasonable amount of fees would have been around $10,000 and we so conclude. Tr. IV:187-188 (Purtell). Our finding is supported by the evidence with reference to the applicable factors listed in Rule 1.5(a):

1. The divorce was simple and straightforward. The assets involved were not extensive or particularly complicated. Further, although there was protracted testimony about whether or not this divorce was amicable, it was probably less acrimonious than the average divorce, given that the parties continued to live together during the proceedings and even drove to court together.

2. Handling the divorce did not adversely affect the respondent's ability to obtain or conduct other work.
3. We credit Attorney Purtell's testimony regarding that the fair and reasonable fee for these services in the locality was roughly one quarter of what the respondent charged Ms. Zullo.
4. The respondent did obtain a divorce for Ms. Zullo, which inures to the respondent's credit.
5. There was no evidence that any client-imposed time limitations necessitated that the fees charged be higher than usual.
6. The respondent had represented Ms. Zullo's mother previously and the excessive fees charged reflected a ten percent discount from the respondent. In other words, without this discount, the charged fees would have been even higher.
7. As discussed supra, while the respondent was experienced and charged a reasonable rate for her services, she employed a variety of associates and paralegals without much experience and whose abilities did not justify their hourly rates. Haddad v. Wal-Mart Stores, Inc., supra.

FACTORS IN MITIGATION AND AGGRAVATION

MITIGATION

217. In her Answer, the respondent alleges in mitigation that the COVID-19 pandemic hindered her ability to obtain Ms. Melanson's goals of being appointed as Mr. Doe's guardian and conservator and also notes that Mr. Kometti's matter was proceeding during the height of the pandemic. Ans., p. 19. We take administrative notice that, in mid-March 2020, the pandemic began in earnest in Massachusetts and severely impacted access to the courts to the public for a

period of time. However, the respondent has the burden of proving mitigation and she has not provided any evidence of how the pandemic prevented her from achieving Ms. Melanson's goals. Rules of the Board of Bar Overseers § 3.28; see also Matter of Ablitt, 486 Mass. 1011, 1018, 37 Mass. Att'y Disc. R. 1 (2021) (requiring causal connection between claimed mitigating factor and misconduct) (internal citations omitted).

218. In fact, in the time period between when the citations were returned in early February 2020 and the start of the pandemic in mid-March, any delays in the case were mainly of the respondent's own making. Unfortunately, the respondent failed to take multiple steps which could have moved this matter along more expeditiously. As just a few examples, the respondent could have sought the written assents from Mr. Doe's children immediately when the case began and could have contacted the ward's counsel, Attorney Weinrich, as soon as the respondent discovered she was appointed on January 28, 2020 (rather than waiting until April 2, 2020 to do so). In addition, the respondent told the client in mid-February that the court would "automatically issue a Hearing date" when the citation expiration date passed (Ex.10, at 00702) but a later note from March 12, 2020 (almost a month later) indicates that the respondent's paralegal spoke to the Court and was informed that the court does not set up hearing dates for these types of cases and is something the parties or counsel do. Ex. 10, at 00705. Whether or not these actions would have brought the case to a resolution, and at a sooner date, however, is pure speculation. It is important to note, though, as the ward's counsel testified, "…initially when the courts were shut down, the guardianship proceedings in particular were still going forward." Tr. V:172 (Weinrich).

219. Similarly, the respondent fails to provide any evidence of how the pandemic affected her representation of Mr. Kometti. She has not proved mitigation.

220. The respondent alleges generally that her firm experienced "the effects of the Great Resignation" and had numerous employees leave including one partner, four associates, and two paralegals. This is not a recognized factor in mitigation and the respondent provided no evidence in support of this claim.

221. Although it was not formally asserted as a factor in mitigation, the respondent nevertheless argued in closing that the four clients received weekly invoices but none of them complained about the invoices in a timely manner. In the first instance, we do not believe this is an accurate characterization as all of the clients, at one point or another, raised the issue of their mounting legal fees. We discussed Ms. Melanson's fee complaints at length supra. In addition, on January 21, 2022, Ms. Zullo called SLG and spoke with the respondent's associate, KH. Ex. 33, at 04276. Ms. Zullo expressed concerns at this early stage about the amount of money she was being charged. The note states that Ms. Zullo was "[q]uestioning close to 20k within a month already…Feels like money going too quick." Id. Further, a client's acquiescence to an unreasonable fee—even if she knows about it, which did not occur here—does not afford the respondent a "safe harbor." See Matter of Zankowski, supra at 152 ("advance consent to excessive fees is not mitigating"); Matter of Fordham, 423 Mass. 481, 491-491, 12 Mass. Att'y Disc. R. 161, 175-177 (1996), *cert. den*. 519 U.S. 1149 (1997).

AGGRAVATION

222. The respondent had substantial experience in the practice of law at the time of her misconduct. Matter of Zankowski, supra at 153; Matter of Moran, supra at 1022; Matter of Luongo, 416 Mass. 308, 312, 9 Mass. Att'y Disc. R. 199, 203 (1993) (substantial experience at the time of misconduct is a matter in aggravation). We agree that this is a factor in aggravation.

223. The respondent committed multiple rule violations across four separate matters, spanning years. This is an aggravating factor. See generally Matter of Saab, 406 Mass. 315, 326, 6 Mass. Att'y Disc. R. 278, 289-290 (1989).

224. Another factor in aggravation is the respondent's ongoing lack of appreciation for her ethical obligations, particularly her duty to avoid charging clearly excessive fees. Throughout the hearing, the respondent maintained that her billing was appropriate and that she did nothing wrong. We conclude that the respondent displayed a lack of insight into or appreciation of her basic ethical obligations, and has not acknowledged the nature, effects, or implications of his misconduct. See generally Matter of Rosenberg, 491 Mass. 1027, 1029, 39 Mass. Att'y Disc. R. __, (2023); Matter of Clooney, 403 Mass. 654, 657, 5 Mass. Att'y Disc. R. 59, 63 (1988) ("respondent's persistent assertions that he did nothing wrong in the handling of either matter demonstrated that he 'continues to be unmindful of certain basic ethical precepts of the legal profession.'").

225. Bar counsel urges us to find that in the Rollins-Lyons matter, in light of the respondent's testimony that she knew the court could not grant such relief, the respondent intentionally filed a frivolous motion to compel. However, we discredited the respondent's testimony on that point, concluding, based on the testimony and the documentary evidence, that she had failed to competently and diligently research the caselaw for that motion and, therefore, did not know the state of the law. We decline to find this factor in aggravation.

226. Bar counsel requests a finding that the respondent took advantage of Rollins-Lyons, who was a vulnerable client at the time of the misconduct. Due to the highly emotional and urgent situation that Ms. Rollins-Lyons believed herself to be facing at that time, we find she was a vulnerable client within the meaning of the caselaw. See Matter of Ruggiero, 39 Mass.

Att'y Disc. R. __ n.24 (2023) ("A client is 'vulnerable' when the client (i) has limited education, (ii) has limited or no ability to speak English, (iii) is elderly, (iv) is unsophisticated, or (v) is dealing with a calamitous personal situation.") (emphasis added); Matter of Font, 30 Mass. Att'y Disc. R. 155 (2014) (finding in aggravation that the attorney's client was vulnerable because she was distressed by her son's death and the military's classification of that death as a suicide).

227. We detailed above that the respondent falsely represented to the court that Ms. Melanson wanted to dismiss the Petitions because of "lack of agreement" between Ms. Melanson and Mr. Doe's children. We find that the respondent's misrepresentations to the court in the Melanson matter were driven by a selfish motive: to deliberately hide that the real reason the client was moving to dismiss the Petitions was the respondent's exorbitant fees. As discussed below, the respondent had a prior disciplinary history for charging and collecting excessive fees. We find that the respondent's misconduct in Melanson was motivated by her own self-interest in avoiding the court's close scrutiny of her fees. This is an aggravating factor. See Matter of Greene, 477 Mass. 1019, 1021, 33 Mass. Att'y Disc. R. 162, 165-166 (2017); Matter of Zak, 476 Mass. at 1041, 33 Mass. Att'y Disc. R. at 533.

228. In addition, the respondent's misconduct in charging clearly excessive fees in each of the four client matters was motivated by her own financial interests and personal gain. As the owner of the firm, the respondent financially profited from the hours that her and her employees' billed and collected from clients. Therefore, she structured her firm to maximize billable hours through overstaffing cases with inexperienced employees who consistently duplicated work or billed legal rates for nonlegal services. Since she reviewed every invoice that went out the door, the respondent knew, or should have known, that this was happening. This is a

factor in aggravation. Matter of Hilson, 448 Mass. 603, 619, 23 Mass. Att'y Disc. R. 269, 289 (2007).

229. The respondent lacked candor at the disciplinary hearing. She testified falsely under oath before us on multiple occasions. First, she repeatedly denied that she had ever had a billable hour requirement for associates in 2019. She was not forthright with the committee even though her dishonesty was obvious (and the requirement was memorialized in writing). Secondly, she claimed that she did not have ultimate authority at her firm with respect to setting hourly billing rates, despite being the sole equity owner. Thirdly, we found her testimony about the polygraph motion in Count Two to lack candor. Again, her dishonesty was obvious – she had already admitted in her Answer that the motion was to compel a polygraph examination but then tried, before us, to wriggle out of that admission. We find that the respondent intended to deceive us with her testimony. Lack of candor before the hearing committee is an aggravating factor. Zankowski, supra; Matter of Hoicka, 442 Mass. 1004, 1006, 20 Mass. Att'y Disc. R. 239 (2004); Matter of Eisenhauer, 426 Mass. 448, 457, 14 Mass. Att'y Disc. R. 251, 262, cert. denied, 524 U.S. 919 (1998); Matter of Friedman, 7 Mass. Att'y Disc. R. 100 (1991).

230. The respondent has been disciplined before. Prior discipline, even if unrelated, is always a "substantial factor" in choosing a sanction. Matter of Dawkins, 412 Mass. 90, 96, 8 Mass. Att'y Disc. R. 64, 71 (1992). Past misconduct that is similar to the subject misconduct is particularly significant. Matter of Long, 33 Mass. Att'y Disc. R. 275, 283 (2017) ("it is impossible not to conclude that the respondent appears to have learned very little from the prior discipline he has received"); Matter of Donaldson, 28 Mass. Att'y Disc. R. 221, 242 (2012); Matter of Ryan, 24 Mass. Att'y Disc. R. 632, 641 (2008) ("[a] disciplinary history of similar violations is an especially weighty aggravating factor.").

231. The respondent's prior discipline involved not just similar misconduct but identical misconduct to what we have found here. Matter of Shapiro, 34 Mass. Att'y Disc. R. 512 (2018). In 2018, the respondent stipulated to a three-month suspension, stayed for one year, for excessively billing three separate clients.[32] The misconduct included billing at a lawyer's rate for administrative tasks. In one matter, in which the representation lasted a little over a month, the respondent charged the client over $5,000 on restraining order matter and over $20,000 on a divorce matter. The respondent learned nothing from this discipline.

232. The respondent also received an admonition in 2016 for unrelated misconduct (improper disclosure of confidential information). Ad. No. 16-05.

Majority Recommended Disposition

Bar counsel recommends that the respondent be suspended for a term of no less than one-year-and-one-day. The respondent recommends dismissal of all counts. A majority of this committee recommend the respondent be suspended for a term of eighteen months.

We begin with the most serious violation: we have found that the respondent made a misrepresentation to the court in the motion to dismiss and supporting affidavit that she drafted and filed in the Melanson matter. Making false statements or deliberate misrepresentations to the court, not under oath, typically warrants a one-year suspension. Matter of McCarthy, 416 Mass. 423, 431, 9 Mass. Att'y Disc. R. 225 (1993); Matter of Neitlich, 413 Mass. 416, 423-424, 8 Mass. Att'y Disc. R. 167 (1992) ("…the respondent's failure to make full disclosure and his misrepresentations as to the terms of the sale constituted 'knowing concealment' and were

[32] As part of her discipline, the respondent was required to submit to an audit by LOMAP. Among other things, LOMAP recommended in its report that the respondent review LOMAP's fee agreement best practices guide "to ensure that [her] fee agreements and billing procedures meet best practice standards." From her attempted use of LARs, and the numerous billing issues we have identified, it appears that the respondent did not follow the guide as recommended.

'deliberate, planned attempts…to conceal from the Court and his opponent the full terms of the proposed sale."); Matter of Hession, supra (year-and-a-day suspension for misconduct including misrepresentations to the court and failure to correct client's false testimony).

Here, the respondent's conduct was less severe than the oft-cited Rule 3.3 cases where the attorneys made multiple misrepresentations, generally relating to issues at the heart of the proceedings. See, e.g. McCarthy, supra (attorney elicited false, sworn testimony from his client and submitted false documents into evidence in a proceeding before the rent control board); Neitlich, supra (attorney suspended for one year for making multiple misrepresentations to both the court and opposing counsel concerning the sale of property in an alimony proceeding). A one-year suspension here is not warranted where there was a single misrepresentation. See Matter of O'Toole, supra (indicating that a suspension in the range of six months is often sufficient where an attorney's conduct amounts to something less severe than a full blown fraud on the court); see also Matter of Smoot, 26 Mass. Att'y Disc. R. 637 (2010) (six-month suspension, three of them suspended, for misrepresenting that summary judgment motion had been served on opposing counsel who the respondent knew had recently died); Matter of Shuman, 17 Mass. Att'y Disc. R. 514 (2001) (six-month suspension for falsely identifying expert witness and describing his expected testimony). Although the respondent here made a singular misrepresentation on an arguably procedural matter, her purpose was to conceal that the real reason for dismissal was the high legal fees that the respondent was charging—which the respondent was keen to avoid having the court scrutinize given her prior disciplinary history. Further, the respondent compounded her misconduct by failing to correct her misrepresentation to the court when the signed assents were received by her shortly after filing the motion to dismiss. The signed assents clearly evidenced that there was no "lack of agreement" between

Ms. Melanson and Mr. Doe's children. The respondent's misrepresentation concerning the reason her client sought to dismiss the Petitions, standing alone, merits at least a six-month suspension.

Moving on to the crux of this disciplinary proceeding, in Counts One through Four, bar counsel alleged that the respondent charged and collected clearly excessive fees from four separate clients. We have found that she did, in all four matters. As the sole equity owner of her firm, the respondent was ultimately responsible for the structure and running of her firm. She set the hourly rates for herself and her employees; many of whom were brand new lawyers. She communicated the high billable hour expectations to her employees as well as the daily timekeeping protocols on the computer system. She chose to send weekly invoices to clients which only showed one block of time per day, per timekeeper. The respondent admitted that she reviewed every single weekly invoice that was sent out by her firm; she knew or should have known that her cumulative fees for these matters were excessive. In addition, these four cases were *her* cases, so we infer that she would have looked at them even more closely or at least been more intimately familiar with the tasks being performed by her employees and the amount of time they were billing for those tasks. Yet, she approved many time entries for both her own and her employees' services that raised significant questions for us.

Although the respondent's own hourly rates were reasonable, the rates she charged for her inexperienced associates and paralegals were not. Further, she block billed her clients, billed her clients legal rates for nonlegal services (e.g. data entry), and approved vague billing descriptions that made her invoices impervious to review and evaluation by either her clients or this committee. Through the overstaffing of cases, exacerbated by the inexperience of her employees, and her emphasis on daily timekeeping and high billable hours, the respondent

created an environment where maximizing and capturing billable hours was more important than anything else, including ensuring that her clients' objectives were met diligently and competently. Unlike many excessive fees cases, however, the respondent did not appear to be charging for work that was not performed. See, e.g. Matter of Zankowski, 487 Mass. at 150, 37 Mass. Att'y Disc. R. at 567 ("it is the established dishonest nature of the respondent's billing that differentiates this case from cases involving charging 'excessive' fees"); Matter of Murphy, 28 Mass. Att'y Disc. R. 643 (2012) (lawyer stipulated to a one-year-and-one-day suspension for knowingly spending more time than necessary on cases in order to increase his billable hours); Matter of Barach, 22 Mass. Att'y Disc. R. 43 (2006) (lawyer suspended for two years for charging for work not performed and falsifying time records). Rather, we conclude that the same or similar work was performed, by different people, over and over, going nowhere, until each case was wrung dry.

The respondent's attempt to capture every moment of billable time, through the use of her extensive timekeeping system and protocols, did not take into account whether the work being done translated into value for her clients. In some ways, this disciplinary proceeding is similar to the classic case of Matter of Fordham, supra. There, the experienced lawyer was hired by a client to defend a first-offense OUI case; something the lawyer had never done before. The client, knowing this, agreed to the representation as well as to the lawyer's $200 per hour rate. The lawyer billed 227 hours, charging the client over $50,000, to successfully defend the case. The high number of hours accounted for the time that the lawyer had to spend learning the relevant law. Despite the lawyer's good result, reasonable hourly fee, and truth in billing, the SJC found that the fee charged (but not collected) was clearly excessive. Expert testimony established that his fee was many times greater than the fee typically charged for such cases in

Massachusetts and the lawyer received a public censure. We appreciated Attorney Purtell's thoughtful synopsis of the issue: "As lawyers sometimes we don't get the outcome that we want to get. And sometimes we have to adjust our bill accordingly…You know, you always have to look at…what were the results obtained." Tr. IV: 151-152 (Purtell).

Yet, we also see parallels to Matter of Murphy, supra. In that case, the attorney billed for tasks that should have been delegated to less senior attorneys as well as for tasks that were duplicated by others at the firm. The lawyer was also found to have billed "meaningful amounts of time to preparing for a hearing that had yet to be scheduled." Significantly, and unlike here, in both of the underlying cases at issue in Murphy, the lawyer's firm wrote off the invoices and returned any paid fees. The lawyer stipulated to a one-year-and-a-day suspension for violating Rules 1.5(a) and 8.4(c) by knowingly spending more time than necessary on his work in order to increase his billable hours at the firm.

With respect to Ms. Rollins-Lyons' matter, we note that the fees charged in her case bring to mind Matter of Rafferty, supra . There, the lawyer failed to rein in his client's overzealous pursuit of discovery, resulting in large fees with no concomitant value to the client. The lawyer billed more than $700,000 which were unreasonable in relation to the client's likely recovery. Quoting the hearing committee report, the Single Justice noted,

> While much of the respondent's work in this misdirected pursuit was competent, the cases went nowhere and the work was ultimately wasted. The gravamen of the misconduct here is that the respondent placed his interest in retaining a profitable client ahead of his professional duties as a member of the bar to effectively counsel clients and provide diligent, competent representation.

Id. (the lawyer was suspended for four months; in aggravation, the lawyer's "failure to control the litigation and to properly advise his client was motivated by a desire to retain a client who was paying him large fees."). There, as here, the lawyer did what the client wanted him to do,

rather than doing his job of advising the client as to how best to pursue her stated goals.

As we described in detail supra, our ability to fully analyze the hours billed and the work done was significantly hampered here by the respondent's billing practices (e.g. block billing, vague descriptions, etc.). As such, we recommend supra that any ambiguities in the respondent's invoices be construed against her. See ¶ 103. Despite these difficulties, based on Attorney Purtell's expert testimony as well as our own independent review of the testimony and exhibits, we have determined that the number of hours spent on the four matters far exceeded the number of hours a reasonably prudent experienced lawyer would have spent. See Matter of Woodhouse, supra. The excessive fees charged and collected in any one of the four matters would warrant at least a public reprimand. Matter of Fordham, supra.

There are no mitigating factors here. Weighing the aggravating factors, particularly the respondent's prior three-month stayed suspension for identical misconduct in 2018 (one year before the misconduct that occurred here), as well as the violations of Mass. R. Prof. C. 1.1, 1.3, 1.4(a)(2), 1.4(b), and 3.1., we find that a term suspension is in order. The respondent instilled a firm culture that prioritized redundant technology over the delivery of efficient, quality legal services to her clients. She has repeatedly demonstrated a pattern of overcharging her clients. After her prior discipline for identical misconduct, she failed to correct her behavior in any meaningful way that we could deduce, refused to take accountability for her conduct, and lied to this committee. Considering the cumulative effect of the multiple rule violations committed by the respondent over a period of years, we conclude that an eighteen-month suspension is appropriate. See Matter of Palmer, 413 Mass. 33, 38 (1992).

Conclusion

For the foregoing reasons, we recommend that the respondent, Anna Shapiro, be suspended for a term of eighteen months. In the event that the respondent's suspension is reduced to a suspension of less than one-year-and-one-day, we strongly recommend that she be ordered to undergo a reinstatement hearing before she is readmitted to practice.

Respectfully submitted,
By the Hearing Committee,

Arthur Carakatsane
Arthur Carakatsane, Esq., Chair

Molly Ambrose
Molly Ambrose, Member

Minority Recommendation

Although I join my colleagues in their findings of fact and conclusions of law, I respectfully dissent from the majority recommendation on the appropriate sanction for the respondent. My colleagues have recommended a term suspension of eighteen months. I find that to be too harsh a sanction based on Matter of Zankowski, supra. There, the lawyer committed far more egregious misconduct by intentionally creating false bills and overcharging clients. For example, on multiple occasions she billed more than twenty-four hours in a day as well as billed over fifty hours for attending depositions that she had not attended. During a nine-month period, the lawyer added 450 hours (amounting to approximately $216,000) to her clients' invoices without any documents to substantiate this time. The full bench of the SJC suspended her for two years for her fraudulent billing, holding that "it is the established dishonest nature of the

respondent's billing that differentiates this case form cases involving charging 'excessive' fees." Zankowski, 487 Mass. at 150, 37 Mass. Att'y Disc. R. at 567. By contrast, the respondent here engaged in serious, but less severe, misconduct. To be sure, the work done by the respondent and her firm was inefficient, at best, but there is no allegation that her bills were fiction; the work claimed was done. The respondent may have created a firm culture where her employees felt they had to bill more time, and she should have recognized the inappropriateness of their time in her review of their bills, but that is not the same as fraudulent billing.

Taking into account the cumulative rules violations, and the aggravating factors, I would recommend a term suspension of one-year-and-one-day and echo the majority's request that the respondent undergo a reinstatement hearing.

By: Theresa Coney
Theresa Coney, Esq., Member

Dated: November 14, 2024