IN RE: MATTER RONALD B. KAPLAN
BBO No. 650577

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

BAR COUNSEL, Petitioner vs. RONALD BRUCE KAPLAN, ESQ., Respondent	B.B.O. File No. C3-19-00262446

HEARING REPORT

On October 26, 2021, bar counsel filed a petition for discipline against the respondent, Ronald Bruce Kaplan, Esquire.

The petition charged that the respondent, in post-divorce Probate Court litigation with his ex-wife, brought proceedings or asserted issues without a basis in fact; made false statements of fact to a tribunal or failed to correct earlier false statements; unlawfully obstructed his ex-wife's access to evidence; concealed material documents from her or otherwise failed to act reasonably in response to proper discovery requests; and knowingly disobeyed obligations under the rules of a tribunal.

Represented by counsel, the respondent filed his answer on November 15, 2021.

Bar counsel moved for issue preclusion on March 9, 2022 arguing, in essence, that the respondent should be precluded from contesting certain facts in the petition for discipline, facts which had been fully and finally litigated before the Probate Court. Bar counsel argued that although the respondent had appealed the Probate Court's adverse decisions to the Appeals Court, he had failed to prosecute them there, and they had grown stale; this "waiver," in bar counsel's view, precluded the respondent from contesting these underlying facts in this disciplinary proceeding. The respondent opposed bar counsel's motion, arguing that the appeals were still pending, that there was not yet a final judgment as to any of them, and that it would be

unfair to apply collateral estoppel here. In an Order dated April 14, 2022, the Board Chair denied bar counsel's motion, concluding that he had not satisfied his burden of showing that the underlying judgments were final, noting that appeals were still pending, and ruling that in the circumstances, "it would be unfair to preclude the respondent from attempting to rebut the findings and conclusions of the Probate Court."[1]

After the parties disclosed their witnesses, bar counsel moved to preclude expert testimony from two of the respondent's witnesses, Amy Wu, M.D. and Stanley Cole, M.D., on the grounds that the respondent's disclosures were inadequate and did not meet the threshold requirements for admissibility. The respondent opposed this motion, arguing that the proposed testimony satisfied the relevant foundational requirements. The Hearing Committee Chair allowed the motion "only to the extent that Dr. Wu and Dr. Cole may not testify as to the respondent's truthfulness during the underlying Court proceedings."

The hearing was held on May 10, May 11, May 18, July 14, July 15, August 26, and October 25, 2022. Seventy-six exhibits were admitted. Nine witnesses testified: Lucretia A. Kaplan (Day 1); John J. McGlone, III, Esq. (Day 1); Jeffrey Johnson, Esq. (Day 3); Amy J. Wu, M.D. (Day 3); Theresa Lord, Esq. (Day 4); Linda Corcoran (Day 4); Stanley M. Cole, M.D. (Day 5); Kevin M. Kane (Day 6); and the respondent (Days 2, 3, 4 and 6).

On January 6, 2023, the parties filed their proposed findings and conclusions.

[1] We are, of course, bound by this ruling, and we have proceeded accordingly. We note, however, that although the respondent was given the right to rebut the findings and conclusions of the Probate Court, they are still in evidence, and we may consider them as evidence even though we have not given them preclusive effect. Further, there is case law to the effect that "a trial court judgment is final and has preclusive effect regardless of the fact that it is on appeal." O'Brien v. Hanover Ins. Co., 427 Mass. 194, 201 (1998). See also Williams v. Comm'r of Internal Revenue, 1 F.3d 502, 504 (7th Cir. 1993) ("a judgment final in the trial court may have collateral estoppel effect even though the loser has not exhausted his appellate remedies"), citing Restatement (Second) of Judgments § 13, comment f.

Findings and Conclusions[2]

Findings of Fact

Our Findings of Fact are divided into ten subsections: (1) General Background; (2) Complaint for Modification: Pretrial Activities; (3) The Respondent's Real Estate Activities; (4) Modification Trial and Judgment; (5) The Contempt Complaints Filed Against the Respondent by his Ex-Wife; (6) Disciplinary Hearing; (7) Our Findings on Discovery Issues; (8) Our Findings on the Respondent's Financial Statement Omissions; (9) Our Findings on Failure to Abide by Contempt Orders; and (10) Our Observations as to the Respondent's Credibility and Candor.

1. General Background

1. The respondent, Ronald Bruce Kaplan, is an attorney duly admitted to the Bar of the Commonwealth on January 23, 2002. See Tr. 2:80 (Respondent).

2. The respondent was admitted to the bar at the age of forty-one, having attended both college and law school as an adult. Tr. 2:79-80 (Respondent).

3. During the course of his twenty-six year marriage to Lucretia A. Kaplan (ex-wife), the respondent primarily cared for the couple's two sons, while the ex-wife was the main wage earner. Tr. 1:50, 105 (L. Kaplan); Tr. 2:77-78 (Respondent). The ex-wife paid for the

[2] The transcript shall be referred to as "Tr. __: __"; the matters admitted in the answer shall be referred to as "Ans. ¶_"; and the hearing exhibits shall be 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.

respondent's college and law school education during the marriage. Tr. 1:106 (L. Kaplan); Ex. 5 (RBK0056). With accommodations for various medical conditions, discussed in more detail below, the respondent graduated summa cum laude from Emmanuel College in 1997, and cum laude in 2002 from Suffolk University Law School, which he attended at nights. Tr. 2:79-80, 82-83 (Respondent).

4. Since his 2002 bar admission, the respondent has always maintained "active" status with the Board of Bar Overseers. He has never notified the BBO of any total or partial disability, and has never changed his registration status to "inactive" or "retired." Parties' Stipulations, ¶ 3 (April 14, 2002).

5. Over the course of his practice, the respondent rented office space at 555 Columbian Street in Weymouth, for which he paid $613.25 a month, and later practiced out of his home at 130 Weymouth Street, Holbrook, Massachusetts. While it is unclear precisely when he moved to 130 Weymouth St., he was there by 2017. E.g., Ex. 30 (RBK0845); Ex.73 (Kaplan601) (impounded 2017 tax returns).[3]

6. The respondent's practice has included collections; drafting documents, wills, revocable and irrevocable trusts; divorce; and various pro bono matters. Tr. 2:93, 94-95, 97 (Respondent); Ex. 6 (RBK0160). Fairly recently, the respondent became a town meeting member of the Town of Holbrook, a position he has held for three years, including a run for reelection. Tr. 6:183-184 (Respondent). He ran for town meeting member because he likes to be "active in the community" and "give back as best as [he] can." Tr. 6:185 (Respondent).

[3] On motion of the respondent and over bar counsel's objections, the respondent's tax returns were impounded in a July 29, 2022 Order of the Board Chair.

7. On November 10, 2008, the respondent filed for divorce. Ronald Kaplan v. Lucretia Kaplan, Norfolk Prob. Ct. No. 08D1557DV1. Ex. 8 (RBK0393).

8. On November 3, 2009, a judgment entered for divorce nisi with an order of support entered against the respondent. Ans. ¶ 6. There was no provision for alimony in the original divorce judgment.

2. Complaint for Modification: Pretrial Activities

9. In June 2013, the respondent's ex-wife retained Attorney John McGlone to help her seek alimony. Tr. 1:83 (L. Kaplan). On November 19, 2013, McGlone filed, on her behalf, a complaint for modification, seeking this relief. Ex. 8 (RBK0394). We credit that the ex-wife had been unable to work since 2000, when she went on disability for a work-related injury. Tr. 1:95 (L. Kaplan). At the time she filed the complaint for modification, she was receiving only disability and social security payments, and she needed funds. Tr. 1:94 (L. Kaplan).

10. The respondent was served December 6, 2013. Ex. 7 (RBK0373). He filed an answer and counterclaim on December 23, 2013. Ex. 8 (RBK0395).

11. We find that McGlone promptly served the respondent with discovery requests, both document requests and interrogatories. Tr. 4:108 (Lord); Ex. 52 (OBC305). The discovery deadline was on or about May 30, 2014, with a pretrial set for June 2014. Tr. 4:97 (Lord).[4]

12. On or about March 17, 2014, the respondent hired Attorney Theresa Lord, an experienced family law attorney, to help him with the discovery requests. Tr. 4:72-73, 77-78 (Lord). Lord had gotten to know the respondent by seeing him in the courthouse and observing him in the Probate Court between 2009 and 2014. Tr. 4:74, 76 ("maybe a couple of times in court"); 101 (multiple occasions) (Lord).

[4] The trial was scheduled for February 20, 2015, but was continued and was instead held July 28, 2015 and September 4, 2015.

13. Lord represented the respondent at two hearings, a June 11, 2014 pretrial conference before Judge Roach, and a February 20, 2015 hearing on a Motion to Produce Documents, held before Judge Menno. Exs. 52, 53.

14. At the **June 11, 2014 pretrial conference**, McGlone complained that the respondent, before Lord's involvement, had not produced discovery for seven months. Ex. 52 (OBC305-306). He had refused to produce documents because McGlone had mistakenly referred to "Robert" Kaplan in the definition section of the Rule 34 document requests. Id. The respondent had objected to all the interrogatories, and had refused to give anything, claiming that he was "representing trust[s]." Ex. 52 (OBC306). We credit McGlone's testimony to this effect, recognizing an element of hyperbole ("[l]ast time [the respondent was asked about the real estate ventures] he told me it's none of my business, you can go take a flying leap, it's a trust.") Ex. 52 (OBC308).

15. McGlone explained the particular relevance of the discovery he had been seeking, noting that the respondent's financial statements regularly reflected negative income from his law firm practice, the product of modest earnings and extremely high expenses. Ex. 52 (OBC306). McGlone observed, however, that despite this consistently negative income, the respondent's debts did not increase from financial statement to financial statement, arguing: "So I've got four financial statements all of them saying he makes negative money. It's interesting to note that the debt doesn't increase each month. The debt, in fact, has gone down." Ex. 52 (OBC307).

16. Compounding matters was that the respondent's assets had increased, with a $30,000 deposit that "all of a sudden . . . plops into his financial statement." Ex. 52 (OBC307). McGlone noted further that records from the Town of Holbrook reflected that the respondent had

"flipped nine houses in the last two years," yielding what looked like substantial profits. Id. McGlone summed up by explaining, "I just need to know what the expenses were [on the house transactions], how is he surviving, what is he living on." Ex. 52 (OBC308).

17. Lord argued that the respondent had no "recorded" amounts of income, that he practiced law minimally because he was disabled, and that he lived off the cash he had received in the divorce settlement. Ex. 52 (OBC310). She devoted most of her presentation to an argument that the ex-wife did not need alimony because she had been awarded significant assets in the divorce judgment. Ex. 52 (OBC310-312).

18. Judge Roach noted that McGlone was complaining he had not gotten complete financial disclosure from the respondent, and reminded Lord that the respondent, as a trained lawyer, understood the need to comply with the Court's rules of "full and complete financial disclosure by both parties." Ex. 52 (OBC312-313).

19. In response to Lord's claim that the respondent had told her he had produced all of his tax returns, McGlone explained that the respondent had produced one page, unsigned, with no Schedule C, G, E and Z. Ex. 52 (OBC316).

20. Judge Roach ordered the parties to fully comply with discovery by July 11, 2014. Ex. 52 (OBC320).

21. At the **February 20, 2015** hearing, roughly five months before trial, the respondent was again represented by Lord. McGlone complained that the respondent was still not providing bank statements or trust documents. He gave as an example documents he had had to subpoena from the Crescent Credit Union (CCU), and told Judge Menno that the respondent had threatened to sue the bank if it complied with the subpoena. Ex. 53 (OBC334).[5] McGlone

[5] This statement was corroborated, in unsworn testimony, by a bank representative who appeared at the February 20, 2015 hearing. Ex. 53 (OBC338). We credit these representations,

had just learned that the respondent, who McGlone said had listed one account on his financial statement, in fact had many accounts at CCU ("between six and eight"). Ex. 53 (OBC335). He wanted the judge to order CCU to provide the subpoenaed documents and, if the respondent continued to refuse to provide trust documents, wanted an order for them also. Ex. 53 (OBC335).

22. Lord admitted surprise that the respondent was not turning over the documents, explaining that it was her understanding that he was going to do so. Ex. 53 (OBC336).

23. A CCU representative explained to the judge that she had brought with her documents relating to two personal accounts, a trust account, and business accounts. Ex. 53 (OBC338, 339). The judge agreed to enter an order "that the keeper of the records for the Crescent Credit Union appearing in Court shall provide the documents she has brought forward today," and a further order as to other CCU accounts. Ex. 53 (OBC339-340).

24. Judge Menno's March 27, 2015 Order for Production required the respondent to produce "any and all bank records that Ronald B. Kaplan has signature authorization on including, but not limited to" four specific bank accounts at CCU. Ex. 56. It further ordered him to produce "copies of any and all Trust instruments . . . (excluding the Tralfaz Revocable Trust previously produced) for which Ronald B. Kaplan is the Donor, Trustee and/or beneficiary." Id. [6]

25. Before us, Lord explained, credibly, that she had assisted the respondent in going over discovery requests and putting together responses, describing herself as a "conduit" for producing materials to McGlone. Tr. 4:77-78 (Lord). Lord gave McGlone the respondent's personal tax returns, bank statements and credit card statements. Tr. 4:78 (Lord). She had to produce documents to McGlone on more than one occasion after he deleted documents from a flash drive she had given him. Tr. 4:79 (Lord).

[6] The respondent's four trusts are described in more detail, below.

26. Lord testified, credibly, that she would not have known if the respondent was concealing information; as the self-described "conduit," she handed over what he gave her. Tr. 4:96 (Lord). She typically trusted her clients, and agreed that she would not have undertaken an investigation as to the respondent's access to undisclosed funds. Tr. 4:103-104 (Lord).

27. Lord did not represent the respondent after March or April 2015, withdrawing shortly after the February 20, 2015 hearing. Tr. 4:89-90 (Lord).

28. The respondent filed a motion to reconsider Judge Menno's March 27, 2015 Order for Production, and this resulted in a hearing before Judge Menno on **June 4, 2015**. Ex. 75.

29. At this hearing, the respondent acknowledged that "throughout this entire litigation, the trusts have been an issue." Ex. 75 (1-4). He claimed that he was prohibited from producing the documents relating to the trusts, stating that he "can't give these things up because they're not mine to give up and I've been told not to," adding that he had permission for Judge Menno's in camera review of a Special Needs Trust he was administering for a disabled individual. Id. at 1-5.

30. McGlone disavowed interest in the Special Needs Trust, but wanted materials on the Oak Street, Surehold and Johnson Trusts, telling the Court that the beneficiary of all of the trusts was Tralfaz, the revocable trust the respondent was "in charge of." Id. at 1-6.

31. McGlone eventually got some trust documents for the Oak Street, Surehold and Johnson Trusts from the Registry of Deeds. Tr. 1:210 (McGlone). The respondent never produced any trust tax returns. Tr. 1:252-253 (McGlone).

3. The Respondent's Real Estate Activities

32. Between roughly 2010 and 2014, i.e., post-divorce (2009) but generally before service of the Complaint for Modification (December 2013), the respondent and his good friend, Kevin Kane,[7] a contractor, builder and developer, engaged in over ten real estate transactions. Tr. 6:199 (Respondent); Tr. 6:20, 22 (Kane). We credit that typically, the respondent would buy a piece of land, he and Kane would build a house, and the respondent would help with the bookkeeping over the course of construction, with the intent of selling the properties and splitting the proceeds. Tr. 6:24-25 (Kane). Kane has continued to develop various properties, but since 2014 or 2015, he has not done so with the respondent. Tr. 6:23-24 (Kane).

33. The properties were put into trusts when the respondent purchased them. Tr. 6:105 (Kane). When the properties were sold, Kane and the respondent split all proceeds evenly, fifty-fifty. Tr. 6:26-27 (Kane). The respondent's share was paid to him, and the respondent returned his own profits to the Tralfaz Revocable Trust, discussed below. Tr. 6:109 (Kane),145 (Respondent).

34. The respondent kept track of the books and records for all of the different properties. Tr. 6:72 (Kane). Kane explained that this was because they both had a financial interest, and his own bookkeeping is "horrible." Tr. 6:25 (Kane). Their profit-sharing arrangement was a verbal agreement, never written down. Tr. 6:50, 72-73 (Kane).

[7] Kane was listed on the Respondent's Final Witness List. He was mentioned repeatedly during the hearing, including within moments of the respondent taking the stand. Tr. 2:78 (worked for Kane during his marriage). It was obvious to us that Kane was central to many of the respondent's claims, among them that Kane was the beneficiary of complex trust arrangements, and that the respondent worked for him for years for no actual pay. On July 14, 2022, Day 4 of the hearing, the respondent's counsel stated on the record that he had spoken with Kane and had thereafter made a decision not to call him to testify. Tr. 4:7 (Respondent's counsel). Exercising our power under BBO Rules, Sec. 4.5(d) ("hearing committee . . . may, on its own motion, subpoena any witness to appear and give testimony"), we subpoenaed Kane to testify, and he appeared August 26, 2022. The respondent's counsel objected on the record, recognizing our power to subpoena a witness but arguing that doing so "contradicts the fundamental duties and functions of the hearing committee." See Tr. 6:7-10 (Respondent's counsel).

35. Kane recalled some specifics. The first joint project was Oak Street in Holbrook. Tr. 6:23, 28 (Kane). The respondent funded the project and kept all of the profit, which Kane estimated as $80,000. Tr. 6:29-30 (Kane). Kane also described two projects on Belair Drive in Holbrook, where the money from the first house went into the second house. Tr. 6:34 (Kane).

36. Another joint project was Ell Road in Holbrook. Tr. 6:38 (Kane). The respondent bought the house at a town auction, when it was in disrepair, and he and Kane renovated it. Tr. 6:39 (Kane). They did not sell it after the renovations were complete; instead, the respondent and his son lived in it rent-free, covering the expenses, starting in December 2014. Ex. 6 (RBK0277, 0279-280); Tr. 6:83-84 (Kane).[8]

37. The last project they worked on together was 130 Weymouth Street in Holbrook. Again, the respondent acquired the property and financed the renovations. Tr. 6:43-44 (Kane); Tr. 6:167 (Respondent). Kane invested $135,000, and served as the general contractor. Tr. 6:45 (Kane). The respondent's investment was greater; although Kane could not put a number on it, he described it as "considerable." Tr. 6:46 (Kane).

38. Kane testified before us, in August 2022, that the renovations to 130 Weymouth Street had been completed about three and a half years ago. Id. The house has not been sold; the respondent has lived there for some years. Tr. 6:46-47 (Kane). The respondent does not pay rent, but pays the real estate taxes. Tr. 6:47 (Kane). He will pay Kane back once he sells the house, something Kane has been urging him to do. Tr. 6:48-49 (Kane). Kane estimated the house to be 3,000 or 3,500 square feet. Tr. 6:49 (Kane).

39. Kane has suggested to the respondent that the respondent sell the house and "take care of your, you know, issues out there," a reference, we conclude, to the alimony the

[8] Kane identified 676 Washington Street as another joint project where he "assumed" he and the respondent made a profit, but he was unable to recall specifics. Tr. 6:94 (Kane).

respondent has been obligated to pay his ex-wife for some years. So far, the respondent has not sold his house. Tr. 6:48-49 (Kane). Kane estimated that the house, which he described as "a very unique home," might be worth $700,000. Tr. 6:86 (Kane). Kane rejected the contention that the house was actually *his*, explaining that while the respondent had told him he was a beneficiary, he has seen no documents to that effect. Tr. 6:104 (Kane).[9]

40. Kane confirmed that there were probably another five projects he and the respondent had done, but he could not remember their specifics. Tr. 6:76-77 (Kane). He testified, credibly, that while not all ten of the projects have been profitable, he and the respondent made money most of the time. Tr. 6:79-80 (Kane).

41. Kane now operates through a corporation known as Kevin Kane, LLC. Tr. 6:57 (Kane). In the past, he used two trusts: Aspinwall Trust, and Charpentier Trust. Tr. 6:57 (Kane). He used Aspinwall to acquire property that he was working on individually, not with the respondent. Tr. 6:60-61 (Kane).[10] The respondent has had no involvement with either trust. Tr. 6:62, 97 (Kane).

42. During the relevant time period of 2010 to 2014, the respondent made use of a complicated series of interconnected trusts to acquire, hold and sell property. He established four trusts: Oak Street, Tralfaz, Johnson, and Surehold. He was the sole trustee of each of them. The Oak Street Realty Trust was created July 19, 2010. It designated the Tralfaz Revocable Trust as its beneficiary. Ex. 40 (RBK1880). The Tralfaz Revocable Trust, also created July 19, 2010, designated the Aspinwall Trust as the sole beneficiary. Ex. 38.[11] The Surehold Realty Trust was

[9] We credit that the house is held in trust by the Johnson Nominee Trust, described below. Tr. 3:64 (Respondent).

[10] There is also an Aspinwall Corporation, a Kane-controlled corporation which Kane used to borrow money. See Tr. 3:30-33 (Johnson).

[11] Bar counsel is correct that there is confusion surrounding when the Tralfaz Trust was actually created. Bar Counsel's PFCs, pp. 10-11, n.12. We note that the Tralfaz Trust's bank accounts – money market and checking – appear to predate the Tralfaz Trust's creation. The confusion is compounded by the respondent's runic and

created November 7, 2014. Ex. 39 (RBK1870-1873). It designated the Aspinwall Trust as its beneficiary. Ex. 39 (RBK1874). The Johnson Nominee Trust was also created November 7, 2014; its Schedule of Beneficiaries listed the Aspinwall Trust as the sole beneficiary. Ex. 41.

43. While Tralfaz was a revocable trust, the respondent described the Oak Street, Surehold and Johnson Nominee Trusts as nominee trusts. Tr. 2:148 (Respondent); Ex. 6 (RBK0174); Exs. 39, 40, 41. A nominee trust "holds nominally for the benefit of a schedule of beneficiaries. And the schedule of beneficiaries can change." Tr. 3:38-39 (Johnson). See generally Goodwill Enterprises, Inc. v. Kavanagh, 95 Mass. App. Ct. 856, 858 (2019) (nominee trust "is `an entity created for the purpose of holding legal title to property' [; these trusts] have been described as 'bare title-holding arrangement[s].'" (citations omitted). To preserve the practice of "secrecy of conveyance," nominee trusts generally do not have a recorded schedule of beneficiaries Tr. 3:38 (Johnson). They do not file tax returns; they are not supposed to be a separate taxable entity. Tr. 3:39 (Johnson); Ex. 75, 1-9.

44. In summary, each of the respondent's four trusts designated the Aspinwall Trust as its ultimate beneficiary. The Aspinwall Trust is a Kane family trust, used for projects that did not involve the respondent. Tr. 6:60-61 (Kane).

45. The respondent tried to convince us that his trusts benefitted Kane. He claimed to use the Tralfaz revocable trust as a "pull-funds" trust, where he would essentially collect Kane's money. Tr. 2:204 (Respondent). He said he was not actually able to show this, because Kane would not allow him to produce the Tralfaz tax returns, and Kane would not allow him to use any documents of Aspinwall, the alleged ultimate beneficiary of all the respondent's trusts. Tr. 2:170, 6:209 (Respondent). We do not credit this testimony, and find instead that the respondent

unexplained statement that, "[t]here have been different Tralfaz Trusts – several." Ex. 5 (RBK0176). He conceded that the trust's tax returns showed that it was actually created in June 2009. Tr. 3:238 (Respondent).

never asked Kane for a copy of the Aspinwall Declaration of Trust or beneficiary schedule and that Kane, as described in more detail below, had nothing to do with Tralfaz or its tax returns. Tr. 6:93 (Kane).

46. We do not credit the respondent's claim that his four trusts were connected with Kane and his family, or were for their benefit. Kane was fully conversant about the trusts he had or had had for himself and his family – Aspinwall and Charpentier. Tr. 6:57-58, 61-63 (Kane). We found this testimony convincing, and unremarkable; an individual would be expected to know what trusts had been established for himself, his business and his family, even trusts established many years ago.

47. By contrast, Kane was emphatic that he had "zero" interest in any of the respondent's trusts. Tr. 6:67-68, 87-88 (Kane). Kane knew no particulars about any of them, and denied that any had been set up to benefit him or his family. Tr. 6:63-68 (Kane).[12] He held no bank accounts in their names, and the trusts held none of his assets. Tr. 6:67-68 (Kane). He testified specifically that he has never deposited money into the Tralfaz Trust bank account. Tr. 6:93 (Kane). We find far more credible the testimony we have set out above: Kane and the respondent were partners in a generally profitable real estate venture, where they bought, renovated and sold house and divided the profits evenly. Kane's testimony was further corroborated by the respondent's admissions that he paid personal expenses out of the trust bank accounts, and otherwise commingled his funds with those accounts. Tr. Tr. 4:28-29; 6:172 (Respondent).

[12] Kane was not asked about the Surehold Trust.

4. Modification Trial and Judgment

48. On July 28 and September 4, 2015, Judge Phelan held a trial on the Complaint for Modification and related issues not relevant to our findings. Exs. 5 and 6. The respondent and his ex-wife were the sole testifying witnesses. See generally Exs. 5 and 6.

49. At the start of the trial, Judge Phelan confirmed that the exhibits he had been given were uncontested, the respondent denying that he had any contested exhibits of his own and explaining that he had "probably provided everything that's in there." Ex. 5 (RBK0043).

50. On December 31, 2015, Judge Phelan issued his post-trial findings and judgment on support modification (Modification Judgment). The decision was docketed on or about January 7, 2016. Exs. 7, 8 (RBK0398).

51. In the Modification Judgment and findings, Judge Phelan found, among other things, that the respondent: had testified falsely; intentionally tried to hide his income; failed to produce documentation to support his claim that he had borrowed funds from the trusts to pay personal expenses; failed to list, on his financial statement, the Tralfaz funds in the accounts at CCU; failed to list, on his financial statement, property he owned at 109R Woodlawn; failed to cooperate in the discovery phase of the case; and was generally untruthful. Ex. 7. The Court found specifically that "[a]t no time during the discovery process before trial or during trial and despite [the ex-wife's] requests, motions to compel and subpoenas, did [the respondent] produce copies of certain trust documents to help construct the money trail of his real estate purchases and sales and his resulting income." Ex. 7 (RBK0387).

52. On April 12, 2016, the respondent filed a Motion to Stay Modification Judgment Pending Appeal. Ex. 8 (RBK0399); Ex. 59. [13] While the respondent challenged many of Judge

[13] Since approximately 2016, the respondent has filed more than ten different notices of appeal, as well as post-hearing motions for relief and for stay, from various decisions by the Norfolk Probate Court, including the

Phelan's findings, he focused most of his efforts on minor factual errors in the judgment: the Court's failure to believe he was disabled; the Court's refusal to allow into evidence accountings he had offered for the real estate ventures; and the Court's acceptance of subpoenaed documents without a keeper of the records certificate. Ex. 59. He did not meaningfully challenge any of the findings or conclusions set out above in ¶ 51.

5. <u>The Contempt Complaints Filed Against the Respondent by His Ex-Wife</u>

53. Between 2016 and 2019, the respondent's ex-wife filed five complaints for contempt against him for his failure to pay court-ordered alimony and attorney's fees. The first of these was dated **January 27, 2016** (docketed February 9, 2016) (First Contempt), several weeks after the issuance of the Modification Judgment, and alleged that the respondent had refused to pay the weekly Court-ordered alimony ($1,800) as well as alimony retroactive to the December 6, 2013 date of service ($48,150), owing a total of $49,950. Ex. 8 (RBK0399); Ex. 9. An amended complaint, claiming the same amount, was filed and docketed February 19, 2016. Ex. 8, <u>id.</u>; Ex. 10. The respondent requested an evidentiary hearing; this was denied March 31, 2016. Ex. 8 (RBK0399).

54. After a March 31, 2016 hearing, Norfolk Probate Court Judge Menno found that the respondent owed $4,500 in alimony since the date of the Modification Judgment. By Judgment dated **April 8, 2016**, Judge Menno ordered the respondent to pay $4,500 by April 22, 2016, and sentenced him to a thirty-day jail sentence, suspended until noon on April 22, 2016. Ex. 11.

Modification Judgment, denials of motions, contempt judgments (described below), and denials of reconsideration. Ans. ¶ 22. The appeals did not progress and, in May 2022, the ex-wife moved in the Probate and Family Court to dismiss them all. This request was denied by Order of May 19, 2022, the Court writing: "The Court is not satisfied that Husband caused delays. The record shall be immediately sent to the Appeals Court and to the extent that the parties want this Court to address modification proceedings that are also subject to appeal, they shall seek leave from the [A]ppeals [C]ourt." Ex. 74.

55. The respondent's ex-wife filed a second complaint for contempt on **July 15, 2016** (Second Complaint), alleging the respondent's violation of the Modification Judgment by making only sporadic and inadequate payments, claiming an arrearage of $52,350 and seeking attorney fees. Ex. 12.

56. The Judgment on the Second Contempt, dated **September 20, 2016** (Menno, J.), on the complaint for contempt filed July 15, 2016, referenced a September 1, 2016 hearing at which both parties appeared and were represented by counsel. Ex. 13; see Tr. 3:115.[14]

57. Judge Menno noted that the respondent had raised an inability to pay, writing that "[t]he difficulty with [this] defense is that Judge Phelan made specific findings relating to the credibility of the [respondent's] testimony and financial statements. He specifically found he had the ability to pay this Judgment. This Court remains bound by the prior Judgment and the findings of the hearing judge." Ex. 13 (RBK0414). Judge Menno found the respondent in contempt for his failure to pay twenty-two weeks of alimony, totaling $9,900, from April 1, 2016 through August 26, 2016; ordered the payment by October 5, 2016; and entered a thirty-day jail sentence, suspended for thirty days.

58. The respondent's ex-wife filed a third complaint for contempt on **December 22, 2016** (Third Contempt), for alleged violation of the Modification Judgment "and continuing dates," claiming $60,650, of which $12,050 was owed since the September 20, 2016 judgment, and $48,600 still owed under the December 31, 2015 judgment; she also sought attorney's fees. Ex. 14.

59. In his **January 19, 2017 Order**, after a January 12, 2017 hearing on Third Contempt, Judge Menno found the respondent in contempt for failing to pay the $9,900 in

[14] The Docket Sheet reflects that Attorney Douglas R. Hyne filed a Notice of Limited Appearance on the respondent's behalf for a September 1, 2016 contempt hearing. Ex. 8 (RBK0401).

alimony he had ordered September 20, 2016; found that the respondent owed $17,900; and rejected his inability to pay argument on the grounds that "[a] prior Judge has adjudicated him to have the ability to today [sic] and that Judgment is on appeal." Judge Menno cited the respondent's testimony about the expected arrival of a $10,000 check, ordered a payment of $17,900 in back-owed alimony and $2,500 in attorney's fees to the ex-wife's counsel, entered a thirty-day jail sentence suspended pending compliance, and scheduled a review hearing for January 26, 2017. Ex. 16.

60. After the January 26, 2017 review hearing, Judge Menno entered a Judgment dated **March 10, 2017**. He found that the respondent had overpaid and thus was relieved from further payments for two weeks, until March 24, 2017, and specifically found that the respondent had the ability to pay under the Krokyn case [378 Mass. 206 (1979)] in light of his recently-liquidated retirement account monies. Ex. 15.[15] Judge Menno ordered further that $25,000 of the retirement monies were to be "restrained from personal use . . . and shall be utilized only to pay [the] weekly alimony order," and that the respondent would be allowed access to the remaining $21,000.

61. Judge Menno wrote: "Obviously, the issue of present inability to pay will resurface at some point in the future after the utilization of these monies. Although the defendant has an appeal pending that has not been perfected as of yet, he is entitled to argue in any future hearings that he has a present inability to pay. Therefore, any future contempt proceeding shall be marked for an evidentiary hearing." Ex. 15 (RBK0416). Noting that he had relied on Judge Phelan's December 31, 2015 Judgment, now on appeal, Judge Menno concluded: "However, due

[15] We discuss the Krokyn case below, at ¶ 102.

process does allow for the [respondent] in any future contempt proceeding to have an evidentiary hearing on his then current ability to pay." Ex. 15 (RBK0417).

62. The respondent's ex-wife filed a fourth complaint for contempt on **July 30, 2018** (Fourth Contempt), claiming an arrearage of $48,600 plus attorney's fees of $31,000. Ex. 18.

63. In a Judgment and Memorandum of Decision on the Fourth Contempt, dated **September 13, 2018**, Judge Phelan referenced a September 6, 2018 hearing, where the ex-wife appeared with her attorney and the respondent appeared pro se. The respondent testified. Ex. 19; see Tr. 3:174-175 (Respondent).

64. Judge Phelan found that the respondent had owed $8,930 in alimony since June 14, 2018, and had failed to pay. Ex. 19 (RBK0422). He credited the representations of the ex-wife's attorney that the respondent had been observed on at least two occasions representing private clients in the District Court, and he cited the respondent's admission that he had private clients. He did not credit the respondent's testimony about disability. He noted that while the respondent had submitted his income tax returns between the years 2003 and 2017, "not one of those returns included a Schedule C for his income as a practicing attorney." Id.; Tr. 3:182 (Respondent). Judge Phelan specifically found that the respondent had the ability to pay the $450 per week in alimony ordered December 31, 2015. Ex. 19 (RBK0422).

65. In his Partial Judgment, Judge Phelan found the respondent guilty of contempt for willfully disobeying the Court's June 14, 2018 Order ($8,930 in alimony) and Modification Judgment ($48,600 in alimony and attorney's fees of $31,000) Orders. Ex. 19 (RBK0423). As to the Fourth Contempt before him, he ordered the respondent to pay attorney's fees of $2,120, and to be sentenced to jail, suspended until October 4, 2018, unless he paid $10,000 in alimony arrears and $10,000 in attorney's fees arrears. Id.

66. Beginning October 18, 2018, the respondent served some of a thirty-day jail sentence for non-compliance with the September 13, 2018 contempt judgment. He satisfied the contempt order on October 26, 2018, and he was released from jail. Ans. ¶ 19.

67. The respondent's ex-wife filed a fifth complaint for contempt on **January 31, 2019** (Fifth Contempt), claiming a violation of the December 31, 2015 and September 13, 2018 Orders, and an arrearage of $4,950 plus $48,600 from prior judgments and $23,210 in attorney's fees. Ex. 20.

68. In a Judgment and Memorandum of Decision on the Fifth Contempt, dated **March 29, 2019**, Judge Phelan referenced a March 21, 2019 hearing, where the ex-wife appeared with her attorney and the respondent appeared pro se and testified. Ex. 21.

69. Judge Phelan found that the respondent had paid nothing towards his alimony obligation since his last appearance on September 13, 2018. He reviewed a letter the respondent had submitted from his physician, Stanley M. Cole, M.D., but did not find it persuasive and did not find credible the respondent's claims that he was unable to work or that he lacked the resources to pay his alimony obligation. Ex. 21 (RBK0425-0426); Tr. 3:191 (Respondent). He found that the respondent had the ability to pay alimony of $450 per week. Ex. 21 (RBK0426).

70. In a Partial Judgment dated **March 29, 2019**, Judge Phelan found the respondent guilty of contempt for willfully disobeying the Court's clear and unequivocal order to pay alimony and attorney's fees, and sentenced him to jail for sixty days unless he paid, before April 8, 2019, $20,000 in alimony arrears and $10,000 in attorney's fees arrears. Ex. 21 (RBK0426).

71. Before us, the respondent admitted that he has been permitted to speak at all of these contempt hearings. Tr. 2:68 (Respondent).

72. On June 26, 2019, the respondent filed a Complaint for Modification in the Probate Court. Ex. 8 (RBK0404); Tr. 3:199-200 (Respondent).

6. Disciplinary Hearing

73. As a defense to bar counsel's charges of misconduct surrounding his activities before the Probate Court, the respondent has claimed, among other things, that the Modification Judgment is riddled with errors. See generally Respondent's Request for Findings of Fact and Conclusions of Law (Respondent's PFCs), ¶¶ 14-20.

74. Our role is not to review the Modification Judgment, or any other decision of the Probate Court, with an eye towards reversal or amendment. We are not the Appeals Court, and such a review would be not only inappropriate but outside our mandate and expertise.

75. However, because bar counsel's motion for issue preclusion was denied, we need to review to some extent the respondent's conduct before the Probate Court, as well as the facts underlying the orders he is charged with violating.

76. While we agree that there are some errors in the Modification Judgment, we find that these are not material to these disciplinary proceedings, and that in general, Judge Phelan's findings are amply supported by evidence.

77. Assuming arguendo that the ex-wife proved a need for alimony, the critical issue in the Probate Court was the respondent's ability to pay alimony. While this would seem to be a straightforward question, we find that, due to the respondent's confounding actions, its answer was shrouded in mystery essentially from the time the ex-wife filed her Complaint for Modification.

7. Our Findings on Discovery Issues

78. We have detailed above the respondent's general refusal to produce discovery. We find and conclude that the respondent did not willingly produce documents concerning his bank accounts, and that McGlone had to subpoena these. Tr. 1:166, 167-169 (McGlone). We credit that the critical CCU Tralfaz Trust accounts were made available only after McGlone subpoenaed them, and that the respondent threatened to sue CCU if it produced the documents. Id.; Tr. 1:84 (L. Kaplan).

79. We do not credit the respondent's testimony that he could not produce trust documents to McGlone because the beneficiaries refused to allow this. Tr. 2:170 (Respondent). To the extent that he is referring to the Aspinwall documents, we instead credit Kane's testimony that the respondent never asked him about these. Tr. 6:93 (Kane). To the extent that he is talking about the Tralfaz trust returns, we do not credit the respondent's testimony that Kane would not allow this, and instead credit Kane's testimony that he had nothing to do with the respondent's trusts and, by necessary implication, Tralfaz or its tax returns. Tr. 2:170, 6:209 (Respondent); see Tr. 6:67-68, 88 (Kane).

80. We do not credit the respondent's statement that shortly before the trial, he gave McGlone "copies of bank statements for all my accounts for the period that he was seeking." Tr. 2:172 (Respondent). For example, in Ex. 42, as to the Tralfaz Revocable Trust account, McGlone requested, among others, statements from "**1/1**/09 to 7/30/10." Ex. 42 (RBK1888). The respondent produced statements only for the period "**11/30**/09 to 7/30/10." Ex. 42 (RBK1890). The earlier statements McGlone requested may well have been highly germane. For instance, the November 30, 2009 statement reflects that there had been a "0" balance in the account as of

November 14, 2009; the balance jumped to $219,450.73 on November 16, 2009. Ex. 23 (RBK0629).

81. We credit that except for the Tralfaz Revocable Trust, McGlone did not receive from the respondent, in a timely fashion before the modification trial, information about the various trusts for which the respondent served as trustee. Ex. 75, p. 1-7.

82. We credit, and find, that the process of understanding the respondent's assets and income was disrupted by his refusal to disclose pertinent documents. See Tr. 1:94 (L. Kaplan).

83. We find in bad faith the respondent's statements to us that, "No, I didn't obstruct the discovery process. Not at all." Tr. 2:65 (Respondent). We agree with Judge Phelan's conclusion in the Modification Judgment that the respondent "failed to cooperate in the discovery phase of the case and caused unnecessary delay, compelling [his ex-wife] to file several motions to compel." Ex. 7 (RBK0386).

8. Our Findings on the Respondent's Financial Statement Omissions and False Statements to Judge Phelan

84. We agree with Judge Phelan's statement that "[i]n his November 18, 2014 financial statement [the respondent] did not indicate owning any real estate nor did he report the proceeds of any purchases or sales of real estate, a significant and telling omission given the other facts surrounding his participation in multiple real estate transactions. . . ." Ex. 7 (RBK0377).[16]

85. The respondent has not challenged Judge Phelan's conclusion that he "solely and individually owns real property located at 109R Woodlawn," and that this property was "not listed on any of his financial statements." Ex. 7 (RBK0382).

[16] Kane did not testify at the modification trial but, to reach and support his conclusions, Judge Phelan pieced together various settlement statements and other documents describing several of the respondent's real estate transactions. See Ex. 7 (RBK0378-0379).

86. As noted, after he was served with the ex-wife's Complaint for Modification, the respondent failed to fully identify his bank accounts and failed to list the Tralfaz Trust accounts on the financial statements he filed. See Ex. 7 (RBK0381); Ex. 55 (OBC0388-0394, **July 28, 2015**; OBC0352-0359, **November 18, 2014**; OBC0361-0368, **October 22, 2014**; OBC0370-0377, **June 11, 2014**). He did not mention an ownership interest in any trusts.

87. Although he disingenuously claimed to Judge Phelan that the Tralfaz funds were not his money, in fact, the respondent helped himself to these funds freely, to pay for many and diverse personal expenses. Ex. 6 (RBK0202-0203). Judge Phelan so found, listing checks for personal debts to Nordstrom, AT&T, Discover card, and a payment to the respondent's landlord Catherine Strain. Ex. 7 (RBK0381-0382, 0387).

88. The respondent was clearly enjoying a financial benefit as the result of his unfettered access to and use of the Tralfaz funds.

89. The respondent was wholly unable to explain to Judge Phelan how it was that despite his claimed negative income, he was routinely able to meet his expenses. He stated at one point that he had borrowed money from his brother Bob and from the Tralfaz Trust, but his July 28, 2015 and November 18, 2014 financial statements do not reflect any such loans. Ex. 6 (RBK0191-0193); Ex. 55 (OBC0352-OBC0359; OBC0388-OBC0394). We conclude that to the extent there was money "borrowed," these were not actual loans as there was no actual expectation that the funds ever needed to be repaid.[17]

[17] We find a similar lack of supporting evidence as to the respondent's alleged "debt" to his girlfriend, Linda Corcoran. She has paid upwards of $37,000 to help purge him of contempt and pay his alimony arrears. Tr. 4:145-146 (Corcoran). The respondent described this as a loan. Tr. 3:180 (Respondent). We do not agree with this characterization, and find that there is no repayment agreement. Corcoran confirmed that there is no written note or document evidencing this obligation, part of which dates back to 2018 (Tr. 4:146 (Corcoran)), and no repayment schedule of any kind. Tr. 4:147 (Corcoran).

90. The respondent did not challenge before us the Court's finding that once the ex-wife filed a Complaint for Modification, "thereafter [the respondent] did his real estate transactions using a different entity, Aspinwall Corporation, which is operated by [his] friend, Kevin Kane," (Ex. 7 (RBK0387)), except to complain that he did not hold any interest in Aspinwall Corporation (Tr. 6:214-215 (Respondent)). This finding was based on the respondent's inability to explain why he ceased doing business through his own trusts after 2014. See Ex. 6 (RBK0320-0323).

91. The July 28, 2015 financial statement gives the respondent's address as 15 Ell Road, Holbrook, and includes a rent expense of $101.58 per week. Ex. 55 (OBC0389). However, the respondent admitted to Judge Phelan that he paid no rent on Ell Road, only expenses. Ex. 6 (OBC0173). He had been living there since around December 2014. Ex. 6 (RBK0277, 0279). In the circumstances, it was misleading to include a rent expense on his financial statement.

92. The respondent admitted to Judge Phelan that between his July 28, 2015 financial statement and his September 4, 2015 financial statement – at a time when his law practice was, allegedly, regularly losing money and when his expenses were high—his debt *decreased*. Ex. 6 (RBK0195-0196). He could not explain this, or how he paid his expenses, claiming at one point that he was using money from his mother's estate, then backing away from that statement. Ex. 6 (RBK0197-198).

93. We find that the respondent misrepresented facts to Judge Phelan when he insisted he was not "buying and flipping houses" with Kane. Ex. 6 (RBK0257-0258).

94. The examples above underscore our agreement with Judge Phelan's conclusion that the respondent was not honest to the Court or to his ex-wife about his assets, and that he actively tried to hide assets and to obfuscate his financial picture.

95. Full and complete disclosure of assets are necessary prerequisites to the questions at the heart of a modification trial like this one, which was about the parties' respective need and ability to pay alimony. We conclude that the respondent deliberately used some or all of his trusts to disguise or conceal his involvement and earnings in what was generally a profitable real estate venture.

9. <u>Our Findings on Failure to Abide by Contempt Orders</u>

96. It is undisputed that from the outset, the respondent did not make the alimony payments the Modification Judgment and Order had imposed. ("[r]ight away we had a problem"). Tr. 1:109 (L. Kaplan); 2:41 (Respondent).

97. The respondent's basic defense was inability to pay, a claim that he did not have the money to comply. He took this position from the moment the Modification Judgment entered, thereby intentionally defying immediately, in January 2016, Judge Phelan's careful and detailed findings, made after two days of hearings and based on testimony, financial statements, and duly-admitted exhibits.

98. The proper way to challenge the alimony order would have been to appeal it or move for modification, not to ignore it and knowingly violate it. We are mindful of the Probate Court's Order of May 19, 2022, denying the ex-wife's motion to dismiss the appeals and noting: "[t]he Court is not satisfied that Husband caused delays." Ex. 74. However, some of these appeals have been pending since 2016. Whether or not the respondent caused delay, we find that had he really needed prompt relief, he would have proceeded with more vigor and dispatch. Further, the respondent did not file a Complaint for Modification until June 26, 2019. Ex. 8 (RBK0404); Tr. 3:199-200 (Respondent).

99. Despite his complaint that he was not allowed to appear and present his case at each contempt hearing, Tr. 2:68, Tr. 3:273 (Respondent), we find otherwise, based on the texts of the Orders themselves. As discussed below, the respondent was allowed to proffer evidence as well. To the extent that he is claiming that Judge Phelan believed nothing he said, an argument we express no view on, we note that Judge Menno also repeatedly found him in contempt.

100. The respondent has never claimed, nor could he plausibly have done so, that the Probate Court orders were anything but clear and unequivocal. We find that his five refusals to comply with the orders were all knowing. We have already observed that the first contempt followed close on the heels of the Modification Judgment, and we find that the respondent's disobedience was knowing. We make a few observations about the other four contempts and our conclusions that all the violations were knowing.

101. Judge Menno's **September 20, 2016 Judgment** (Second Contempt) reflects that at the contempt hearing, the respondent was represented by counsel; the docket sheet confirms this. Ex. 13 (RBK0414); Ex. 8 (RBK0401). Judge Menno appears to have reviewed, in camera, documents proffered by the respondent, yet still rejected his inability to pay defense. See Tr. 3:271-272 (Respondent). These facts underscore our conclusion that the respondent had no valid defense, and that his violation of the Court's Order was knowing.

102. Judge Menno's **March 10, 2017 Judgment** (Third Contempt) includes a specific finding that the respondent *had* the ability to pay, referencing Judge Phelan's findings on this point, and citing the Krokyn case. Ex. 15 (RBK0416). Krokyn v. Krokyn, 378 Mass. 206 (1979) holds, in pertinent part: "Common sense and basic concepts of fairness support the notion that ownership of a valuable asset demonstrates ability to pay without further inquiry as to whether payment can be enforced directly against the asset." Id. at 213-214. "Neither the court

.nor the aggrieved obligee should be required to map in detail the method by which the contemnor will transform an asset into cash. . . . Thus, both reason and precedent justify treating the ownership of assets as relevant evidence of ability to pay." Krokyn, id. at 214. See Cooper v. Cooper, 43 Mass. App. Ct. 51, 55 (1997) (citing Krokyn and rejecting husband's "claim of impoverishment because the evidence permitted a finding that it was self-imposed."). We conclude that the respondent's violation of this Order was knowing.

103. Judge Phelan's **September 13, 2018 Judgment and Memorandum of Decision** (Fourth Contempt) referenced a hearing at which the respondent testified. Ex. 19 (RBK422); Tr. 3:174-175 (Respondent). Judge Phelan heard the respondent testify, referenced, in his Order, tax materials the respondent had submitted for his review, and specifically rejected the respondent's claims of disability, noting that the respondent had not submitted any documentation "admissible to the Court" in support of this claim.

104. Before us, the respondent seemed to concede that he had the burden to submit materials in support of his claimed inability to pay. Tr. 3:181-182 (Respondent). While it is not clear that the hearing referenced in Judge Phelan's September 13, 2018 Judgment was a full evidentiary hearing, it certainly bore the hallmarks of one, including testimony from the respondent, whose burden it was to prove inability to pay, and the receipt and review of exhibits. To the extent that the respondent was unhappy that Judge Phelan cited, in support of his conclusions, McGlone's comments that he had seen the respondent in court twice representing private clients, the proper response was not to willfully ignore the Order. Ex. 19 (RBK0422). We find that his disobedience was knowing.

105. Judge Phelan's **March 29, 2019 Judgment and Memorandum of Decision** (Fifth Contempt) references a hearing at which the respondent testified. Ex. 21 (RBK425). It

includes specific references to testimony Judge Phelan rejected, concerning the respondent's alleged inability to work, and his finding that the respondent made inadequate efforts to find work. It references a physician's letter the respondent submitted, which we assume is Ex. 76. The respondent's testimony, that Judge Phelan refused to allow him to present evidence (Tr. 3:172) cannot be reconciled with these observations. Nor can he plausibly claim that the judge relied on unsworn representations by McGlone (see Tr. 3:175); Judge Phelan specifically noted that the ex-wife, under oath, adopted McGlone's representations as her own testimony. Ex. 21 (RBK0425). Again, while it is not clear that this was a full evidentiary hearing, Judge Phelan heard sworn testimony and received and reviewed exhibits. That the respondent disagreed with Judge Phelan's conclusion does not provide grounds to ignore his Order. We find this disobedience knowing.

106. Although we did not receive evidence about alleged contumacious behavior after 2019, we find that the respondent was still non-compliant in his alimony obligations at the time of our hearing. Tr. 1:111 (L. Kaplan); 1:223 (McGlone).

10. <u>Our Observations as to the Respondent's Credibility and Candor</u>

107. In addition to reviewing the respondent's conduct before Judge Phelan, we had the opportunity to watch him testify in this proceeding and to draw our own conclusions. In many particulars, we did not find him credible, and we also conclude that he actively tried to mislead us as to other issues discussed below.

108. We do not credit that the respondent did not make money on his real estate ventures with Kane, that he did at least ten deals with Kane because he "was trying to learn how to build a house," or that his unpaid work with Kane was done as a "labor of love." Tr. 6:196, 198-200 (Respondent).

109. As we found above, the respondent did indeed make money. He was not simply Kane's bookkeeper, as he would have us believe. While we do not doubt that he and Kane were friendly, his testimony that he provided years of free bookkeeping services out of his friendship to Kane is not only unbelievable, but strongly undermined by the evidence. We find far more credible Kane's testimony, described above, that he and the respondent had a joint venture to split all profits on the many, mostly profitable real estate deals they undertook together.

110. Despite the respondent's repeated claims that the real estate deals were not profitable because of the substantial expenses that offset any profit, we saw no documents to this effect. The respondent claimed that such documents existed, but they were not exhibits before the Probate Court and, more significant, he did not seek to admit them before us. Tr. 2:227-228; 6:219-220 (Respondent). In the circumstances, we are justified in drawing an inference that the documents do not exist, or do not support the respondent's claims. 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"); Mikkelson v. Connolly, 229 Mass. 360, 362 (1918) (failure of defendant to produce his ledger of account with plaintiff competent for jury's consideration; "[i]f it was within the power of the defendant to produce it and he failed to do so, it could have been inferred that, if produced, it would not have supported the claim of the defendant."). The respondent's failure to produce any documents in support of his position is fatal to his claim that the real estate endeavors were not profitable.

111. The respondent initially told us that he is a licensed realtor, an admission supported by his girlfriend's testimony. Tr. 3:260 (Respondent); 4:144 (Corcoran). This was followed by testimony, in response to a specific question about the real estate license, that he had

gotten it many years ago and had not renewed it after 2001. Tr. 6:178 (Respondent). That testimony is clearly false; the respondent appears to have renewed the license at least as recently as August 16, 2016. Ex. 30 (RBK0887) (check memo on #1085, 8/29/16 reads: "Lic Renewal for 148543-RE-AB").

112. The respondent was not forthright with us about paying personal expenses from the Tralfaz accounts in 2009-2012, initially admitting only to using the accounts in one year, 2009. Tr. 4:28 (Respondent). He at first denied writing checks for his personal expenses from the Tralfaz money market account, later admitting that he had done so but equivocating that "sometimes those [expenses] were for other people. They weren't for me." Tr. 4:27, 30 (Respondent). Finally, the respondent conceded to us that he "might have" used Tralfaz funds to pay rent to his landlord "on a couple of occasions." Tr. 4:31 (Respondent).

113. We find this testimony patently untrue, undermined as it is by the many checks in evidence showing that the respondent used Tralfaz funds numerous times, to pay landlord Strain and to pay other personal expenses, including some for his son, Matthew. E.g., Ex. 23 (534, 536, 537, 538, 540, 544, 545, 546, 556, 557, 560, 562, 564, 566, 568, 570). On at least one occasion, he transferred $3,000 of Tralfaz funds into his IOLTA account. Ex. 23 (536).

114. We do not credit the respondent's testimony that the 3,500 square foot house he lives in, at 130 Weymouth Road in Holbrook, actually belongs to Kane, or to Kane and his wife. Tr. 2:154, 3:65 (Respondent). While we credit that Kane loaned the respondent money and is owed money by him, we find that the respondent put in more money than Kane, and that the house is the respondent's. Tr. 6:43-45 (Kane). The respondent produced no documentation to different effect. We credit Kane's testimony, cited above, that the house is large and unique, and that it is worth around $700,000.

115. Turning to the respondent's tax returns, we found significant irregularities. These were impounded, and while we are reluctant to give too many specifics, we need to disclose enough to explain our reasoning.

116. We credit that the respondent has always prepared his own tax returns. Tr. 6:115-116 (Respondent). For the years 2017 to 2019, the respondent used his home for his law practice, yet deducted high amounts as rent for the business use of his home. We find that the respondent did not actually pay rent to anyone, yet listed an office rent expense of $14,400 for 2017, $20,980 for 2018, and $20,980 for 2019. Ex. 73 (impounded) (Kaplan0610, Kaplan0647, Kaplan0686). Questioned about this, he could not explain. Tr. 6:138; 6:142 ("I don't even know how it got there") (Respondent).

117. The respondent's annual alimony expense in the years 2016-2020 was $23,400/yr. (at $450/week). However, on his tax returns, he claimed he paid $39,900 in 2017; $33,850 in 2018; $76,525 in 2019, and $41,475 in 2020, for a total of $191,750. (Ex. 73 (impounded), Kaplan 601, 642, 680, 717).[18]

118. We also found an irregularity on the respondent's July 28, 2015 financial statement. When we asked about the $101 per week rent expense listed there, the respondent told us that this was prior to his living rent-free at 130 Weymouth Street. Tr. 6:158 (Respondent). He claimed that he moved to Weymouth Street in 2018 or 2019, and that before that he had lived at 5 Atherton Street. Tr. 6:159 (Respondent). We find that the respondent intended to mislead us into thinking he actually paid rent as of July 28, 2015.

119. In light of the evidence we have described above, we do not credit and find patently false the respondent's sworn statements to us that he has never purposely failed to

[18] This figure, even if it includes the additional $30,000 in alimony arrears ordered September 13, 2018 and March 29, 2010 (Ex. 19 (RBK0423) and Ex. 21 (RBK0426)), is still significantly inflated.

produce documents or to hide information from the Court or his ex-wife; that he has never unlawfully obstructed his ex-wife from seeking evidence that she was properly entitled to; that he has never failed to comply with her discovery requests; and that he has never purposely failed to include sources of funds on his financial statements. Tr. 3:201-202 (Respondent).

120. We find and conclude that the respondent has used the various trusts he has set up, and the Tralfaz bank accounts, to hide or obscure the true nature of his real estate holdings and dealings. He has hidden behind Kane to deepen and further this deception. He created an elaborate shell game of trusts and related, undisclosed bank accounts with a single goal in mind: to hide his assets and to defeat any claim against them by his ex-wife.

Conclusions of Law

121. Bar counsel charged that by bringing a proceeding or asserting an issue without a basis in fact, the respondent violated Mass. R. Prof. C. 3.1 (do not bring a proceeding or assert an issue or defense without a good faith, non-frivolous basis for doing so). The Petition did not identify any specific, frivolous proceedings or issues of fact that allegedly transgressed this rule.

122. In his PFCs, bar counsel claims as transgressive that the respondent filed an action to terminate child support after the Court had already terminated it; filed a complaint for contempt against his ex-wife alleging a failure to pay expenses he had earlier admitted had been paid; and wrongfully asserted privilege and privacy to withhold Tralfaz Trust documents. Bar Counsel's PFCs, ¶ 71.

123. Bar counsel did not carry his burden to prove a Rule 3.1 violation as the result of the action to terminate child support and the complaint for contempt. We heard scant evidence about either; they did not figure at all prominently in this disciplinary matter. We do not agree that the respondent's actions as to those matters violated Rule 3.1.

124. We reach a different conclusion as to the privilege and privacy claims the respondent made for the Tralfaz documents. As described above, we did not credit the respondent's explanation that Kane would not allow him to produce trust documents. We find that Kane was not asked about trust documents, had no interest in Tralfaz or its documents, and that the respondent's testimony on this point was false. Consequently, it was frivolous to rely on this false explanation in support of a refusal to produce properly-requested and relevant documents. We agree that bar counsel has proved a Rule 3.1 violation.

125. Bar counsel charged that by making false statements of fact to a tribunal or failing to correct false statements of material fact, the respondent violated Mass. R. Prof. C. 3.3(a)(1) (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), Rule 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation), Rule 8.4(d) (conduct that is prejudicial to the administration of justice), and Rule 8.4 (h) (any other conduct that adversely reflects on fitness to practice law).

126. Based on the facts we have found and our discussion above, we conclude that bar counsel has proved Rule 3.3(a)(1), 8.4(c) and 8.4(d) violations. The respondent was repeatedly untruthful in the Probate Court on both his financial statements and in his testimony (Rule 3.3(a)(1) and 8.4(c)), and this impacted the administration of justice (Rule 8.4(d)) by creating the need for numerous hearings, requests for sanctions, and the like, to the detriment of the limited resources of the Court and its personnel.

127. However, we have not been directed to any "other" conduct that would violate Rule 8.4(h). Ignoring the word "other" would undermine the basic and oft-repeated principle of statutory construction that effect is to be given "`to each word of a statute so that no part will be

inoperative or superfluous.'" Commonwealth v. Fleury, 489 Mass. 421, 427 (2022) (citation omitted). We are reluctant to sanction the respondent twice for the same misconduct. Bar counsel's failure to identify something more leads us to conclude that he has not proved a Rule 8.4(h) violation.

128. Bar counsel charged that by unlawfully obstructing another party's access to evidence or concealing a document or other material having evidentiary value, or otherwise failing to make a reasonably diligent effort to comply with proper discovery requests, the respondent violated Mass. R. Prof. C. 3.4(a) (lawyer shall not unlawfully obstruct another party's access to evidence or unlawfully conceal a document having potential evidentiary value), 3.4(d) (lawyer shall not, in pretrial procedure, make a frivolous discovery request or fail to make reasonably diligent effort to comply with proper request by opposing party), and 8.4(d) and (h).

129. Our discussion above, about the respondent's repeated and strenuous efforts to keep properly-requested information from his ex-wife, resulting in numerous motions and substantial Court time and resources, supports a conclusion that bar counsel has proved a violation of Rules 3.4(a) and 8.4(d).

130. In the circumstances, the Rule 3.4(d) charge seems to be a sort of lesser-included violation of Rule 3.4(a). We agree that bar counsel has proved a technical violation of Rule 3.4(d). However, we do not agree that this violation should be used to enhance the sanction; it appears to capture precisely the same conduct as the Rule 3.4(a) charge, and to double-count it for sanction purposes strikes us as unfair.

131. As we stated above, Rule 8.4(h) is addressed to "other" conduct. We have not been directed to other misconduct in the discovery context that would constitute a Rule 8.4(h) violation, and conclude that it has not been proved.

132. Bar counsel charged that by knowingly disobeying obligations under the rules of a tribunal, the respondent violated Mass. R. Prof. C. 3.4(c) (lawyer shall not knowingly disobey obligation under the rules of a tribunal).

133. We conclude that bar counsel has proved a violation of this rule, by proving the respondent's repeated and knowing violation of the Probate Court's orders to pay alimony and attorney's fees.

Matters in Mitigation and Aggravation

Mitigation

134. In his Answer, the respondent claimed mitigation as the result of the contentious nature of the divorce proceedings, and the fact that he was self-represented without having professional experience in domestic relations matters.

135. We do not agree that the contentious nature of the proceedings is mitigating. Matter of Griffith, 440 Mass. 500, 509, 20 Mass. Att'y Disc. R. 174, 188 (2003) (lawyer's obsession with the case and the contentious nature of the proceedings are not mitigating factors). As a factual matter, we find that the respondent was generally, but not always, pro se. As a legal matter, pro se status is not mitigating. See generally Jordan v. Register of Probate for Hampden County, 426 Mass. 1020, 1020 (1998) (pro se litigant in Probate Court is "held to the same standards as litigants who are represented by counsel.").

136. The respondent next cited his general reputation in the community for honesty and competency during his years at the bar. We heard no evidence about a general reputation for honesty and competency, and our findings above certainly would not support such a conclusion. More telling, it has long been the law that a good reputation at the bar is not mitigating. Matter of Moore, 442 Mass. 285, 294, 20 Mass. Att'y Disc. R. 400, 411 (2004); Matter of Alter, 389 Mass. 153, 157, 3 Mass. Att'y Disc. R. 3, 7 (1983).

137. The respondent claimed mitigation based on his history of substantial pro bono service and his provision of legal services to underserved and needy individuals. While this is not a mitigating factor, see generally Matter of Zak, 476 Mass. 1034, 1040, 33 Mass. Att'y Disc. R. 521, 532 (2017); Matter of Otis, 438 Mass. 1016, 1017, n.3, 19 Mass. Att'y Disc. R. 344, 346, n.3 (2003) (frequent pro bono representation not mitigating); Matter of Serpa, 30 Mass. Att'y Disc. R. 358, 368 (2014) (service to under-served clients not mitigating), we commend this practice and strongly encourage it. See generally Mass. R. Prof. C. 6.1 (urging lawyers to provide annual pro bono services for persons of limited means).

138. The respondent claimed mitigation based on his cooperation in the disciplinary process. While we have no reason to believe the respondent did not cooperate with bar counsel, we found above that he lied repeatedly to us. This would seem to undermine any claim of cooperation. In any event, attorneys are obliged to cooperate; even had the respondent fully done so, this would not have been mitigating. Matter of Alter, supra, 389 Mass. at 157, 3 Mass. Att'y Disc. R. at 7.

139. The respondent claimed mitigation based on his lack of any disciplinary history prior to the time period in question. "The absence of prior discipline is to be expected." Zankowski, supra, 487 Mass. at 153, 37 Mass. Att'y Disc. R. at 570. This typical mitigating factor does not serve to lessen a sanction.

140. Finally, the respondent claimed mitigation as the result of his longtime and significant health problems which pre-dated the events alleged in the petition for discipline, impacted his ability to defend himself at trial, and continue to the present day.

141. A medical condition or disability can be mitigating, but only if it caused the lawyer's misconduct. Matter of Haese, 468 Mass. 1002, 1007, 30 Mass. Att'y Disc. R. 197, 206

(2014) (finding medical condition did not cause intentional misconduct); Matter of Schoepfer, 426 Mass. 183, 188, 13 Mass. Att'y Disc. R. 679, 685 (1997). The burden is on the respondent to prove causation. BBO Rules, Sec. 3.28.

142. We do not doubt that the respondent has some chronic medical conditions, which he has identified as chronic pancreatitis; severe bilateral carpal tunnel; diabetes; Dupuytren's disease; arthritis; stenosis; tendonitis; fibromyalgia; hearing loss; ADD; dyslexia; sleep disorder; and thyroid disease. Tr. 3:67-69, 83 (Respondent). However, we find and conclude he has not proved that any of his medical conditions caused his misconduct.

143. Many of these conditions pre-date by some years the respondent's misconduct. Despite their presence, he managed to graduate college with highest honors, and to graduate law school with honors. He has enjoyed some success as a lawyer. Tr. 2:92-93 (Respondent). He is proud of his robust pro bono practice, citing his placement since 2010 on the Adams Pro Bono Honor Roll, an honor reserved for lawyers who have done fifty or more pro bono hours. Tr. 2:96-99 (Respondent). He has worked for Kane for decades, beginning when he was married (Tr. 2:78 (Respondent)); while their relationship may have cooled as of late, Kane did not indicate that this was because of any lack of ability on the respondent's part.

144. We noted above that the respondent recently became, and remains, a town meeting member for the Town of Holbrook.

145. The respondent's success at pursuits he enjoys undermines his claim of being permanently and totally disabled. Cf. Matter of Levy, 32 Mass. Att'y Disc. R. 334, 344 (2016) (citing committee's refusal to credit claims of inability to focus or function, "based in part on the various tasks that the respondent was able to complete during this period.").

146. Most compelling, the respondent has not proved any causation between any of his alleged medical conditions and the misconduct we have found, specifically, lying to the Probate Court, obstructing access to evidence, knowingly disobeying Court orders, and lying to us. We are at a loss to see how any of this misconduct could have been caused by a medical condition or disability.[19]

Aggravation

147. In aggravation, bar counsel has argued that the respondent's conduct was motivated by an interest to benefit himself personally at the expense of his ex-wife. We agree that this is a factor in aggravation. Matter of Pike, 408 Mass. 740, 745, 6 Mass. Att'y Disc. R. 256, 261-262 (1990).

148. Bar counsel has argued that the respondent caused harm to his ex-wife and to the administration of justice, and that these are aggravating factors. We agree that the respondent caused harm to his ex-wife; she had to incur great expense and inconvenience to get the discovery she was entitled to, and she had to file numerous motions for contempt to get the respondent to pay what he owed. This type of harm is a factor in aggravation. Matter of Aufiero, 13 Mass. Att'y Disc. R. 6, 25 (1997).

149. We also agree that the respondent caused harm to the administration of justice. See generally Matter of Foley, 439 Mass. 324, 337, 19 Mass. Att'y Disc. R. 141, 156 (2003) (finding harm from effect of lawyer's conduct "on the profession and the public's confidence in its integrity"); Matter of Goodman, 22 Mass. Att'y Disc. R. 352, 366 (2006) ("misconduct constitutes harm to the profession in the dishonor it brings to all of us in the eyes of the public.").

[19] To the extent that the respondent is arguing that he violated the Probate Court orders because he could not pay due to his inability to work as the result of his disabilities, we do not credit this attenuated claim. We have already found that he *did* work and did earn money, but hid the proceeds. We would also note that despite some evidence of disability, e.g., Ex. 54, our findings above reflect our conclusion that even though the respondent has not earned wages as a W-2 employee, and even though his enormous alleged expenses dwarfed any self-employed business income he earned, the respondent is clearly able to work at his own pursuits.

However, bar counsel twice charged violations of Mass. R. Prof. C. 8.4(d) (harm to the administration of justice), and we agreed that these were proved. Labeling the misconduct we have already found as an aggravating factor would be double-counting, in our view, and thus unfair.

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

151. We agree that a lack of insight or a failure to acknowledge the effects of misconduct is a factor in aggravation. We do not require a respondent to fall on his sword; he is allowed to present a defense. See Matter of Zankowski, supra, 487 Mass. at 153, 37 Mass. Att'y Disc. R. at 571. That the defense does not prevail does not make its assertion aggravating. However, "[w]hile a respondent is entitled to defend himself, he is not entitled to testify falsely." Matter of Ablitt, 486 Mass. 1011, 1019, 37 Mass. Att'y Disc. R. 1, 16 (2021). The respondent's lies, among them ascribing to Kane responsibility for trusts about which Kane knew nothing, and his steadfast insistence that his work for Kane was a labor of love and not at all remunerative, had a single goal: to defeat his ex-wife's right to alimony. These, and other flagrant misrepresentations, underscore our conclusion that the respondent has no insight about, or appreciation of, our rules of professional conduct and the ethical constraints on our attorneys. Bar counsel has proved this aggravating factor.

152. We do not agree with bar counsel that the respondent's failure to comply with the Probate Court's order is a factor in aggravation. This misconduct is at the heart of the respondent's Rule 3.4(c) violation, which we concluded above has been proved. Therefore, it would be double-counting to find it a factor in aggravation.

153. The respondent's marked lack of candor during the disciplinary hearing is a significant factor in aggravation. We concluded above that he lied to us repeatedly. Honesty is the cornerstone of effective legal practice. "[T]he hearing committee may determine whether to credit the testimony and evidence, and it may consider in aggravation any lack of candor it finds." Matter of Zankowski, supra, 487 Mass. at 153, 37 Mass. Att'y Disc. R. at 571 (2021); Matter of Hoicka, 442 Mass. 1004, 1006, 20 Mass. Att'y Disc. R. 239, 243 (2004).

Recommended Disposition

Bar counsel recommends a two-year suspension. The respondent recommends dismissal. We recommend a suspension of eighteen months. If that is decreased below a year and a day, we nonetheless strongly recommend a reinstatement hearing.

As a threshold matter, we do not agree with the respondent's claims that Rules 3.1 and 3.3 do not apply to a self-represented lawyer. Respondent's PFCs, pp. 16 and 17. Nothing in either rule's text limits its reach to a lawyer representing a client other than himself. While the respondent is correct that comments to both rules reference "clients," the Scope section of the Rules of Professional Conduct, at [9], clarifies that "The Comment accompanying each Rule explains and illustrates the meaning and purpose of the Rule. . . . The Comments are intended as guides to interpretation, but the text of each Rule is authoritative."

More compelling, much of the case law we describe below involves self-represented lawyers. Nothing in any of those cases suggests that the rules at issue here, among them 3.1 and 3.3, do not apply in the circumstances.

We turn to that case law. A recent full bench decision, Matter of Laroche-St. Fleur, 490 Mass. 1020, 38 Mass. Att'y Disc. R. __ (2022) cannot easily be distinguished from this case. It featured a self-represented lawyer who committed misconduct in her own divorce. The Court

noted that "[t]he primary issue in the divorce was the division of assets, including the marital home." Id. at 1021; 38 Mass. Att'y Disc. R. at __. On five occasions, the lawyer submitted financial statements to the Court with the false claim that there was a mortgage on the home. She also claimed she had a loan from a third party, which in fact was the same money she had elsewhere claimed as a mortgage, and, most pertinent to our case, failed to disclose certain bank accounts on her financial statements. Id. at 1021-1022; 38 Mass. Att'y Disc. R. at __. She eventually revealed, to the Court and opposing counsel, that that she had falsely listed the alleged loan as mortgage debt.

In addition, Laroche-St. Fleur was found in contempt "up to six" times, among them for her failure to cooperate with a discovery master; her failure to pay the discovery master; and her refusal to sell the marital home or to cooperate with the master in to do so. See generally Matter of Rosenberg, 491 Mass. 1027, 1029, 39 Mass. Att'y Disc. R. __, __ (2023) (SJC observes that "an attorney's willful, repeated noncompliance with court orders and failure to comply with discovery obligations typically results in a term suspension."). Laroche-St. Fleur was also found to have filed a frivolous Rule 60(b) motion; the Court cited approvingly the Board's finding that her appeals from its denial were intended to hamper and delay her husband in his receipt of divorce benefits. In total, her conduct violated Mass. R. Prof. C. 3.3(a)(1), 3.3(a)(3), 3.4(c), 8.4(d), and 3.1. Id. at 1020; 38 Mass. Att'y Disc. R. at __. The Court noted that the Board had found no mitigating factors, and many aggravating factors. Id. at 1024; 38 Mass. Att'y Disc. R. at __.

On appeal, the Court imposed an eighteen-month suspension. It cited the Hearing Committee's observation that while a two-year suspension is considered typical for making false statements under oath, "similar forms of misconduct committed during the course of an

attorney's own divorce typically have garnered suspensions ranging from several months to one year." Id. at 1024; 38 Mass. Att'y Disc. R. at __. The Court cited numerous cases in support of this proposition, among them Matter of Ring, 427 Mass. 186, 192-193, 14 Mass. Att'y Disc. R. 651, 663 (1998) (three-month suspension); Matter of Finnerty, 418 Mass. 821, 828-830, 10 Mass. Att'y Disc. R. 86, 95-96 (1994) (six-month suspension); Matter of Leahy, 28 Mass. Att'y Disc. R. 529, 539 (2012) (two-month suspension); Matter of Kilkenny, 26 Mass. Att'y Disc. Rep. 288, 290 (2010) (three-month suspension); Matter of Okai, 11 Mass. Att'y Disc. R. 187, 190 (1995) (one- year suspension).

Our review of the apposite case law underscores our view that a suspension of eighteen months would be appropriate here. The other cases we have reviewed, where shorter suspensions were imposed, did not feature anywhere near the constellation of misconduct we found here, or the numerous aggravating factors. In Matter of Ring, the self-represented lawyer was found in contempt at least seven times. However, he did not lie to the Court, did not hide evidence, and stipulated to the misconduct, which was mitigated by depression. In imposing a short suspension, the Court noted that bar counsel had not proposed a suspension, and the Board did not press for more than three months. The Court wrote: "Although we would have proposed a longer suspension if the issue had come to us without the background recited in this opinion, we are content to direct that the single justice enter a judgment suspending the lawyer for a period of three months." Ring, 427 Mass. at 193, 14 Mass. Att'y Disc. R. 663.

In Matter of Finnerty, the lawyer deliberately misrepresented his assets in his financial statement "to obtain an unwarranted judgment, favorable to him, with respect to the division of marital assets." Finnerty, 418 Mass. at 828, 10 Mass. Att'y Disc. R. 93-94. His misconduct was

found to have violated the predecessor rules to Rules 8.4(c), (d) and (h). There was no other misconduct, and no aggravating factors. Finnerty was suspended for six months.

The conduct at issue in Leahy (knowing violation of Court orders regarding custody; misrepresentation to Court and guardian ad litem, including about wife's mental state; no personal financial motive; with aggravation) and Kilkenny (lawyer suggested revisions to employer's letter about lawyer's compensation, decreasing it; left blank line on financial statement where gross yearly income should have been; lied to Court to the effect that lawyer had fully and completely disclosed her assets) is significantly less serious than the respondent's. Okai (stipulation to misconduct in three matters, including four contempts in own divorce, with aggravation including prior discipline) is harder to compare, because of the misconduct unrelated to divorce, but appears to us to be less severe, with less pervasive misconduct.

On balance, guided heavily by the Court's analysis and sanction in Laroche-St. Fleur, we recommend an eighteen-month suspension. Should the ultimate sanction be less than a year and a day, we would strongly recommend a reinstatement hearing in light of our findings above, among them that the respondent was flagrantly and pervasively dishonest before numerous tribunals, and that he appears to have no regard or respect for the rules of professional conduct.

Conclusion

For the misconduct and rule violations we have found above, we recommend that the respondent, Ronald Bruce Kaplan, receive an eighteen-month suspension from the practice of law.

Respectfully submitted,

By the Hearing Committee,

John A. Ullian

John A. Ullian, Esq., Chair

Joseph D. Lipchitz

Joseph D. Lipchitz, Esq., Member

Kathy L. Parker

Kathy L. Parker, Member

Dated: May 17, 2023