IN RE: MATTER OF GARY R. DOLAN
BBO NO. 677841

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

BAR COUNSEL, **Petitioner** **vs.** **GARY DOLAN, ESQ.** **Respondent**	**BBO File No. C2-20-00266763**

HEARING REPORT

On June 29, 2023, bar counsel filed with the Board of Bar Overseers a petition for discipline in this matter. In summary, the five-count petition charged the respondent with violations of the Massachusetts Rules of Professional Conduct arising out of his conduct in asserting frivolous claims in multiple filings with various courts and making statements concerning the qualifications and integrity of judges and attorneys, knowing the statements to be false or with reckless disregard as to their truth or falsity.

On July 19, 2023, the respondent, proceeding pro se, filed an answer to the petition for discipline. The respondent admitted most of the factual allegations in the petition but denied the allegations of misconduct. In mitigation, the respondent claimed a lack of due process and his failure to be heard by the courts on his various claims.

On December 5, 2023, bar counsel filed a motion to amend the petition for discipline to add a sixth count, necessitated by the respondent's continued alleged misconduct after bar counsel filed the original petition. The sixth count included additional charges of making frivolous claims and false statements concerning the qualifications and integrity of judges, knowing the statements to be false or with reckless disregard as to their truth or falsity. Bar counsel also added charges that the respondent knowingly made false statements of fact and law to a tribunal, and that, in an attempt to influence the court, the respondent engaged in ex

parte communications with the court during a proceeding. The Board allowed the motion on December 6, 2023 and the amended petition for discipline was served on the respondent on December 8, 2023.

On December 17, 2023, the respondent, proceeding pro se, filed an answer to the amended petition for discipline. The respondent admitted to most of the factual allegations but denied the allegations setting forth the violations of alleged misconduct. The respondent reiterated his claim in mitigation that he was denied due process. A six day in-person public hearing was held on March 11, 12 and 13, 2024 and April 16, 17 and 24, 2024. Bar counsel called Attorneys Robert R. Pierce, Joseph D. Lipchitz, Nora R. Adukonis, John J. Jarosak, William J. Thompson and the respondent as witnesses. The respondent testified on his own behalf. One hundred and seventy-two (172) exhibits were admitted in evidence.

After several extensions of time, bar counsel filed proposed findings of fact, conclusions of law and a sanction recommendation (PFCs) on September 6, 2024. The respondent did not file any PFCs.

As a preliminary matter, we note that the respondent's charged misconduct occurred over eight years (2015-2023). It occurred in five lawsuits and eight appeals, all stemming from injuries allegedly sustained by the respondent's client, Nellie Saninocencio, in a slip and fall in 2012. We adopt the nomenclature assigned in bar counsel's amended petition for discipline, as follows:

- "Personal Injury Action": Saninocencio vs. Bradford Village Condominium Trust, et al., Essex Superior Court Civil Action No. 1277CV02240.
- "PI Appeal": Appeal from the defense verdict in Saninocencio vs. Bradford Village Condominium Trust, et al. Appeals Court No. 2016-P-1265.
- "SJC PI Appeal": petition for further appellate review (FAR) in the Personal Injury Action. SJC No. FAR-25622.

- "Middlesex Superior Court Action": lawsuit filed against the lawyers who defended the Personal Injury Action, Saninocencio vs. Pierce & Mandell, PC, et al., Middlesex Superior Court No. 1881CV00900.

- "Middlesex Appeal": appeal from the dismissal of the Middlesex Superior Court Action and interlocutory orders. Appeals Court No. 2019-P-480.

- "Middlesex SJC Appeal": petition for FAR from Appeals Court judgment in the Middlesex Appeal. SJC No. FAR-27673.

- "Federal Court Action": lawsuit in federal court against the defense lawyers in the personal injury action, as well as one superior court judge and the entire bench of the SJC. Saninocencio vs. Pierce and Mandell, P.C., et al., United States District Court for the District of Massachusetts, Case No. 1:21-cv-11455-RGS.

- "First Circuit Action": appeal from sanctions imposed on the respondent in the Federal Court Action. First Circuit No. 22-1110.

- "2020 Suffolk Superior Court Action": lawsuit against Lubin & Meyer, P.C., the law firm to whom the respondent had referred the medical malpractice case on behalf of Sanincencio for injuries she sustained in the treatment of the injuries allegedly sustained in the original 2012 slip-and-fall injury. Saninocencio vs. Lubin & Meyer, P.C., Suffolk Superior Court No. 2084-CV-02420.

- "2020 Suffolk Appeal": appeal from the dismissal of the 2020 Suffolk Superior Court Action. Saninocencio vs. Lubin & Meyer, P.C., Mass. Appeals Court No. 2021-P-1126.

- "2020 Suffolk SJC Appeal": petition for FAR from Appeals Court judgment in the 2020 Suffolk Appeal. SJC No. FAR-29101.

- "2022 Suffolk Superior Court Action": a re-filed lawsuit against Lubin & Meyer, P.C. Saninocencio vs. Lubin & Meyer, P.C., Suffolk Superior Court, No. 2284-CV-01319.

- "2022 Suffolk Appeal": appeal from the dismissal of the 2022 Suffolk Superior Court Action. Saninocencio vs. Lubin & Meyer, P.C., Mass. Appeals Court No. 2023-P-0552.

FINDINGS OF FACT[1]

[1] The transcripts are referred to as "Tr. __: __"; the matters admitted in the amended answer are referred to as "Ans. ¶_"; and the hearing exhibits are referred to as "Ex. _." The matters admitted by the answer include those deemed admitted as a result of the respondent's failure to deny them in accordance with B.B.O. Rules § 3.15(d). See Matter of Moran, 479 Mass. 1016, 1018, 34 Mass. Att'y Disc. R. 376, 379 (2018). We have considered all of the evidence, but we have not attempted to identify all evidence supporting our findings where the evidence is cumulative. We credit the testimony cited in support of our

"The Personal Injury Action"

1. On December 3, 2012, the respondent filed a personal injury action in Essex Superior Court concerning a slip and fall incident on behalf of Nellie Saninocencio ("Saninocencio")[2] and against defendants Bradford Village Condo Trust and Property Management, Inc., also known as Property Management, Inc. New England. See San Inocencio, Nellie vs. Bradford Village Condo Trust et al., Essex Superior Court, Docket No. 1277CV02240 ("Personal Injury Action"). (Ans. ¶ 3; Ex. 1, docket sheet).

2. In order to understand the disciplinary case, it is necessary to understand the nature and travel of the underlying personal injury case, where the respondent—in his first case as a lead counsel and his only case for eight or nine years—represented the plaintiff. (Tr. III:138-139, respondent).

3. On or about January 23, 2012, Saninocencio slipped and fell on ice/snow outside her residence at 13 Myles Standish Drive, Bradford, Massachusetts, a condominium complex known as Bradford Village Condominiums. (Ex. 3, AGR-0014 to 0015).

4. The relevant parties to the litigation commenced by the respondent are as follows:

   (a) Bradford Village Condominium Trust (Bradford Village) owned the property. (Ex. 3, joint pre-trial memorandum, AGR-0014).

   (b) KJ Decker Enterprises, Inc. d/b/a Property Management, Inc. (KJ Decker or Property Management, Inc. New England) managed the property. (Ex. 3, AGR-0015).

   (c) Kershaw Landscaping contracted with KJ Decker for the removal of snow

findings to the extent of the findings, and we do not credit contradictory testimony. In some instances, we have specifically indicated testimony that we do not credit.

[2] The spelling of Saninocencio's name appears as either Saninocencio or San Inocencio in court filings. Our report uses the spelling "Saninocencio," as did the petition for discipline.

and ice. (Id.).[3]

(d) The removal of snow and ice was subcontracted to Erhardt & Shallow Landscaping, LLC (Erhardt), which was run by Ryan Erhardt. (Ex. 3, AGR-0016).

5. The defendants claimed that Erhardt and his crew performed the snow removal in the following fashion: A crew would arrive at the scene with two trucks and at least two men to shovel and treat the walkways. Once walkways were shoveled and treated, they would knock on doors to ask residents to move their cars so that the areas in which the cars are parked could be plowed. The cars would be moved to areas already plowed, and then the areas where the cars were previously parked would be plowed. They did not knock on the doors to contact residents to move their cars until the walkways were shoveled and treated. (Ex. 3, AGR-0014 to 0015).

6. In response to a knock on her door by the Erhardt crew, Saninocencio came out to move her car and fell after having done so, while returning to her apartment. (Ex. 9, AGR-0126, 0129 to 0133).[4]

7. She was taken to Lawrence General Hospital, where surgery was ultimately performed by Dr. Imad Abumeri. (Tr. V:99-100, respondent). Unfortunately, Dr. Abumeri apparently cut an aortic artery, resulting in extensive bleeding. (Ex. 5, AGR-0032 and 0033,

[3] There is some inconsistency as to who contracted with Kershaw. On page one of the joint pre-trial memorandum (AGR-0014), it says KJ Decker contracted with Kershaw. On page three of the same document (AGR-0016), it says that Kershaw contracted with the condominium association itself and not with the property manager, KJ Decker. This discrepancy is immaterial to our findings of fact, conclusions of law and sanction recommendation. Either way, it is undisputed that the snow removal was subcontracted to Erhardt, who performed the work on the day of the plaintiff's fall.

[4] Apparently, snow was initially removed from part of the parking areas. After that, residents were asked to move their cars so the snow could be removed from the rest of the parking areas. The plaintiff fell while returning to her apartment, after moving her car and another car belonging to an elderly neighbor. (Ex. 9, AGR-0105 to 0106). As discussed below, there is some dispute as to where her fall occurred.

hearing transcript, the doctor severed the aortic artery in the middle of her back during surgery). Saninocencio was airlifted from Lawrence General Hospital to Massachusetts General Hospital for treatment, where she underwent emergency surgery. (Tr. V:100, respondent). Her medical bills from her treatment were over $311,000. (Ex. 3, AGR-0019).

8. The respondent referred Saninocencio's medical malpractice case against Dr. Abumeri and his group to Lubin & Meyer, P.C. (Tr. I:43-44, respondent; Tr. IV:13, Thompson; Ex. 150). Lubin & Meyer accepted the case. (Tr. IV:13, Thompson). As discussed in more detail below, Lubin & Meyer recommended, after several years of litigation and approximately two weeks before trial, that Saninoncencio not take the medical malpractice case to trial. (Tr. I:44, respondent; Tr. IV:26-29, Thompson).

Preliminary Allegations

9. The respondent, Gary Dolan, was duly admitted to the bar of the Commonwealth on October 22, 2010. (Ans. ¶ 2).

10. The respondent has been employed as a heating fuel delivery truck driver since approximately 2015. He described his only legal work from 2015 to the date of the hearings in this matter as trying to expose alleged corruption in the courts through litigation of Saninocencio's slip and fall case. (Ex. 135, AGR-1988; Tr. III:138, respondent).

11. As noted, on December 3, 2012, the respondent filed a personal injury action in Essex Superior Court concerning the slip and fall incident on behalf of Saninocencio and against defendants Bradford Village and Property Management. The respondent did not file suit directly against Erhardt. (See e.g., Ex. 4, AGR-0024, showing that Erhardt is only a third-party defendant).

12. Bradford Village and Property Management were represented by Attorney John Jarosak, Esq. ("Jarosak") and Nora Rose Adukonis, Esq. ("Adukonis") of Litchfield Cavo LLP

("Litchfield Cavo"). (Ans. ¶ 4; Ex. 1).

13. On July 29, 2013, the respondent filed an Amended Complaint in the Personal Injury Action, renaming defendant Property Management, Inc. as KJ Decker Enterprises, Inc. d/b/a Property Management, Inc. and adding Kershaw Landscaping as a defendant. (Ans. ¶ 5; Ex. 1, AGR-0003).

14. Kershaw Landscaping was represented by Attorney Robert Pierce, Esq. ("Pierce") of Pierce and Mandell, P.C. ("Pierce Mandell"). (Ans. ¶ 6; Ex. 1).

15. On May 16, 2014, Kershaw Landscaping filed a third-party complaint in the Personal Injury Action against Erhardt & Shallow Landscaping, LLC. (Ans. ¶ 7; Ex. 1, AGR-0004).

16. Erhardt & Shallow Landscaping, LLC (Erhardt) was represented by Attorney Joseph Noone, Esq. ("Noone") of Avery Dooley & Noone, LLP ("Avery Dooley").[5] (Ans. ¶ 8; Ex. 1).

17. On April 1, 2015, a Notice to Appear for a Final Pre-Trial Conference was issued by the court. The parties were ordered to file a joint pre-trial conference memorandum three business days prior to the pre-trial conference. (Ans. ¶ 9; Ex. 2, AGR-0009 to 0010).

18. The pre-trial conference was originally scheduled for May 26, 2015, but it was rescheduled to June 17, 2015. (Ans. ¶ 9; Ex. 2, AGR-0011 to 0013). As part of the pre-trial memorandum, the parties were required, inter alia, to identify expert witnesses they intended to call at trial. (Ans. ¶ 9; Ex. 2, notice to appear for pre-trial conference).

19. The preparation of pre-trial memoranda was typical in civil litigation cases and was accomplished by circulating drafts among the parties or their counsel, who then made edits

[5] Bradford Village Condo Trust, KJ Decker Enterprises, Inc. d/b/a Property Management, Inc., Kershaw Landscaping, and Erhardt & Shallow Landscaping, LLC will be collectively referred to as the "Personal Injury Defendants."

and agreed upon a final version. (Tr. III:6-9, Jarosak).

20. Counsel for all parties in the Personal Injury Action, including the respondent, collaborated on the pre-trial memorandum as required by the court. (Ans. ¶ 10). Versions of the pre-trial memorandum were circulated via email among all counsel involved in the action. (Ans. ¶ 10; Ex. 39, AGR-0652 to 0665; Tr. I:64-65, Pierce; Tr. II:178, Adukonis).

21. Pierce's practice was to be overinclusive in his disclosures of witnesses and he typically listed "anybody" who may testify. (Tr. I:59, Pierce).

22. Throughout the pendency of the Personal Injury Action, Pierce communicated with the respondent by email without difficulty and was never told by the respondent that he should not communicate with him by email. (Tr. I:63-64, Pierce).

23. The respondent used grdolan.law@gmail.com as his email address in the court documents and to communicate with the Personal Injury Defendants. (Tr. I:68-69, Pierce; Tr. III:11, Jarosak; Tr. III:145, 155, respondent).

24. On June 16, 2015, at 8:58 a.m., Pierce emailed the respondent, Jarosak, and Noone with his proposed revisions to the "latest version of the PT Memo [he] could find" and requested that the respondent and Noone provide him with any changes to be made to the document by later that afternoon. (Ex. 26, AGR-0382 to 0383; Ans. ¶ 11, admitted in part).

25. On June 16, 2015, at 1:53 p.m., Jarosak emailed Pierce, Noone, and the respondent and suggested adding Dr. Michael Kennedy's ("Dr. Kennedy") name to the expert section of the memorandum: "Do we at least identify Dr. Kennedy in the Expert section?" (Ex. 26, AGR-0382; Ex. 39, AGR-0656; Tr. I:66-67, Pierce; Tr. III:12-13, Jarosak; Tr. II:155, respondent).

26. Dr. Kennedy was a potential defense expert witness. Noone was the point of contact with Dr. Kennedy on behalf of all of the Personal Injury Defendants, who split the cost of Dr.

Kennedy. (Tr. I:83, Pierce).

27. Pierce added Dr. Kennedy's name to the memorandum and included the suggestion of bifurcating the trial between liability and damages. (Ex. 26, AGR-0382; Ex. 39, AGR-0656; Tr. I:66-67, Pierce; Tr. III:12-13, Jarosak; Tr. III:155, respondent).

28. On June 16, 2015, at 2:29 p.m., Pierce emailed Jarosak, Noone, and the respondent; he attached an unsigned copy of the proposed final pre-trial memorandum with the additions referenced above. (Ex. 26, AGR-0381 to 0382; Ex. 39, AGR-0656, 0661 to 0663; Tr. II:188-189, Adukonis; Tr. III:155-156, respondent).

29. In the body of the email, Pierce wrote that he had added Jarosak's suggestions to the memorandum and included the comment, "Gary, please note that we will be discussing with the Judge the possibility of bifurcating the trial." (Ex. 39, AGR-0656, 0661 to 0663; Tr. I1:67, 70, Pierce; Ex. 26, AGR-0378 to 0379, Pierce affidavit).

30. The respondent received the emails described in the paragraphs above on the date they were sent, along with the unsigned copy of the final agreed-upon version of the Executed PTC Memorandum, which was attached. (Tr. V:73-76, Tr. VI:84, respondent).

31. The respondent did not respond to the June 16, 2015 emails. (Tr. I:67, Pierce). The respondent saw the emails, including Pierce's email of June 16, 2015, at 2:29 p.m., but did not open it and read it, or the attachment thereto, until two years later. (Tr. V:73-74, respondent).

32. On June 17, 2015, Pierce, Noone, Adukonis (on behalf of Jarosak), and the respondent appeared at the Essex Superior Court for the pre-trial conference. (Tr. I:72, Pierce).

33. Jarosak did not appear at the pre-trial conference because he was preparing witnesses for trial in another matter. (Tr. II:186, Adukonis; Tr. III:53-54, Jarosak).

34. On June 12, 2015 (prior to the foregoing exchange of emails and prior to the pre-trial

conference), the respondent had filed with the Essex Superior Court clerk's office an unexecuted draft of his version of the pre-trial memorandum (the "Unexecuted PTC Memorandum") that predated the draft circulated by Pierce on June 16, 2015. (Ans. ¶ 12, Ex. 3; Tr. III:157-158, respondent).

35. The respondent did not tell counsel for the Personal Injury Defendants that he had filed the Unexecuted PTC Memorandum with the court. (Tr. I:68, 73, Pierce; Tr. II:182, Adukonis).

36. The respondent filed the Unexecuted PTC Memorandum with the court on June 12, 2015, because the pre-trial order required the joint pre-trial memorandum to "be filed with the Court no less than three business days prior to the pre-trial conference." (Tr. V:66, respondent; see Ex. 2 at AGC-0010). Jarosek testified that, in practice, this rarely occurred and pre-trial memoranda were typically filed at the pre-trial conference. (Ex. 2; Tr. III:9, Jarosak).

37. The pre-trial conference was held before Judge Maynard Kirpalani on June 17, 2015. (Ans. ¶ 13; Ex. 5; Tr. I:74-75, Pierce; Ex. 4, AGR-0027, ¶ 6D). The respondent testified that he handed out copies of the Unexecuted PTC Memorandum to defense counsel for the Personal Injury Defendants at the time of the pre-trial conference and thought that what he was given by defense counsel to sign was the same thing that he distributed. (Tr. V:79-82, respondent). Two of the witnesses testified that the respondent did not provide a copy of the Unexecuted PTC Memorandum to defense counsel for the Personal Injury Defendants either at the time it was filed or at any time thereafter. (Tr. I:74, VI:87, Pierce; Tr. II:182, Adukonis).

38. Pierce brought unsigned copies of the to-be Executed PTC Memorandum attached to his email of June 16, 2015, at 2:29 p.m., to the court for the pre-trial conference, which was circulated. (Tr. I:67, Pierce; Tr. 2:178-179, Adukonis). He gave unsigned copies of the

Executed PTC Memorandum to all counsel at the time of the pre-trial conference. (Tr. 1:67, 6:86, Pierce; Tr. II:180, Adukonis).

39. In the courtroom, prior to the time the case was called, all counsel, including the respondent, signed one copy of the pre-trial memorandum circulated by Pierce on June 16, 2015 (Ex. 4, the "Executed PTC Memorandum"). (Tr. I:67, 71-73, Pierce; Tr. I:179-180, Adukonis; Tr. III:139-140, respondent).

40. The respondent did not make any objection when he signed the Executed PTC Memorandum, nor did he read or ask any questions about its contents. (Ex. 4; Tr. I:67, 71-72, Pierce; Tr. II:180-181, Adukonis). He signed it without reading it. The respondent's explanation was that he thought he was signing what he last read (i.e., his own Unexecuted PTC Memorandum). (Tr. V:79-82, respondent).

41. The Unexecuted PTC Memorandum and the Executed PTC Memorandum were not identical. (Ans. ¶ 15; Ex. 3, 4). In the Executed PTC Memorandum, bifurcation of the trial between liability and damages was proposed, and Dr. Kennedy was identified as a potential expert witness. (Ex. 4; Tr. I:67, (Pierce); Tr. III:140, respondent). In the Unexecuted PTC Memorandum, the Personal Injury Defendants did not identify a specific medical expert and instead reserved "the right to call an expert physician." (Ans. ¶ 17; Ex. 3, AGR-0018, ¶ 6D).

42. Bar counsel urges us to credit defense counsel and not the respondent concerning the handling and signing of the Executed PTC Memorandum. (Bar counsel's PFCs at ¶ 35). We need not decide who to believe in this because it was clear that there was confusion among the various counsel about what was going on and what was being passed around. While the respondent says he was surprised and blind-sided by having signed a joint pre-trial memorandum that he did not realize listed Dr. Kennedy as a potential witness, he was nevertheless correct that

the draft submitted by defense counsel and signed by all counsel did not contain a detailed expert witness disclosure as required by the "Notice to Appear for Final Pre-Trial Conference." (Ex. 2, AGR-0009, ¶ (6)(a); AGR-0012 to 0013; Tr. I:80-82, Pierce; Tr. III:37-38, Jarosak).

43. At the pre-trial conference, Pierce raised the possibility of bifurcation. (Ex. 5, AGR-0037; Tr. I:78-80, Pierce). The court stated that if the Personal Injury Defendants wanted to request a bifurcation of the trial, they should file a motion with the court, so that the parties would have the opportunity to brief the issues. No deadline for filing the motion was set. (Ex. 5, hearing transcript, AGR-0037 to 0038; AGR-0041 to 0042). Pierce also told the court that the Personal Injury Defendants would likely use a medical expert at trial. (Ex. 5, AGR-0043).

44. The court set October 30, 2015, as the deadline for the Personal Injury Defendants to disclose all medical experts, and a trial date was scheduled for January 4, 2016. (Tr. I:82, Pierce; Ex. 4, AGR-0021; Ex. 5, AGR-0046). An endorsement with the deadline to disclose experts was written on the first page of the Executed PTC Memorandum. (Ex. 4; Ex. 5, AGR-0044 to 0045).

45. The number of trial days needed was also discussed, and it was agreed that a two or three-day jury trial would be needed if the case were bifurcated and no experts were to testify. (Ex. 5, AGR-0042 to 0043).

46. At the June 17, 2015, pre-trial conference, Pierce told the court that the Personal Injury Defendants would likely use a medical expert at trial if the trial were not bifurcated. The court suggested scheduling a five-day trial, considering the time needed for empanelment and voir dire of a jury. (Ex. 5, AGR-0043).

47. The Personal Injury Defendants did not provide medical expert disclosures by the October 30, 2015, deadline because the plaintiff did not disclose an expert, because Dr. Kennedy's opinion was not helpful, and the Personal Injury Defendants "felt [the respondent]

was incompetent, and [they] thought [they] would win on liability." (Tr. I:82, VI:88-89, Pierce; Tr. III:89, 130-131, Jarosak).

48. On December 11, 2015, the Personal Injury Defendants filed an Emergency Motion to Bifurcate Trial and argued, inter alia, that the bifurcation of liability and damages would promote judicial economy and preserve the parties' resources, including the need for the Personal Injury Defendants to "shoulder the significant costs of potentially proffering expert testimony […]." (Ex. 6).

49. There was hearing testimony that the motion was filed as an emergency rather than pursuant to Superior Court Rule 9A because, by the time the Personal Injury Defendants filed it, the upcoming January trial date did not allow sufficient time to comply with the Rule. (Tr. I:84, Pierce; Tr. III:16-17, 61-62, Jarosak).

50. The testimony by defense counsel about timing are not correct. We take administrative notice of Superior Court Rule 9A and the fact that a movant must first serve its motion on the opposing party and allow ten days for an opposition to be served, before the movant can file actually file its "Rule 9A package" with the court. Therefore, a motion to bifurcate, if served under Rule 9A on December 11, 2015, could not be filed with the court until December 21, 2015.[6] Because of the holidays it might not be acted on before the first day of trial (January 4, 2016), but that is what happened anyway. Moreover, one could rightly criticize the defense lawyers for waiting at least two months before filing their motion to bifurcate. On the other hand, the respondent was able to submit a timely opposition and the motion was not argued until the first day of trial. The respondent made no claim that he was not prepared to argue the motion at that time.

[6] Both Pierce and Jarosak basically alluded to this in their hearing testimony. (Tr. I:84, Pierce; Tr. III:16-17, 61-62, Jarosak).

51. On December 24, 2015, the Essex Superior Court docketed the respondent's opposition to the Emergency Motion to Bifurcate the Trial. In his opposition, the respondent argued that the Personal Injury Defendants' actual goal for their bifurcation motion was to bifurcate damages between the slip and fall incident and a separate medical malpractice matter, and, for this reason, the Personal Injury Action did not necessitate bifurcation. (Ans. ¶ 20; Ex. 7; Tr. III:141, respondent).

52. The ruling on the motion to bifurcate was reserved for the trial judge. (Ans. ¶ 21; Ex. 6).

53. The trial in the Personal Injury Action commenced on January 7, 2016, before Judge Richard Welch ("Judge Welch") at the Essex Superior Court in Newburyport, MA. (Ans. ¶ 22; Ex. 8, trial transcript for day 1).

54. As becomes relevant later, at the beginning of the trial, Judge Welch also asked the parties for an estimated length of the trial. Pierce responded that if the case was not bifurcated, the trial would take four days, and if the case were bifurcated, the trial would take two days. The respondent predicted a three-day trial if the case was not bifurcated. (Ex. 8, AGR-0061 to 0062).

55. Judge Welch next heard arguments from the parties on the bifurcation issue. Pierce argued on behalf of the defendants and focused on the "complexity" of the damages issues to support bifurcation. Pierce estimated that if the case were not bifurcated, the trial would be lengthened by one or two days. (Ex. 8, AGR-0063 to 0067). He added that the defendants believed that the respondent had a "very difficult liability case." (Ex. 8, AGR-0068).

56. The Personal Injury Defendants agreed with Judge Welch's suggestion that if the case were bifurcated and the plaintiff prevailed on liability, a trial on damages would follow immediately, using the same jury. (Ex. 8, AGR-0068).

57. The respondent also agreed with Judge Welch's recommendation and stated, "I have no objection to that." The respondent then raised a concern with the court that Saninocencio be able to testify as to her damages. Judge Welch assured him that she would have the opportunity at the "appropriate time." (Ex. 8, AGR-0068 to 0069).

58. Judge Welch then asked the respondent, "But why not do the liability first, let the jury look at that – agree with me if --" to which the respondent answered, 'Absolutely' and 'I have no problem with that.'" (Ex. 8, AGR-0069; Tr. III:20, Jarosak; Tr. III:141-142, respondent).

59. The respondent told Judge Welch that he believed Saninocencio needed to offer some testimony on damages as it related to the location of her fall. Judge Welch clarified that Saninocencio would not be able to testify fully about her damages if the case were bifurcated; however, she would be permitted to testify to damages, and medical records would be admitted only if they related to the issue of where Saninocencio fell and the issue of liability. (Ex. 8, AGR-0070; Tr. I:86, Pierce).

60. The respondent then stated, "Then I have no problem with the jury going – deciding liability and then coming back, and we finish up on the damages. I have no problem with that." (Ex. 8, AGR-0070; Tr.III:143, respondent).

61. The respondent consented to the bifurcation of the trial before the court during the hearing on the motion. (Ex. 8, AGR-0070).

62. During the hearing on bifurcation, Judge Welch did not display any particular emotion when allowing the emergency bifurcation motion, did not discuss how the bifurcation of the trial would impact his court schedule, and said nothing about having a "vacation" or days off if the trial were bifurcated. (Tr. I:107-108, Pierce; Tr. III:22, Jarosak).

63. After hearing argument on the bifurcation issue, Judge Welch allowed the Personal Injury Defendants' Emergency Motion to Bifurcate Trial. (Ans. ¶ 23; Ex. 8, AGR-0070).

64. On January 7, 2016, the jury was empaneled and counsel for each party gave an opening statement. (Ex. 8).

65. On January 8, 2016, before testimony began, the respondent asked Judge Welch to clarify what issues were being bifurcated. Judge Welch advised the respondent that his ruling was that liability would be bifurcated from the issue of damages; however, the respondent could enter hospital records of Saninocencio's initial treatment that related to the issue of liability. (Ex. 9, AGR-0103).

66. The respondent did not object to Judge Welch's explanation of the bifurcation procedure and, in fact, responded, "Okay. Great. Thank you, Your Honor." (Ex. 9, AGR-0104).

67. On January 8, 2016, the respondent presented Saninocencio's case to the jury. He called Saninocencio and her daughter as witnesses. (Ex. 9, AGR-0104 to 0158; Tr. III:20, Jarosak; Tr. VI:177, Pierce).

68. During Saninocencio's testimony, the court permitted the respondent to enter three separate medical records of treatment of Saninocencio despite objections to their admissibility by the Personal Injury Defendants. (Ex. 9, AGR-0113 to 0117, 0154; Tr. V:134-137, respondent).

69. One of the medical records entered into evidence indicated that Saninocencio suffered a bruised knee, which the respondent contended was probative to show that she fell on the sidewalk, not the grass. (Tr. V:123, respondent).

70. During the jury trial, the respondent did not present any evidence to establish the liability of any of the Personal Injury Defendants. The Personal Injury Defendants made an oral motion for a directed verdict, which was denied by the court. (Ex. 9, AGR-0105 to 0158, 0160

to 0163; Tr. III:132, Jarosak; Tr. VI:177-178, Pierce).

71. Next, the Personal Injury Defendants presented their case to the jury and each defense attorney called a representative of their respective clients. (Ex. 9; Tr. III:20, 132, Jarosak). No medical experts were called upon to testify at the trial. (Ex. 9; Tr. I:144, respondent).

72. Following the presentation of evidence, the parties agreed on the form of the verdict slip and exhibits, and the jury began deliberations at approximately 1:21 p.m. The respondent did not raise any objections to the verdict slip. (Ex. 9, AGR-0259 to 0260; Tr. I:92-93, Pierce).

73. At 2:20 p.m. on January 8, 2016, the jury returned to the courtroom, and their verdict of no liability for all of the Personal Injury Defendants was read into the record. (Ex. 9, AGR-0260 to 0262; Ex. 10).

74. On January 11, 2016, Judge Welch entered a judgment reflecting the jury's finding of no liability. (Ans. ¶ 27; Ex. 11).

COUNT ONE --FINDINGS OF FACT

The Respondent's Misstatements in Post-trial Motions

75. On January 28, 2016, the respondent filed a motion for a new trial on Saninocencio's behalf in the Personal Injury Action, together with an opposition filed by the Personal Injury Defendants. (Ans. ¶ 28; Ex. 12).

76. In the motion, the respondent alleged, inter alia, that in the Personal Injury Action, the bifurcation of the trial was prejudicial to the plaintiff and that the motion to bifurcate was "based on misrepresentations of material facts meant to mislead and improperly influence th[e] Court." (Ans. ¶ 29; Ex. 12).

77. In the opposition to the motion, the Personal Injury Defendants argued, inter alia,

that the motion should be denied because the respondent "specifically agreed to the bifurcation of liability and damages on the first day of trial." (Ans. ¶ 30).

78. On February 10, 2016, the court denied the respondent's motion for a new trial and found that the respondent "consented to bifurcation in the presence of his client. This motion is simply a bowl of sour grapes served with regret." (Ans. ¶ 31; Ex. 12; Ex. 17, respondent's "non-joint request for special assignment," at AGR-0289).

79. On February 24, 2016, the respondent filed on Saninocencio's behalf an Emergency Motion to Reconsider Denial of Motion for a New Trial in the Personal Injury Action. The respondent reiterated that the Personal Injury Defendants' motion to bifurcate was supported by deliberate misrepresentations of fact and law. While the respondent conceded that he agreed to bifurcation, he alleged that he did so only conditionally and cited his December 24, 2015, opposition to the Personal Injury Defendants' motion to bifurcate the trial. The respondent also challenged the court's impartiality and called the Personal Injury Defendants' actions "unethical." (Ans. ¶ 32; Ex. 13).

80. In his motion, the respondent explained that the "condition" upon which he agreed to bifurcation was that he be allowed to enter some medical evidence as it related to the issue of liability. This respondent's argument was without merit because the "condition" was met. The court had permitted the respondent to enter three medical records of his client, even though they arguably did not directly relate to liability and were objected to by the Personal Injury Defendants. (Ex. 13, AGR-0269; Ex. 9, AGR-0113 to 0117, 0154).

81. The respondent also: (a) challenged the court's impartiality and called the Personal Injury Defendants' actions "unethical," including the fact that they did not file the Emergency Motion to Bifurcate the Trial until December of 2015; and (b) charged the court with bias

towards the plaintiff, the latter without any facts to support the allegations. (Ans. ¶ 32; Ex. 13, AGR-0272 to 0274).

82. On February 24, 2016, the Personal Injury Defendants filed an opposition to the respondent's motion for reconsideration and requested sanctions. (Ans. ¶ 33; Ex. 13, AGR-0280).

83. The court denied the respondent's emergency motion to reconsider on February 25, 2016. It did not rule on the request for sanctions. (Ans. ¶ 34; Ex. 13, margin endorsement, AGR-0268).

The Respondent's Appeal in the Personal Injury Action

84. On March 7, 2016, the respondent filed a Notice of Appeal of the February 10, 2016, denial of his motion for a new trial in the Personal Injury Action. (Ans. ¶ 35; Ex. 1, AGR-0006).

85. On March 29, 2016, the respondent emailed the Personal Injury Defendants and proposed that he would prepare an agreed-upon statement of facts instead of presenting the Record on Appeal, including the trial transcripts, as required by the Massachusetts Rules of Appellate Procedure Rule 8. (Ex. 21, AGR-0315).

86. All of the counsel for the Personal Injury Defendants refused and told the respondent in their emails that any appeal would be frivolous, as he had agreed to what the judge did. (Ex. 21, AGR-0314 to 0315, Pierce; Ex. 21, AGR-0314, Jarosak; Ex. 21, AGR-0313 to 0314, Noone).[7]

87. On May 11, 2016, the respondent filed a notice with the court and advised the court that the respondent had served the Personal Injury Defendants with a motion for a new trial based on newly discovered evidence. (Ans. ¶ 36; Ex. 15; Tr. III:144, respondent).

[7] Undeterred, the respondent later filed a statement with the court saying that Saninocencio did not intend to order the trial transcripts or any portions thereof. (Ans. ¶ 48; Ex. 1, AGR-0007).

88. Also on May 11, 2016, the respondent filed an emergency motion for clarification in the Personal Injury Action that sought an explanation from the court as to why the court did not permit evidence of the plaintiff's damages at trial. In the motion, the respondent stated, "The Plaintiff will argue on appeal that the Defendants tricked this Court into misinterpreting the word 'liability' for the term 'breach of duty,' and then conducting a separate trial on the latter. This is the only reason the Plaintiff can deduce why her testimony and evidence of injuries were barred." (Ans. ¶ 37; Ex. 14).

89. The respondent's claim that the court was "tricked" was without merit. There was nothing misleading or "tricky" about the contents of the motion to bifurcate (Ex. 6) or the oral argument on it, and the respondent unequivocally agreed to bifurcation. (Ex. 8, AGR-0068 to 0070; Ex. 9, AGR-0103 to 0104).

90. On May 19, 2016, the respondent filed the motion for a new trial based on newly discovered evidence in the Personal Injury Action. The motion was filed unverified and without an affidavit supporting the allegations contained therein. (Ans. ¶ 38; Ex. 15; Tr. III:144, respondent).

91. In the motion, the respondent failed to identify the "newly discovered evidence." (Ex. 15; Ex. 15; Tr. I:96, Pierce; Tr. III:145, respondent).[8]

92. The court denied the motion for clarification on May 23, 2016. In the endorsement, the court wrote, "[t]he transcript should clarify the matter. As the transcript should show,

[8] It is also unclear to us what the "newly discovered evidence" was. The respondent never shared it with the court (Tr. III:144, respondent), nor did he identify it in his motion, telling us that he tried to present it in camera to the court. (Tr. III:176, respondent). When bar counsel asked the respondent what it was, the respondent said, "I'm not going to tell you what the newly discovered evidence is." (Tr. III:96, respondent). We infer that the "newly discovered evidence" was the Executed PTC Memorandum, which the respondent had signed without reading and did not know was different from his own Unexecuted PTC Memorandum.

plaintiff agreed to a bifurcation; the trial was to focus solely on liability. If liability was proven, a separate trial would be held regarding damages and the extent of plaintiff's damages." (Ans. ¶ 41; Ex. 14, margin endorsement, AGR-0281; Ex. 16, clerk's notice of ruling).

93. On May 31, 2016, the court denied the respondent's motion for a new trial. (Ans. ¶ 44; Ex. 1, AGR-0007).

94. On June 29, 2016, the respondent filed a Non-Joint Request for Special Assignment in the Personal Injury Action. (Ex. 17). In it, the respondent stated, "The Defendant was granted an untimely filed motion on the morning of the trial which barred the Plaintiff from producing any evidence of her injuries." (Ex. ¶ 45; Ex. 17, AGR-0286). This statement was false. There was no deadline to file the motion for bifurcation; the respondent filed a written response to the motion; he orally argued his position before the court; and at the hearing he agreed to bifurcation. The effect of the bifurcation on the respondent's ability to introduce medical evidence was fully explained to him by the court. Further, the respondent was permitted to enter three medical records of the plaintiff into evidence. (Ex. 5; Ex. 8, AGR-0063 to 0070; Ex. 9, AGR-0103 to 0104; 0113 to 0117, 0154). The respondent also alleged that a year before the Emergency Motion to Bifurcate was filed, Pierce had alluded to filing a motion to bifurcate. The respondent alleged that the Personal Injury Defendants' use of the "guise of an 'emergency'" was intended "to deny [Saninocencio] a fair hearing and prevent her from filing an interlocutory appeal." (Ans. ¶ 45; Ex. 17).

95. The respondent also alleged that the trial judge ignored newly discovered evidence and requested the alleged new evidence be evaluated by a new judge. The respondent also challenged the legitimacy of the Emergency Motion to Bifurcate, the trial judge's impartiality, and the Personal Injury Defendants' ethics. He claimed that he had come to possess evidence

that at least one of the Personal Injury Defendants had perjured himself and that the Personal Injury Defendants prevailed at trial through an "elaborate fraud." (Ans. ¶ 45; Ex. 17).

96. The allegations were all without merit. The alleged "elaborate fraud" was the defense lawyers filing the Executed PTC Memorandum in open court at the time of the pre-trial conference and disclosing Dr. Kennedy as a potential expert witness in it, which the respondent did not know because he did not read the prior emails he had received and did not read the Executed PTC Memorandum he signed.[9]

97. Two of the defendants opposed the request for a special assignment (Ans. ¶ 46; Ex. 18) and on July 25, 2016, the court denied the respondent's request for special assignment. (Ans. ¶ 47; Ex. 1, AGR-0007).

"The PI Appeal"

98. On September 8, 2016, a statement of the case on appeal was filed by the respondent in the Essex Superior Court. (Ex. 1, AGR-0007).

99. On September 19, 2016, the Massachusetts Appeals Court docketed the respondent's appeal. See Nellie San Inocencio v. Bradford Village Condo, Trust and others, Appeals Court, Docket No. 2016-P-1265 ("PI Appeal"). (Ex. 28).

100. On September 19, 2016, the Personal Injury Defendants filed a motion to dismiss the respondent's appeal in the Essex Superior Court. In support, they argued that the respondent failed to comply with the Rules of Appellate Procedure relating to deadlines and with other procedural requirements relating to transcripts and recordings of the underlying proceedings. (Ans. ¶ 50; Ex. 19).

[9] In fact, the respondent did not read the Executed PTC Memorandum until he saw an unexecuted copy as part of the supplemental appendix. This was almost a year and a half after the respondent signed the Executed PTC Memorandum at the time of the pre-trial conference in the Personal Injury Action. (Tr. III:152-153, respondent).

101. On September 19, 2016, the respondent filed an opposition to the Personal Injury Defendants' Motion to Dismiss [the appeal]. The respondent alleged that the Personal Injury Defendants' motion was an attempt to avoid accusations of fraud. The respondent repeated his claims that the court failed to review the alleged newly discovered evidence, and that the Personal Injury Defendants prevailed at trial by committing a fraud upon the court. (Ans. ¶ 51; Ex. 20).

102. Also on September 19, 2016, the Personal Injury Defendants filed a reply alleging that the respondent failed to comply with the Rules of Appellate Procedure, which resulted in prejudice to the Personal Injury Defendants. (Ans. ¶ 52; Ex. 21).

103. Also on September 19, 2016, the respondent's appeal of the denial of the February 10, 2016, motion for a new trial was entered on the docket in the PI Appeal. (Ans. ¶ 53; Ex. 28).

104. On October 6, 2016, the court in the Personal Injury Action denied the Personal Injury Defendants' motion to dismiss the appeal without prejudice. (Ans. ¶ 54; Ex. 19).

105. On October 11, 2016, the respondent filed a Civil Docketing Statement in the PI Appeal. The respondent identified three issues on appeal: (a) "whether the trial was properly bifurcated between liability and damages pursuant to M.R.C. P. 42(b)"; (b) "whether mistakes made by the trial judge were the result of defense counsel's fraud upon the court"; and (c) "whether the Plaintiff has a right to have newly discovered evidence evaluated by the lower court pursuant to M.R. C. P. 60(b) before proceeding to appeal." (Ans. ¶ 55; Ex. 28).

106. On October 25, 2016, the Personal Injury Defendants filed a motion to supplement the record on appeal and for certification and transmission of supplemental record in the Personal Injury Action, in which they sought to supplement the record with a transcript of the trial. (Ans. ¶ 56; Ex. 1, AGR-0008).

107. Also on October 25, 2016, the respondent filed a memorandum in support of opposition to the Personal Injury Defendants' motion to supplement the record. In it, he alleged that the Personal Injury Defendants' motion was supported by misleading statements and intentional misrepresentations of fact. The respondent also alleged that the motion was "[…] an attempt to delay these proceedings, confuse the issues, and unfairly prejudice the Plaintiff whose brief is ready to file without any transcript." (Ans. ¶ 57; Ex. 22).

108. On October 25, 2016, the Personal Injury Defendants submitted a reply to the respondent's opposition and stated that they provided the complete trial transcript to ensure that the record truly and fully disclosed what occurred in the lower court. (Ans. ¶ 58; Ex. 23).

109. The trial transcript was an important part of the record because it documented the respondent's consent, during a hearing before the court, to the motion to bifurcate. (Ans. ¶ 59 admitted or not otherwise denied; Ex. 8).

110. On October 26, 2016, the court allowed the Personal Injury Defendants' motion to supplement the record. (Ans. ¶ 60; Ex. 24).

111. On November 2, 2016, the Personal Injury Defendants ("Appellees") filed a motion to enlarge the record appendix or for leave to refer to material not contained in the record appendix along with a brief in support thereof in the PI Appeal. Specifically, the Appellees wanted the trial transcript, relevant docket entries, court orders, and notices to be included. (Ans. ¶ 61; Ex. 28, AGR-0407).

112. On November 2, 2016, the Appeals Court granted the Appellees leave to file a supplemental record appendix to the extent the respondent's record appendix did not contain all materials from the record requested by the Appellees. (Ans. ¶ 62; Ex. 28, AGR-0407).

113. On November 9, 2016, the respondent filed a Brief for Appellant/Plaintiff and an

accompanying appendix in the PI Appeal. In the brief, the respondent argued that: (a) the trial court improperly bifurcated the trial; (b) the Appellees' motion to bifurcate the trial constituted a fraud upon the court; and (c) newly discovered evidence should be reviewed by the trial court before proceeding to an appeal. (Ans. ¶ 63; Ex. 29).

114. In the Brief for Appellant/Plaintiff, the respondent also alleged, inter alia, as follows:

(a) "The Defendants' Motion to Bifurcate was a last minute trick to re-litigate issues that were previously settled in the Plaintiff's favor." (Ex. 29, AGR-0417).

(b) "Logic proves the Defendants' untimely filing trick succeeded as Judge Welch apparently never read their Motion to Bifurcate or the Plaintiff's opposition to it. He has over 20 years on the bench, yet a first-year law student would have recognized that it was procedurally impossible to try Dr. Abumeri in abstentia for malpractice." (Ex. 29, AGR-0420).

(c) "The most outrageous misrepresentations made in the Defendants' Motion to Bifurcate induced Judge Welch into granting it." (Ex. 29, AGR-0420).

(d) "The Defendants falsely claimed to have had 'numerous experts in the field of orthopedics' ready to testify." (Ex. 29, AGR-0421).

(e) "Unless Defense counsel can produce the names of their experts or an explanation for their untimely 'emergency' filing, their Motion to Bifurcate was an obvious fraud upon the trial court." (Ex. 29, AGR-0422).

(f) "Judge Welch's refusal to consider the Plaintiff's new evidence is unprecedented." (Ex. 29, AGR-0423).

(g) "The Plaintiff also argues that remanding her motion back to Judge Welch would be extremely prejudicial considering his past rulings and comments." (Ex. 29, AGR-0423).

(h) "Judge Welch impeded the Plaintiff's effort to assemble the record for this appeal by refusing to provide her with an adequate explanation as to why her testimony and evidence was barred." (Ex. 29, AGR-0424).

(i) "With all due respect, the Plaintiff has since been denied due process rights to post judgment relief by members of the judiciary. If this appeal is similarly denied without a hearing or explanation, this Court will be perpetuating a fraud and

condoning the Defendants' unethical conduct." (Ex. 29, AGR-0424).[10]

115. The respondent did not have a non-frivolous basis for the foregoing assertions, as follows:

(a) The Defendants' Motion to Bifurcate was not a last-minute trick. It was mentioned in Pierce's email to the respondent on June 16, 2015. (Ex. 26, AGR-0381-0382) and in the unsigned draft of the pre-trial memorandum included with the email. (Ex. 4, AGR-0025 to 0026). The respondent was aware of it at that time. (Tr. III:146-147, respondent). The motion was filed on December 11, 2015, and not argued until January 7, 2016 (Ex. 8), to which the respondent agreed. (Id. at AGR-0068 to 0069).

(b) There is nothing to support the allegation that Judge Welch never read the motion, which was discussed at length with all counsel on January 7. (Id. at AGR-0063 to 0071), and the respondent admitted as much. (Tr. III:148, respondent). Moreover, there was no discussion about "trying Dr. Abumeri in absentia for malpractice." To the contrary, defense counsel said (and Judge Welch agreed) that the medical malpractice case would be a separate trial perhaps years later. (Id. at AGR-0066 to 0067).

(c) As discussed specifically in ¶ (d), there were no misrepresentations (let alone "outrageous" ones), in the motion to bifurcate. (Ex. 6).

(d) The defendants did not "falsely claim[] to have had 'numerous experts in the field of orthopedics' ready to testify." Assuming the respondent was referring to the memorandum in support of the motion to bifurcate, it does NOT say the defendants had "numerous experts in the field of orthopedics ready to testify." What it actually says is that, if the case is not bifurcated, "the damages portion of the trial will require testimony from numerous fact witnesses as well as defense experts in the field of orthopedics." (Ex. 167 at R045). Charitably, the respondent misread or misremembered what the memorandum actually said and then repeated it many times.

(e) The defendants did in fact have an expert, Dr. Michael Kennedy, who was named in the Executed PTC Memorandum (Ex. 4, AGR-0027, where Kennedy is identified; Ex. 168, Kennedy report).

(f) We find nothing in the record to indicate that the respondent presented any "new evidence" to Judge Welch, nor did the respondent ever identify to us exactly what this "new evidence" was.

(g) The respondent did not identify the "past rulings and comments" he meant, nor can we discern any. To the extent he claims there was some prior relationship

[10] All of this is also admitted in the respondent's answer. (Ans. ¶ 64).

between Pierce and Judge Welch, we credit Pierce's testimony that he did not know Judge Welch, other than having appeared before him "a handful of times." (Tr. I:87, Pierce).

(h) The respondent misapprehended what is involved in assembling the record and wrongly blamed Judge Welch. While the respondent wanted to avoid having to order the transcript and instead submit his appeal on an agreed statement of facts, it was the defense lawyers who refused to agree to this; they told the respondent to order the trial transcripts. (Ex. 21, AGR-0314 to 0315, Pierce; Ex. 21, AGR-0314, Jarosak; Ex. 21, AGR-0313 to 314, Noone).

(i) The respondent was not denied due process when the respondent sought post-judgment relief on the plaintiff's behalf. To the contrary, the Appeals Court decision (Ex. 35) shows that the trial court bent over backwards to address the respondent's arguments on the merits, notwithstanding his failures to comply with various procedures.

116. On December 8, 2016, Pierce and Noone filed a brief on behalf of their clients, rebutting the respondent's allegations. Pierce and Noone also sought sanctions, including costs and attorneys' fees based upon the frivolousness of the respondent's appeal, given that the respondent specifically agreed to bifurcation prior to the commencement of the trial. (Ans. ¶ 67; Ex. 30; Ex.31).

117. Pierce and Noone also filed a supplemental appendix to accompany their brief. The supplemental appendix included an unsigned copy of the Executed PTC Memorandum. (Ex. 31, AGR-0485).

118. On December 9, 2016, Jarosak filed a brief on behalf of his clients in the PI Appeal, also rebutting the respondent's allegations.

119. Jarosak also sought sanctions, including costs and attorneys' fees, based on the frivolousness of the PI Appeal. Jarosak argued that sanctions were justified because there was "no reasonable likelihood of reversal" on any of the issues raised by the respondent and that the respondent included inflammatory and inappropriate material in the Brief for Appellant/Plaintiff. (Ans. ¶ 70; Ex. 32).

120. On January 13, 2017, the respondent filed a motion to accept a non-conforming reply brief in the PI Appeal because his brief was previously rejected for exceeding the 20-page limit. The respondent alleged that the Appellees' briefs contained misleading statements and arguments necessitating a longer than the page limit. The respondent again claimed the Appellees did not have any experts prepared for trial of the Personal Injury Action. The respondent also speculated that the unsigned copy of the Executed PTC Memorandum provided as part of Pierce and Noone's brief and that named Dr. Kennedy as an expert for the Personal Injury Defendants in the Personal Injury Action "[…] may be a fake which is being used to defraud this Court." (Ans. ¶ 71; Ex. 33).

121. On January 18, 2017, the Appeals Court denied the respondent's motion to accept a non-conforming reply brief and advised the respondent that a reply brief not to exceed 20 pages could be filed on or before February 2, 2017. (Ans. ¶ 72; Ex. 28, AGR-0407).

122. On February 2, 2017, the respondent filed a reply brief in the PI Appeal. The respondent admitted that he did agree to bifurcate the trial in the Personal Injury Action but that the trial court improperly implemented the bifurcation procedure by limiting the respondent to eliciting testimony only on the location of Saninocencio's slip and fall. The respondent again alleged the Personal Injury Defendants' Emergency Motion to Bifurcate was a fraud on the trial court and an attempt to relitigate issues already settled. (Ex. 34; AGR-0556).

123. The respondent's assertion (that the implementation of bifurcation was improper) was baseless because Judge Welch clearly explained that the matter was being bifurcated between liability and damages, responded to the respondent's questions and concerns, and the respondent said he understood and consented. (Tr. II:150-151, Dolan; Ex. 8, AGR-0068 to 0070).

124. On September 8, 2017, an Appeals Court panel issued a Memorandum and Order dismissing the respondent's appeal as untimely. The panel further stated that even if the appeal was properly before the court, the panel was unpersuaded by the respondent's arguments. (Ans. ¶ 75; Ex. 28, AGR-0408; Ex. 35).

125. In the Memorandum and Order, the Appeals Court panel found: (a) the respondent's appeal failed because he had agreed to bifurcation, and, even if he did not agree to bifurcation, the respondent's argument on appeal was meritless because a decision on bifurcation rests within the trial judge's discretion; (b) none of the alleged behavior of the Appellees came "close to the egregious conduct held to constitute fraud"; and (c) that because the respondent did not appeal the June 23, 2016 order denying the respondent's Motion for a New Trial Based on Newly Discovered Evidence in the Personal Injury Action, the issue was not before the Appeals Court and, even if it was, the respondent would not prevail because there was no evidence of abuse of judicial discretion. (Ans. ¶ 76; Ex. 28, AGR-0408; Ex. 35).

126. The respondent read the Appeals Court Memorandum and Order at or near the time it was issued. (Tr. III:152, respondent).

127. On September 22, 2017, the respondent filed a petition for rehearing with the Appeals Court. The respondent alleged to have discovered a forgery committed by the Personal Injury Defendants' counsel in the Personal Injury Action. The respondent offered the Unexecuted PTC Memorandum and the Executed PTC Memorandum, both of which appeared on the docket for the Personal Injury Action. The respondent alleged he was misled to believe the Unexecuted PTC Memorandum was the final version of the pre-trial memorandum and that the Personal Injury Defendants' counsel added a proposal to bifurcate and a disclosure of an expert witness named Dr. Michael Kennedy to the Executed PTC Memorandum without his

knowledge. The respondent concluded that because there should only be one pre-trial memorandum on the docket, one of these documents must have been "a fake." The respondent accused the Personal Injury Defendants' counsel of "unethical trickery." (Ans. ¶ 77; Ex. 36).

128. The respondent's statement that one of the memoranda was "a fake" was without merit. The respondent was provided with an unsigned copy of the Executed PTC Memorandum prior to the pre-trial conference. The respondent signed the Executed PTC Memorandum, which was filed with the court at the conference. The respondent also filed the Unexecuted PTC Memorandum with the court before the pre-trial conference, causing there to be two versions of the document on the record. The respondent had no basis in fact to claim that the Executed PTC Memorandum was inauthentic and "planted" in the record. (Tr. III:152-153, V:73-76, VI:84, respondent; Ex. 3).

129. On September 25, 2017, the Appeal's Court panel denied the petition for rehearing. (Ans. ¶ 79; Ex. 28, AGR-0409).

"SJC PI Appeal"

130. On October 2, 2017, the respondent filed an application for Further Appellate Review ("FAR") of the Appeals Court's findings in PI Appeal with the Supreme Judicial Court ("SJC"). See Nellie San Inocencio vs. Bradford Village Condo Trust & Others, SJC, Docket No. FAR-25622 (the "SJC PI Appeal"). The respondent set forth the history of the Unexecuted PTC Memorandum and the Executed PTC Memorandum and repeated his prior claims that one of the memoranda was a "forgery." The respondent also alleged that "[s]omeone caused the original PTC memos to go missing from the lower court record when this case was appealed." The respondent alleged that the Personal Injury Defendants' counsel manipulated Judge Welch, and claimed that "[…] if this Court takes no action, it will be implicitly condoning the unethical

behavior of one side in this dispute." (Ans. ¶ 80; Exs. 37 and 38).

131. On October 10, 2017, Pierce, Noone and Jarosak filed an opposition to the respondent's FAR Application on behalf of their respective clients in the SJC PI Appeal.

132. On November 6, 2017, the SJC denied the respondent's application for FAR. See San Inocencio v. Bradford Vill. Condo Trust & others, 94 N.E. 3d 851, 478 Mass. 1104 (2017). (Ans. ¶ 82; Ex. 37).

133. On March 28, 2018, the respondent filed a motion for clarification directed to Judge Kirpalani in the Personal Injury Action and sought the underlying reason for the June 17, 2015, order to disclose experts by October 30, 2015. The respondent claimed he needed this information to support fraud allegations he and his client wished to pursue against the Personal Injury Defendants' counsel and to support a complaint to the Board of Bar Overseers. (Ans. ¶ 83; Ex. 25).

134. In the motion for clarification, the respondent repeated his claims that the defense expert, Dr. Kennedy, did not exist, and for that reason the defense lawyers committed a fraud on the court and that the plaintiff was therefore denied due process and a fair trial. (Ex. 25, AGR-0345, 0347-0349):[11]

135. The respondent's assertions in the motion for clarification, accusing the Personal Injury Defendants of fraud, were without merit, without a good-faith basis, frivolous, and/or made with reckless disregard as to their truth or falsity, as follows:

(a) No findings were made by any court that the Personal Injury Defendants committed a fraud on the court, made any misrepresentations to the court or used any "unethical trickery" in their defense of the Personal Injury Action. (Tr. I:98-99, Pierce).

(b) As noted above, Dr. Michael Kennedy the defense medical expert, was real and had previously generated a report to defense counsel. In any event, the

[11] All of this is also admitted in the respondent's answer. (Ans. ¶ 84).

respondent's arguments concerning Dr. Kennedy were beside the point as the case was bifurcated; the respondent lost the trial on liability, so no medical expert testimony was ever necessary. (Ex. 9).

(c) Because the case was bifurcated and the plaintiff lost on the liability phase, the case never reached the damages phase, at which time a "Daubert motion" to voir dire the Personal Injury Defendant's medical expert would have been appropriate.[12]

136. Moreover, the respondent knew, when he filed the motion for clarification, that the Appeals Court did not make any findings of fraud by the Personal Injury Defendants. (Tr. II:156, respondent).

137. On April 13, 2018, Judge Kirpalani denied the respondent's motion for clarification based upon the fact that the matter was no longer pending and that the relief that the respondent was seeking was an explanation of the court's thought process in issuing the order. Judge Kirpalani found: "In conclusion, where plaintiff has failed to show that the relief sought is necessary, germane and appropriate (or even open to it, given the Appeals Court's treatment of the appeal of the judgment), the court must DENY the motion." (Ans. ¶ 86; Ex. 27).

COUNT ONE--CONCLUSION OF LAW

138. Bar counsel charged that the respondent's conduct, in asserting claims that lacked a basis in law or fact that were not frivolous, was in violation of Mass R. Prof. C. 3.1 and 8.4(d) (conduct prejudicial to the administration of justice). We conclude that bar counsel has proved these charges, as described in ¶¶ 128 and 135.

139. Bar counsel charged that the respondent's conduct, in making statements concerning the qualifications and integrity of judges and attorneys, knowing the statements to be

[12] We take administrative notice of the fact that a Daubert-Lanigan analysis, see Daubert v. Merrell Dow Pharms., Inc., 509 U.S. 579, 585–595 (1993), and Commonwealth v. Lanigan, 419 Mass. 15, 24–26 (1994), would allow a party to test the reliability of an opposing party's expert witness opinion. One way is to file a motion in limine and have the court conduct an evidentiary hearing. See the Note to the Mass. Guide to Evid. § 702.

false or with reckless disregard as to their truth or falsity, was in violation of Mass. R. Prof. C. 8.2 and 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation), (d), and (h) (other conduct that adversely reflects on the lawyer's fitness to practice law). We conclude that bar counsel has proved these charges, as described in ¶¶ 124 and 144.

COUNT TWO--FINDINGS OF FACT

"Middlesex Superior Court Civil Action"—against the personal injury defense lawyers

140. On March 28, 2018, the respondent filed a Complaint (the "Middlesex Complaint") on Saninocencio's behalf in Middlesex Superior Court against Pierce, Jarosak, Noone and their respective law firms (the "Middlesex Defendants"). In it, the respondent alleged that the Middlesex Defendants committed a fraud upon the trial court, Appeals Court and the SJC. See Saninocencio, Nellie vs. Pierce & Mandell, PC et al., Middlesex Superior Court, Docket No. 1881CV00900 (the "Middlesex Superior Court Action"). (Ans. ¶ 89; Ex. 41).

141. In the Middlesex Complaint, the respondent alleged, as he had in post-trial motions, the PI Appeal and the SJC PI Appeal, as follows: the Executed PTC Memorandum was a planted forgery; that the defense medical expert (Dr. Kennedy) did not exist; and that the defendants' motion to bifurcate was not to save time but to bar the Plaintiff's evidence on the morning of the trial. (Ex. 41, AGR-0678 to 0679).[13]

142. The respondent's claims as alleged in the Middlesex Superior Court Action were meritless for the following reasons:

(a) The respondent consented to the motion to bifurcate, which was allowed because of the complexity of factual and medical issues.

[13] All of this is also admitted in the respondent's answer. (Ans. ¶ 90).

(b) The respondent had no evidence of the "intent" of the defendants.[14]

(c) Dr. Kennedy was not "fictitious" and his name was not added to the PTC Memorandum "without the respondent's knowledge" because he was emailed a draft in advance and received and signed a copy at the pre-trial conference. (Tr. I:66-67, 69-70, 74, Pierce; Tr. III:64-65, 139-140, respondent).

(d) The Executed PTC Memorandum was not a "forgery" because the respondent received an unsigned version of it an email the day before the pre-trial conference and signed the memorandum at the conference. (Tr. I: 66-67, 69-70, 74, Pierce; Tr. III:64-65, 139-140, respondent).

143. The respondent also requested the Court exercise its discretion pursuant to Mass. R. Civ. P. 60(b) and vacate the trial court judgment entered on January 11, 2016, and all post-judgment orders in the Personal Injury Action. (Ans. ¶ 93; Ex. 41, AGR-0681).

144. These requests were without merit and frivolous because the respondent had already requested substantially similar relief in the Personal Injury Action, the PI Appeal, and the SJC PI Appeal, where these requests were denied. (Ex. 12; Ex.29, AGR-0425; and Ex. 38, AGR-0621).

145. On May 4, 2018, the Middlesex Defendants filed a motion to dismiss the complaint in the Middlesex Superior Court Action, alleging that the Middlesex Complaint failed to state a claim upon which relief could be granted, because the respondent had consented to bifurcation and that his claim for a new trial pursuant to Mass. R. Civ. P. 60 was time barred. (Ans. ¶ 95; Ex. 42; Ex. 43).

146. On May 4, 2018, the respondent filed an opposition to the motion to dismiss. In

[14] When asked to explain his claim about the "intent" of the motion to bifurcate, the respondent said that the part of the trial transcript, not originally transcribed, would "show that Judge Welch knew they were having a trial limited to prove where she fell." (Tr. VI:185-186, respondent). That part of the transcript was only the jury empanelment and not any instructions to the jury about the scope of the trial. While the trial judge did say, at a sidebar before any testimony was received, that he was going to bifurcate liability and damages, but would allow the plaintiff to introduce some medical records (Ex. 9, AGR0103), that does not support the respondent's claims concerning the "intent" of defense counsel.

the opposition, the respondent repeated his prior claims that the Middlesex Defendants had made misrepresentations to the court in the Personal Injury Matter, that the Emergency Motion to Bifurcate Trial was improperly implemented and a fraud upon the court, and that the Middlesex Defendants "planted a forgery in the court record […]" (Ans. ¶ 96; Ex. 44).

147. On June 18, 2018, the Middlesex Defendants filed a motion for protective order to stay discovery in the Middlesex Superior Court Action pending a ruling on the motion to dismiss. (Ans. ¶ 98; Ex. 40, AGR-0673; Ex. 46).

148. Also on June 18, 2018, the respondent filed an opposition to the motion for a protective order. In his opposition, the respondent repeated his prior claims that the Middlesex Defendants made false statements to the courts and relied on a forgery in the PI Appeal and in their response to the FAR application. (Ans. ¶ 99; Ex. 45).

149. On August 1, 2018, Judge John Lu of Middlesex Superior Court allowed in part and denied in part the respondent's opposition to the motion for protective order requiring responses to outstanding discovery and limiting response to any additional discovery requests until the motion to dismiss was ruled upon. (Ans. ¶ 100; Ex. 40, AGR-0673).

150. On August 21, 2018, Judge Christopher Barry-Smith ("Judge Barry-Smith") of the Middlesex Superior Court ruled on the same motion for protective order to stay discovery and stayed all discovery until September 26, 2018. (Ans. ¶ 101; Ex. 46).

151. On September 12, 2018, a hearing was held on the Middlesex Defendants' motion to dismiss the plaintiff's complaint. Judge Barry-Smith presided at the hearing and heard extensive argument by the respondent in opposition to the Middlesex Defendants motion to dismiss. (Ans. ¶ 102; Ex. 47, hearing transcript, AGR-0719 to 0732, 0737 to 0741).

152. The respondent claimed that he did not know that Dr. Kennedy's name had been

added to the Executed PTC Memorandum and because he was unaware, his client lost the ability to challenge Dr. Kennedy's admissibility and depose him before trial. (Ex. 47, AGR-0720).

153. This argument was frivolous because, as previously discussed: (a) an email the respondent received the day before the pre-trial conference told him that Dr. Kennedy's name had been added to the memorandum; (b) at the pre-trial conference, the respondent signed the Executed PTC Memorandum that contained Dr. Kennedy's name; and (c) no experts ever testified at the trial because the respondent lost the case on liability.

154. On September 18, 2018, the court allowed the Middlesex Defendants' motion to dismiss. Judge Barry-Smith specifically found that the respondent "wholly ignores" that the arguments in the complaint "mirror perfectly" the arguments: (a) in the post-trial motion for a new trial in the Personal Injury Action which was denied; and (b) in the appeal to the Appeals Court and the SJC, both of which were denied. The court also found that the claims asserted in the Middlesex Superior Court Action were "substantively identical to the *objections and appeals* [respondent] raised, unsuccessfully, before the trial court and the Appeals Court[,]" and that the respondent's presentation of the Executed PTC Memorandum failed to qualify as "new evidence." (Ans. ¶ 103; Ex. 48, emphasis in the original).

155. In a footnote to the decision and order, Judge Barry-Smith warned, "Should plaintiff cause these defendants to incur additional costs after this decision in connection with this litigation, upon motion the court will consider again plaintiff's accountability for defendants' costs and fees." (Ex. 48, AGR-0747).

156. The respondent read the decision and order of Judge Barry-Smith and understood the court's findings at or around the time the decision was issued. (Tr. III:168-169, respondent). However, the respondent was unhappy with the decision and order and did not agree with the

court's findings. (Tr. III:169, respondent).

157. Based on the court's allowance of Middlesex Defendants' motion to dismiss, the Middlesex Complaint was without merit, without a good-faith basis, frivolous, and/or made with reckless disregard as to its truth or falsity because the arguments contained therein had already been made and rejected in and between the Personal Injury Action, the PI Appeal, and the SJC PI Appeal. (Ex. 48).

158. On September 27, 2018, judgment on the motion to dismiss with prejudice was entered against Saninocencio in the Middlesex Superior Court Action. (Ans. ¶ 105).

159. On October 18, 2018, the respondent filed a Notice of Appeal of the September 27, 2018, judgment of dismissal and the August 21, 2018, allowance of the motion for protective order to stay discovery. (Ans. ¶ 106; Ex. 40, AGR-0674).

160. On October 30, 2018, the respondent filed a motion to recuse Judge Barry-Smith and a supporting memorandum. In the motion, the respondent alleged that Judge Barry-Smith denied the plaintiff due process and assisted the Middlesex Defendants in covering up a fraud on the court that occurred in the Personal Injury Action. (Ans. ¶ 107; Ex. 49).

161. The respondent made these unfounded claims about Judge Barry-Smith despite the fact that he knew that, in the Personal Injury Appeal, the Appeals Court did not find fraud on the court. (Tr. III:170, respondent).

162. In his memorandum, the respondent also alleged, inter alia, as follows:[15]

(a) "Judge Welch's bizarre behavior and decisions throughout the underlying action clearly called into question his integrity, (see CJC complaint attached as Exhibit A for a history of Welch's dubious decisions)." (Ex. 49, AGR-0753).

(b) "The defendants succeeded in committing a fraud on the trial court because Judge Welch was more interested in giving himself a five-day vacation than making sure

[15] All of this is also admitted in the respondent's answer. (Ans. ¶ 108).

the plaintiff got a fair trial." (Ex. 49, AGR-0753 to 0754).

(c) "The only plausible explanation for this Court's decisions in this action is that it actively engaged in the cover-up of the fraud in the underlying action." (Ex. 49, AGR-0754).

(d) That this Court would issue a protective order under these circumstances clearly shows its intent to deny the Plaintiff due process . . . There is no innocent explanation why this Court would issue a protective order allowing [the lawyer defendants] to conceal this evidence [concerning an expert witness] in this action." (Ex. 49, AGR-0755).

(e) "The Plaintiff has clear and convincing evidence to prove the Defendants' PTC memo is a forgery [… but] this Court refused to even look at this evidence and ruled as a matter of law that the Defendants' PTC memo isn't a forgery." (Ex. 49, AGR-0756).

(f) "The whole point of this action was to prove THE DEFENDANTS NEVER HAD ANY EXPERT WITNESS PREPARED FOR TRIAL." (Capitalization in the original filing). (Ex. 49, AGR-0760).

(g) "Judge Barry-Smith's decisions call into question his impartiality and he should disqualify himself so the Plaintiff can present her evidence to a fair and impartial judge before proceeding on appeal. Otherwise, the Plaintiff's counsel will regrettably be forced to take whatever action necessary to disqualify him including filing another CJC complaint." (Ex. 49, AGR-0761).

163. The respondent's assertions in his motion to recuse Judge Barry-Smith and his supporting memorandum were without merit, without a good-faith basis, frivolous, and/or made with reckless disregard as to their truth or falsity, as follows:

(a) The respondent testified that that he believed Judge Welch was under the influence of alcohol during the trial of the Personal Injury Action. He claimed he could smell it on his breath when he was physically very close to Judge Welch during the trial. (Tr. III:170-171, respondent). We do not credit his after-the-fact claim at the disciplinary hearing because: (i) the respondent did not raise this issue at any time before he testified at the disciplinary hearing despite the multitude of court filings in which he attacked Judge Welch; (ii) the respondent did not raise the issue when he filed a complaint against Judge Welch with the Commission on Judicial Conduct; (iii) the respondent did not know what constituted typical behavior for Judge Welch; (iv) Pierce testified at the disciplinary hearing that counsel were at sidebar several times during the trial of the Personal Injury Action and Pierce did not smell alcohol on Judge Welch's

breath;[16] and (v) Judge Welch's behavior at trial was consistent with his behavior in other court matters. (Tr. III:170-172, respondent; Tr. VI:178-179, Pierce; Ex. 64, AGR-1040).

(b) The claim about Judge Welch's vacation schedule was frivolous and without merit because the respondent did not know Judge Welch's vacation schedule, did not know whether Judge Welch would be in court the day following the jury verdict in the Personal Injury Action, and made assumptions based upon unverifiable facts. (Tr. III:172-174, respondent).

(c) The respondent had no basis for claiming that the court engaged in a cover-up. Aside from the fact that there was no "fraud" (i.e., no substitution of the Pre-trial Memorandum without the respondent's knowledge) and the respondent knew that the Appeals Court did not find fraud on appeal (Ex. 35, see Tr. III:175-176, respondent), his reasoning that there as "no other plausible explanation" for ruling against the plaintiff was without merit, as there were clearly other explanations for the judge's ruling (including the Appeals Court decision).

(d) The superior court had allowed a motion for a protective order pending the outcome of the motion to dismiss. (Ex. 46). There was no reason to allow discovery unless and until the respondent could prove the Executed PTC Memorandum was a "forgery" or a "fraud." Hence there was an "innocent explanation" for the issuance of the protective order and it was not to allow the lawyers to "conceal evidence."

(e) The respondent did not have "clear and convincing evidence to prove the Executed PTM was a "forgery." It was sent to him in advance of the pre-trial conference; he signed the original at the pre-trial conference and it was filed with the court that day. What he thought was "clear and convincing evidence" was a product of his own failure to read emails and documents. The respondent's statement (that the judge did not consider his purported "newly discovered evidence") was frivolous because the respondent did not provide the evidence or any affidavit in support of his motion. (Tr. III:176, respondent).

(f) The respondent was clearly wrong in repeating his unsupported allegation that the defendants had no experts, when they disclosed Dr. Kennedy's name and his report has since been admitted as an exhibit at this hearing. (Ex. 168).

(g) The respondent's allegations concerning Judge Barry-Smith (Ex. 49, AGR-0761) appear to relate to his ruling on the motion for a protective order after Judge Lu had previously done so. (Ex. 49, AGR-0757 to 0758; Ex. 40, docket sheet, AGR-0673). But Judge Barry-Smith's order was not inconsistent with that by Judge Lu. Judge Lu's order on August 1, 2018, said the defendants had to provide discovery within "7 days after any denial of the motion to dismiss." Judge Barry-Smith's order said that "With a hearing on the defendants' motion to dismiss

[16] We credit Pierce's testimony and do not credit the respondent's testimony on this point.

> scheduled for Sept. 12, 2018, discovery in this civil action will be stayed until Sept 26, 2018." (Ex. 40, docket sheet, AGR-0673). The respondent admittedly had no factual basis for calling Judge Barry-Smith's fairness and impartiality into question. This was based solely on the respondent's unhappiness with the judge's rulings. (Tr. III:177, respondent).

164. On October 30, 2018, the Middlesex Defendants filed an opposition to the motion to recuse and a supporting memorandum. They also sought sanctions against the respondent pursuant to Mass. R. Civ. P. Rule 11 and attorney fees for requiring them to continue to expend time and money in responding to allegations that were previously dismissed. (Ans. ¶ 110; Ex. 50, Ex. 51).

165. The same day, the respondent filed a reply to the defendants' opposition to the motion to recuse. In the reply, the respondent alleged, inter alia, that (a) Saninocencio's due process rights had been violated; (b) that Judge Barry-Smith misunderstood the issues in the Middlesex Superior Court Action; (c) that the Middlesex Defendants were participating in a scheme to defraud the courts; and (d) that defendants' opposition to plaintiff's motion to recuse was a "shameless attempt to 'run up [the Middlesex Defendants] bill' in anticipation of this Court awarding attorney's fees." (Ans. ¶ 111; Ex. 52). These assertions were frivolous and without a basis in fact.

166. On October 30, 2018, the Middlesex Defendants filed a motion to strike the plaintiff's motion to recuse and a supporting memorandum. (Ans. ¶ 112; Ex. 40, AGR-0674).

167. On October 30, 2018, the respondent filed an opposition to defendants' motion to strike. It incorporated by reference plaintiff's reply memorandum to defendants' opposition to plaintiff's motion to recuse. (Ans. ¶ 113; Ex. 40, AGR-0675).

168. On November 26, 2018, Judge Barry-Smith denied plaintiff's motion to recuse and stated, inter alia, "After careful consideration of all parties' submissions, the plaintiff's motion to recuse is denied. My prior decisions were based on the procedural and trial and

appellate history of this case, not any bias or prejudice." He also denied the Middlesex Defendants' motion to strike the motion to recuse and their requests for attorneys' fees and sanctions. (Ans. ¶ 114; Ex. 53).

169. On December 31, 2018, the respondent filed a motion to reconsider the September 27, 2019, judgment on the motion to dismiss with prejudice and a memorandum in support thereof. (Ans. ¶ 115; Ex. 54).

170. In his memorandum, the respondent again argued that the Middlesex Defendants filed a fraudulent Emergency Motion to Bifurcate Trial, that Dr. Kennedy did not exist, that the Executed PTC Memorandum was a "forgery," and that the defendants intentionally deceived the respondent. (Ans. ¶ 116; Ex. 54).

171. In the memorandum, the respondent also alleged, inter alia, as follows:[17]

(a) "The Defendants manipulated the trial court judge into barring all of the Plaintiffs injury evidence on the morning of the trial." (Ex. 54, AGR-0787).

(b) "That so many judges are being so easily manipulated into making such appalling decisions indicates there is something more sinister at work here than just incompetence coupled with unethical trickery." (Ex. 54, AGR-0788).

(c) "Because Welch was on his annual three-month vacation from his part-time job as a judge, Judge Kirpalani presided at the [Pre-Trial] Conference." (Ex. 54, AGR-0790).

172. The respondent's assertions were an attempt to relitigate issues already settled in the Personal Injury Action and thus were without merit, without a good-faith basis, frivolous, and/or made with reckless disregard as to their truth or falsity. Among other things:

(a) The defendants did not "manipulate" the judge into "barring all of the plaintiff's injury evidence." The respondent was allowed to ask some questions and to introduce some of her medical records. Moreover, his statement was based on his opinion that he understood the law and legal precedent better than the judges. (Tr. III:179-180, respondent).

[17] All of this is also admitted in the respondent's answer. (Ans. ¶ 117). We do not repeat here the respondent's previously asserted statements that were false.

(b) The respondent's statements about judges being "so easily manipulated" and "unethical trickery" were without any foundation. E.g., the respondent was allowed to be heard on his various motions.

(c) the respondent admitted that had no basis for saying that Judge Welch was a part-time judge or that he took an annual three-month vacation. (Tr. III:173-174, respondent). He did not know Judge Welch's vacation schedule in 2016 and his statements that Judge Welch's position as a Superior Court judge was a part-time position had no basis in fact. (Tr. III:181-182, respondent).

173. On December 31, 2018, the Middlesex Defendants filed an opposition to the motion to reconsider and motion to strike. (Ans. ¶ 119; Ex. 55).

174. On January 9, 2019, Judge Barry-Smith denied plaintiff's motion to reconsider and found that, "Plaintiff's motion to reconsider does not satisfy the standard for appropriate reconsideration and re-confirms that plaintiff seeks to relitigate the case that was tried, and appealed, in 2016 […] If plaintiff repeats these contentions again, he should expect to be sanctioned and to pay defendants' costs and fees." (Ans. ¶ 120; Ex. 56).

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175. On February 8, 2019, the respondent filed a Notice of Appeal of the January 9, 2019 denial of the motion to reconsider. (Ans. ¶ 121; Ex. 40, AGR-0674).

176. The respondent's Appellate Court Entry Statement was entered in the Massachusetts Appeals Court on April 1, 2019. See Nellie Saninocencio vs. Pierce & Mandell, PC & others, Appeals Court, Docket No. 2019-P-0480 (the "Middlesex Appeal"). (Ans. ¶ 122; Ex. 57).

177. On May 20, 2019, the respondent filed an Appellant Brief with an accompanying appendix in the Middlesex Appeal. (Ans. ¶ 124; Ex. 58).

178. As part of the appendix to the brief, the respondent included an affidavit signed by him and that was dated May 12, 2019. (Ans. ¶ 125, not denied; Ex. 59, AGR-0884 and 0885).

179. In the respondent's affidavit, signed under the penalties of perjury, the respondent: (¶ 1) did not dispute that he received the email on June 16, 2015, which contained the identification of Dr. Kennedy as a possible defense expert; (¶ 2) admitted that he did not review the email until at some point in time after the PI Appeal was dismissed; (¶ 3) admitted that the first time he read the Executed PTC Memo (with Dr. Kennedy's name on it) was when he read it in an unsigned copy that was part of an appendix on appeal; (¶ 4) stated that the original Executed PTC Memo and the Unexecuted PTC Memo were not physically in the court file when it was transferred from Newburyport to Salem for the PI Appeal; and (¶ 6) stated that "a clerk told [him that] she located the originals in 'the attic' of the Newburyport Courthouse and sent them on to Salem for inclusion in the record." (Ex. 58, AGR-0830, 0884 to 0885).

180. In the respondent's appeal brief, he identified two additional appellate issues: (a) "[w]hether the Appellant was entitled to have the decision to dismiss her Complaint reversed after the Appellees violated their protective order by introducing evidence into the record"; and (b) "[w]hether the Appellant has been denied due process by judges in these courts." (Ex. 58, AGR-0822). The respondent repeated his prior claims that the Emergency Motion to Bifurcate Trial was improperly allowed and a fraud on the court, that Saninocencio never agreed to bifurcation, and that the Executed PTC Memorandum was a forgery that the Personal Injury Defendants had planted in the record. (Ex. 58).

181. He also claimed that that the Unexecuted PTC Memorandum and the Executed PTC Memorandum had been misfiled in the attic of the Newburyport Courthouse and accused Judge Welch of "Conspiring to commit a fraud on his own court and hiding the evidence in the attic of the Newburyport Courthouse." (Ex. 71, AGR-1151, 1154). However, when asked at the disciplinary hearing to produce evidence that Judge Welch hid the memorandums in the attic of

the courthouse, the respondent claimed that he knew of a witness to verify his allegations, but he refused to disclose the name of the witness or provide any evidence to support his allegations. (Tr. VI:197-198, respondent).

182. In the appeal brief, the respondent also alleged, inter alia, as follows:[18]

(a) "Judge Welch was so eager to give himself a five-day weekend, he never bothered to address the Appellant's Opposition and apparently 'forgot' that he had previously ordered the Appellees not to file this motion." (Ex. 58, AGR-0835).

(b) "Judge Welch tricked the Appellant into agreeing to the bifurcation procedure as it was proposed in the Altered PTC Memo […]" (Ex. 58, AGR-0835 to 0836).

(c) "After sandbagging the Appellant while she was testifying, Welch made sure he got his extended weekend by allowing the Appellees to introduce irrelevant and extremely prejudicial evidence of her arthritis to the jury. Any reasonable person could see this was done to portray her as con artist trying to scam their clients in a slip and fall scheme." (Ex. 58, AGR-0837 to 0838).

(d) "Judge Welch denied the motion without a hearing and called it a 'bowl of sour grapes served with regret' […] This ignorant comment shows the level of respect he had for the Appellant's due process rights." (Ex. 58, AGR-0838).

(e) "Judge Christopher Barry-Smith hijacked this case from another judge and quickly set out to cover up the Appellees' fraud." (Ex. 58, AGR-0839).

(f) "It's apparent now that the judges in these courts have been actively engaged in the perpetration and cover-up of the Appellees' scheme to cheat the Appellant out of her right to due process." (Ex. 58, AGR-0840).

(g) "The Appellees are officers of the court who planted a forgery in the record for the purpose of deceiving the trial court judge that they had an expert witness prepared to testify at trial." (Ex. 58, AGR-0842).

(h) "Planting the Altered PTC Memo in the record enabled them to 'bifurcate' the trial. It also allowed them to falsely claim to this Court to have had disclosed Doctor Kennedy prior to trial. That was the connection between the forgery and the bifurcation. Smith would have understood this if he had given the Appellant a fair hearing." (Ex. 58, AGR-0844).

(i) "The fact that there are two different versions of a jointly prepared document in the record is prima facia evidence that one of them could be a forgery." (Ex. 58, AGR-0848).

[18] All of this is also admitted in the respondent's answer. (Ans. ¶ 127).

(j) "Without seeing any evidence, Smith concluded the document wasn't a forgery based on his own wildly speculative theory as to how two different versions of a jointly prepared PTC Memo could innocently get into a court record […]" (Ex. 58, AGR-0848).

(k) "Judge Smith intentionally took statements made at the hearing out of context and claimed that the Appellant acknowledged that the Altered PTC Memo was always in the record […] He also claimed that the Appellant was not excusably ignorant of its existence in the record […] He is patently wrong and apparently condones the Appellees' deceptive behavior." (Ex. 58, AGR-0849).

(l) "Pierce couldn't have done much worse to communicate the changes if he had put the Altered PTC Memo in a bottle and thrown it in the river." (Ex. 58, AGR-0851).

(m) "The Appellees never submitted the transcript because no one ever mentioned Dr. Kennedy's name during the conference. If anyone had, Appellant's counsel would have jumped out of his seat and said 'who the fuck is Dr. Kennedy'. The forgery would have been exposed and the Appellees' scheme would have unraveled right there in front of Judge Kirpalani." (Ex. 58, AGR-0851).

(n) "[…] a trial shouldn't be a game of poker where unethical lawyers can bluff an incompetent judge into doing something adverse to the opposing party." (Ex. 58, AGR-0859).

(o) "That Judge Smith would issue a protective order allowing them to conceal [evidence] in this action is unconscionable[.]" (Ex. 58, AGR-0860).

(p) "No competent judge would have granted a late-filed emergency motion requesting a radical bifurcation procedure like this. No competent judge would have neglected to inquire why 'numerous experts' hadn't been disclosed prior to trial[.]" (Ex. 58, AGR-0865).

(q) "Any competent judge would have recognized the Appellees' Motion to Bifurcate was a fraud." (Ex. 58, AGR-0865 to 0866).

(r) "Just for the record, the Appellant would have argued that Judge Welch abused his discretion by trading her right to a fair trial for his five-day weekend." (Ex. 58, AGR-0868).

183. The respondent's assertions in his motion to recuse Judge Barry-Smith and his supporting memorandum were without merit, without a good-faith basis, frivolous, and/or made with reckless disregard as to their truth or falsity, as follows:

(a) The respondent's claim (that Judge Welch "had previously ordered the appellees not to file this motion [to bifurcate]") is demonstrably factually false and makes no sense. The pre-trial conference was held before Judge Kirpalani on June 17, 2015. (Ex. 5). When discussing bifurcation, he said that, relative to a January 2016 trial date, "if you're going to try and bifurcate you ought to do it before this date . . ." (Id. at AGR-0045). Judge Welch was not involved in the scheduling of the filing of the motion to bifurcate. Moreover, Judge Welch did not share his weekend or vacation plans when he allowed the motion to bifurcate on January 7, 2016. (Tr. I:107-108, Pierce; Tr. III:22, Jarosak; Ex. 8, AGR-0070 to 0071).

(b) As previously discussed and is clear from the hearing transcript, the respondent was not "tricked" into agreeing to bifurcate the trial. (Ex. 8, AGR-0070 to 0071).

(c) While defense counsel did ask the plaintiff about her rheumatoid arthritis during cross-examination, no mention of it was made in any of their closing arguments. (Ex. 9, AGR-0221 to AGR-0234). Therefore no one tried to portray the plaintiff as alleged by the respondent.

(d) It is true that, on February 16, 2016, the court denied the respondent's motion for a new trial based on his initial objection to bifurcation, to which he later consented. The entirety of the order is as follows: "Denied. Plaintiff's counsel consented to bifurcation in the presence of his client. This motion is simply a bowl of sour grapes served with regret." (Ex. 31, defendants' supplemental appendix on appeal, AGR-0494). There was no disrespect of the plaintiff's due process rights, since the respondent agreed to bifurcation after a full discussion on the record.

(e) This allegation is without any foundation. The respondent admitted that he had no idea why the case was reassigned. (Tr. III:182-183, 189, 195, respondent).

(f) The respondent admitted that his claim of a cover-up was based solely on his disagreement with the court's decision; he admitted the court gave an explanation for its decision, but because the respondent disagreed with it, he concluded the real reason must be a cover-up. (Tr. III:175-176, respondent).

(g) As previously discussed, the Executed PTC Memorandum was not "planted"; it was filed with the superior court at the time of the June 2015 pre-trial conference. The respondent's claim of "forgery" was based on his failure to read the document he signed.

(h) Since the Executed PTC Memorandum (which listed Dr. Kennedy as a potential expert witness), was not "altered" or "planted," it was therefore not a "false claim" by defense counsel that they had previously disclosed Dr. Kennedy.

(i) The fact that there were two versions of the pre-trial memorandum is not "prima facie of evidence of a forgery." As previously discussed, the respondent sent in the Unexecuted PTC Memorandum (Ex. 3) on his own, before the pre-trial

conference, and the Executed PTC Memorandum (Ex. 4) was circulated at the time of the pre-trial conference and signed by all counsel, including the respondent, and filed at that time. (Tr. I:72, Pierce).

(j) There was nothing "wildly speculative" about how two versions of the PTC Memorandum could get into the record.[19] Regardless of Judge Barry-Smith's observation about what has happened in other cases, in this case we know exactly what happened: the respondent submitted the Unexecuted PTC Memorandum ex parte prior to the pre-trial conference, and the Executed PTC Memorandum was signed by all counsel and filed at the time of the conference. (Tr. I:71-72, Pierce).

(k) The respondent took issue with the judge's statement that the Executed PTC Memorandum (which the respondent calls the Altered PTC Memo) was always in the case file. However, this was a correct statement by the judge. Since the respondent personally signed the Executed PTC Memorandum and was physically present when it was given to the court, the judge was correct in saying that the respondent was not excusably ignorant of its existence in the record.

(l) Pierce sent the final draft of the Executed PTC Memorandum to the respondent by email in advance of the pre-trial conference (which described the changes and additions; see (Ex. 26, AGR-0382 to 0383), and then gave him a courtesy copy as well as having the respondent sign the original that was filed with court. (Tr. I:72-74, Pierce). It was the respondent's fault in not reading emails and documents he signed, not Pierce's fault. (Ex. 59, AGR-0884 to 0885).

(m) The respondent's brief (Ex. 58, AGR-0851) misstates what the Middlesex Defendants said in their brief in opposition to the plaintiff's motion to recuse. (Ex. 51). The respondent said their brief said "a transcript of the conference which would show that '. . . Dr. Kennedy's expert disclosure and the bifurcation issue were discussed during the conference on in the presence of Judge Kirpalani . . .' " However, the exact statement by the defendants in footnote 5 of their brief was as follows:

> The Attorney Defendants have initiated the process to obtain the transcript of the Underlying Case Final Pre-Trial Conference. The Attorney Defendants will file an addendum to this Opposition focused on the specifics of that Conference upon receipt of the transcript. The Attorney Defendants anticipate that Dr. Kennedy's expert disclosure and the bifurcation issue were discussed during the Conference in the presence of Judge Kirpilani [sic] and Plaintiff Counsel. (emphasis added). (Ex. 51, AGR-0774, n.5).

[19] As quoted by the respondent, Judge Barry-Smith said: "On occasion, there are files in this courthouse where there is more than one pre-trial memo filed. . . and then the parties forget to take out the first one." (Ex. 58, AGR-0848).

In other words, the lawyers' brief did not say that Dr. Kennedy and his disclosure "were discussed," but that they "anticipated" the transcript (which they did not have) would show that Dr. Kennedy's disclosure was discussed. Since the respondent had the transcript of that hearing at the time he wrote his appellant brief (as opposed to the defendants, who did not have a copy of it when they wrote their opposition to the respondent's motion to recuse), the respondent made a knowing misrepresentation of fact in his brief (Ex. 58).

(n) We agree that expert disclosures and discovery in general are to avoid trial by ambush[20] and unfair surprise, but that has nothing to do with his false statements that "unethical lawyers can bluff an incompetent judge into doing something adverse to the opposing party." (Ex. 58, AGR-0859). Nothing the respondent said supported his claim that the judge was "incompetent" or was "bluffed" into "doing something adverse to the opposing party."

(o) On August 21, 2018, Judge Barry-Smith issued a protective order, staying discovery until after a decision on the motion to dismiss the lawsuit against the Middlesex Defendants, which was scheduled for hearing on September 12, 2018 (Ex. 46), and was in fact heard on that date. (Ex.47, hearing transcript). Since the outcome of the hearing on the motion to dismiss was not dependent on the existence or non-existence of Dr. Kennedy's report, but rather on what the attorney-defendants said in advocating for bifurcation, the protective order did not constitute allowing the defendants to conceal evidence. (Ex. 48).[21]

(p) While the respondent attacked the competence of Judge Welch in granting the motion to bifurcate the trial, the fact remains that the respondent gave the respondent an opportunity to be heard in opposition and he agreed to it on behalf of the plaintiff on January 7, 2016. The respondent also misstated the issue of "numerous experts," which the defense lawyers said would have been necessary if the case was not bifurcated and particularly the trial got into the issue of the medical malpractice by the plaintiff's surgeon in treating her accident-related injuries. (Ex. 8, AGR-0065 to 0070).

(q) While inflammatory, the respondent's claim that "Any competent judge would have recognized the Appellees' Motion to Bifurcate was a fraud" also makes no

[20] While we accept and agree with the respondent's point—that pre-trial discovery is to avoid unfair surprise—the reference to "blind man's bluff" is inapposite, as it refers to when a player does not know his own cards, and not when he does not know his opponent's cards.

[21] Of course, there were procedural reasons why it was not even necessary to reach the issue of what the Middlesex Defendants said to obtain bifurcation. First, the plaintiff's claims were foreclosed by the Appeals Court decision, which considered and rejected the plaintiff's arguments that the trial court erred by bifurcating the trial. (Ex 48, AGR-0745). Second, the request to vacate the January 2016 was time-barred. (Id.). Third, the bifurcation as ordered by the trial court was what had been discussed and agreed to by the respondent. (Id. at AGR-0746 to 0747). Fourth, the statements by the Middlesex Defendants, as counsel for the defendants in the underlying tort case, were protected by the litigation privilege and could not be the basis for liability. (Id. at AGR-0747).

sense. Bifurcation was granted (after a motion to consolidate with the medical malpractice case was denied) because of the complexity of issues. There was nothing "fraudulent" about it.

(r) As with subparagraph (a) above, there was not in the record to support the respondent's claims that the judge granted the motion to bifurcate the trial so as to shorten it and therefore be able to take a five-day vacation. These two paragraphs therefore were statements made with reckless disregard for their truth or falsity concerning the integrity of a judge, as the respondent admitted he had no information or basis for his statements at the time. (Tr. III:172-175, respondent).

184. On May 29, 2019, in the Middlesex Appeal, the Middlesex Defendants ("Appellees") filed a motion to file a supplemental appendix and to strike the respondent's affidavit, which was included in the appendix to the Brief of the Appellant. The Appellees sought to include documents that were omitted from the appendix submitted by the respondent. (Ans. ¶ 129; Ex. 61).

185. On May 31, 2019, the court allowed the motion to file a supplemental appendix. A ruling on the motion to strike the affidavit of the respondent was reserved for the Appeals Court Panel. (Ans. ¶ 130; Ex. 57, AGR-0817).

186. On June 5, 2019, the respondent filed an opposition to defendants' motion to file a supplemental appendix and to strike the respondent's affidavit in the Middlesex Superior Court Action Appeal. In his opposition, the respondent repeated his argument that the Executed PTC Memorandum could be a "forgery" and that the Appellees filed it as part of a scheme to defraud the court. (Ans. ¶ 131; Ex. 62).

187. On June 19, 2019, the Appellees filed a brief in the Middlesex Appeal. On July 18, 2019, and with permission of the court, the brief was withdrawn and substituted with a substitute brief. (Ans. ¶ 132, not denied; Ex. 63, substituted brief; Ex. 57, docket sheet, AGR-0817, dkt. #19).

188. In their brief, the Appellees argued that in the Middlesex Superior Court Action:

(a) the trial court properly allowed the Middlesex Defendants' motion to dismiss the plaintiff's complaint because it was time-barred, did not meet the minimal showing of fraud on the court and the Middlesex Defendants were shielded by the litigation privilege; (b) the Middlesex Defendants' opposition to the plaintiff's motion to recuse did not violate a protective order; (c) the plaintiff was not been denied due process; and (d) the Plaintiff/Appellant's appeal was frivolous and the Defendants/Appellees should be entitled to costs and attorneys' fees. (Ans. ¶ 133; Ex. 64).

189. On August 7, 2019, the respondent filed reply brief in the Middlesex Appeal. In the reply, the respondent repeated his prior arguments: (a) that the Appellees perpetrated a fraud on the courts, (b) that the Executed PTC Memorandum was a forgery, and (c) that the Emergency Motion to Bifurcate Trial was supported by misrepresentations. (Ans. ¶ 134; Ex. 65).

190. The respondent's reply brief correctly stated that Saninocenio had been "denied eleven post-trial motions, an appeal and petition to this Court, and an application for further review by the SJC." (Ex. 65, AGR-1079).

191. Despite these adverse rulings, the respondent never considered that his legal positions were incorrect. (Tr. III:187, respondent).

192. Moreover, in the reply, the respondent also alleged, inter alia, as follows:[22]

(a) "The decisions being made by every judge involved in this controversy are contrary to the law, the rules, and the standards of review." (Ex. 65, AGR-1079).

(b) "The purpose of this reply brief is to eliminate any possibility that this abomination of justice has any innocent explanation." (Ex. 65, AGR-1079).

(c) "The evidence also shows [the Appellees] had no intention of calling any expert witnesses to prove the surgical injuries were unforeseeable." (Ex. 65, AGR-1085 to 1086).

[22] All of this is also admitted in the respondent's answer. (Ans. ¶ 135).

(d) "The purpose of planting this forgery in the record was to support the misrepresentations later made in their Motion to Bifurcate." (Ex. 65, AGR-1088).

(e) "Dr. Kennedy's name was added without the Appellant's knowledge to prevent her from derailing their scheme to defraud the trial court[…]" (Ex. 65, AGR-1088).

(f) "Every judge involved it this controversy has defended the Appellees' actions by relying on the B.S. semantic argument that the Appellant agreed to 'bifurcate' the trial." (Ex. 65, AGR-1093).

(g) "The trial transcript supports these claims and that Judge Welch allowed the Appellees to perpetrate this fraud." (Ex. 65, AGR-1095 to 0196).

193. The respondent's assertions were without merit, without a good-faith basis, frivolous, and/or made with reckless disregard as to their truth or falsity because they were, among other things, conclusory, speculative, and contradicted by the respondent's conduct in the Personal Injury Action. Some of it is conclusory hyperbole, which we need not address. However, the respondent clearly could not divine the "intent" of the lawyers, except they were hoping to avoid having to call expert witnesses by seeking bifurcation, which they did not deny. We have already discussed that the Executed PTC Memorandum was not a "forgery" and was not "planted"; that Dr. Kennedy's name was not "added without the [respondent's] knowledge nor was it done to "prevent [the plaintiff, Saninocencio] from derailing their scheme to defraud the trial court," as the respondent circuitously argued; and it was not a "B.S. semantic argument" that the respondent agreed to bifurcate the trial.

194. However, the false statements in subparagraph (g) must be addressed. First, the transcripts do not support the respondent's claims and, to the contrary, show that he agreed to bifurcation after a full discussion of the issues. (Ex. 8). Second, and as previously discussed, there was no fraud. Third, Judge Welch did not "allow the [defense lawyers] to perpetrate this fraud." This last statement is unsupported by the record and is a statement concerning the

qualifications and integrity of a judge, with reckless disregard as to its truth or falsity. Moreover, the respondent admits that the Appeals Court found no fraud. (Tr. III:157, 170, 176, respondent).

195. On January 22, 2020, the respondent filed a motion for oral argument in the Middlesex Appeal and again argued the Appellees used a forgery to perpetrate a fraud on the court. (Ans. ¶ 137; Ex. 66).

196. On January 23, 2020, the Appeals Court denied the motion for oral argument. (Ans. ¶ 138; Ex. 57, AGR-0818).

197. On March 12, 2020, the Appeals Court panel affirmed the August 21, 2018, allowance of the motion for a protective order, the September 27, 2018, judgment on motion to dismiss, and the January 9, 2019 denial of plaintiff's motion to reconsider. See Saninocencio v. Pierce & Mandell, PC, 97 Mass. App. Ct. 1106 (2020). (Ans. ¶ 139; Ex. 67, Ex. 68).

198. In its decision on August 21, 2018, the Appeals Court panel found as follows:

> "At bottom, a plausible inference cannot be drawn that the defendants committed the fraud as alleged in Saninocencio's complaint. Saninocencio's allegations do not plausibly suggest that she will be able to 'clearly and convincingly' demonstrate that the [Middlesex Defendants] 'sentiently set in motion some unconscionable scheme' to deceive the trial court (or any of the appellate courts), or which unfairly hampered her ability to prosecute her case. [citation omitted]. She has failed to demonstrate any misconduct on the part of the [Middlesex Defendants] that would warrant relief under rule 60 (b) in the circumstances of this case […] Saninocencio's remaining arguments, concerning her objections related to the protective order, the motion to recuse, and her due process question, are either moot or premised on the same central assertion involving the alleged forged PTC memo and the motion to bifurcate. Given the result we reach, we need not address these issues, or other arguments raised by the defendants." (Ans. ¶ 140; Ex. 68 at AGR-1112).

199. On March 26, 2020, the respondent filed motion for reconsideration of the Appeals Court panel's March 12, 2020, decision in the Middlesex Appeal. (Ans. ¶ 141; Ex. 69).

200. In the motion for reconsideration, the respondent also alleged, inter alia, as

follows:[23]

(a) “This panel has intentionally deprived the Appellant of her right to due process in order to cover up an egregious fraud perpetrated by the Appellees.” (Ex. 69, AGR-1114).

(b) “The Appellant had a right to bring this action pursuant to Mass.R.Civ.P. 60(b). She also had Constitutional rights to due process and equal protection which have been denied by this panel and every judge who has had a hand in covering up this fraud.” (Ex. 69, AGR-1115).

(c) “This case was assigned to Judge Maureen Hogan and then quickly reassigned/hijacked by Judge Christopher Barry-Smith.” (Ex. 69, AGR-1115).

(d) “Before she could even ask for it, Barry-Smith shut down all discovery by giving the Appellees a protective order without a hearing and without regard to the Appellant's opposition to it. This protective order was issued for the sole purpose of allowing the Appellees to conceal evidence.” (Ex. 69, AGR-1116).

(e) “Judging from his very publicly exposed background, Barry-Smith was probably 'assigned' to dismiss this case by someone on this court or the SJC.” (Ex. 69, AGR-1116).

(f) “This appeal was assigned to justices Wolohojian, Henry and Rubin before it was 'reassigned/hijacked' by this panel which denied the Appellant's motion for an oral argument.” (Ex. 69, AGR-1116).

(g) “And your arguments clearly show you were lousy lawyers before you became dishonest judges.” (Ex. 69, AGR-1117).

(h) “That this panel would argue that I knew, or should have known it had been added shows that this panel is as unethical as the sleazy lawyers who perpetrated this fraud.” (Ex. 69, AGR-1118).

(i) “If this panel has any integrity and believes in the veracity of the arguments it made for the Appellees, it should order them to 'duly execute' this document. If this panel refuses to do this, it will be clear to a federal court judge that this panel has knowingly allowed the Appellees to use a forgery to perpetrate a fraud on this court in a previous appeal as alleged in Count II.” (Ex. 69, AGR-1119 to 1120).

(j) “This panel also made the same BS semantic argument that every other judge involved in this cover-up has made to exonerate the Appellees; that I assented to their motion to bifurcate the trial. Since this panel obviously has no regard for the Appellant's right to due process and will undoubtedly deny this motion, I'll address this argument in the Appellant's application for further appellate review.”

[23] All of this is also admitted in the respondent’s answer. (Ans. ¶ 142).

(Ex. 69, AGR-1120).

201. The respondent's assertions were without merit, without a good-faith basis, frivolous, and/or made with reckless disregard as to their truth or falsity because they were conclusory, speculative, contradicted by the respondent's conduct in the Personal Injury Action, as follows:

(a) The "fraud" alleged by the respondent was two-fold: (1) he claimed that the Executed PTC Memo was a "forgery," and a fraudulent substitution of the jointly prepared memorandum, which added information about Dr. Kennedy as a proposed expert witness; and (2) the late-filed motion to bifurcate the trial was unsupported and designed to prevent the plaintiff from introducing evidence at trial. (Ex. 41, ¶ 24, at AGR-0678 and 0679). Since none of this constituted a "fraud on the court," the Appeals Court panel did not deprive the plaintiff of any due process nor did it engage in a "cover-up" of any alleged misconduct the defendants or their lawyers.

(b) As previously discussed, there was no "fraud" and therefore there was no coverup.

(c) As previously noted, the respondent admitted that he had no idea why the case was reassigned or factual basis for this claim. (Tr. III:196-197, respondent).

(d) As discussed above, there was no impropriety in granting the motion for a protective order.

(e) The respondent's speculation about why Judge Barry-Smith was assigned to the case was unsupported, as the respondent admitted he did not know how or why Judge Barry-Smith was assigned to the case. (TR. II:183, 189, 195, respondent).

(f) As previously noted, the respondent admitted that he had no idea why the case was reassigned or any factual basis for this claim. (Tr. III:196-197, respondent).

(g) In explaining his brief the respondent claimed that the judges were "as sleazy and underhanded as [the lawyers who defended the underlying case] and were lousy lawyers before becoming crooked judges," and because they did not follow precedent. (Tr. III:201-202, respondent). When he presented his own defense, the respondent offered nothing to support these claims. However, when cross-examined by bar counsel, the respondent said he should have been allowed to offer medical records in a bifurcated trial limited to liability, and that the trial court did not follow Tilton v. Union Oil Co. (Tr. III:202-203, respondent; Ex. 34,

AGR-0557 to 0558, citing Tilton).[24] However, the trial transcript reflects that the respondent was allowed to introduce medical records. (Ex. 9, AGR-0101, AGR-0116 to 0117, AGR-0154). Accordingly, we find that the respondent's statements about the qualifications and integrity of the trial judge, and by extension, the Appeals Court judges, were false or made with reckless disregard as to the truth or falsity of these statements.

(h) See subparagraph (g).

(i) The respondent argued that the Appeals Court panel confused his signature on the Executed PTC Memorandum with requirement of Superior Court Rule 30B, that the medical expert must sign the expert witness disclosure in the pre-trial memorandum. He further argued that the Appeals Court "has knowingly allowed the Appellees to use a forgery to perpetrate a fraud on this court" if it did not order the attorneys to have Dr. Kennedy sign his disclosure. (Ex. 69, AGR-1116 to 1117).[25] However, it is the respondent who conflated two issues. First, the defense lawyers admitted the deficiency of their expert disclosure concerning Dr. Kennedy (Tr. I:80-82, Pierce), but it was ultimately irrelevant because they never sought to call him as a witness.

(j) The Appeals Court decision discussed at length the respondent's having assented to the motion to bifurcate and that there was no fraud or forgery. (Ex. 68). Accordingly, the respondent's statement that the Appeals Court has "no regard for the Appellant's right to due process" was a statement about the qualifications and integrity of the judges and was false or made with reckless disregard as to the truth or falsity of the statement.

202. On March 27, 2020, the Appeals Court panel denied the respondent's motion for reconsideration in the Middlesex Appeal. (Ans. ¶ 144; Ex. 57, AGR-0818).

"Middlesex SJC Appeal"—the personal injury defense lawyers

203. On July 17, 2020, the respondent filed a Request for Further Appellate Review ("FAR") in the SJC of the Middlesex Appeal. See Nellie Saninocencio vs. Pierce & Mandell, PC & Others, SJC, Docket No. FAR-27673 (the "Middlesex SJC Appeal"). In respondent's

[24] The respondent's citation in his brief is incomplete, but we take administrative notice of the fact that the case is Tilton v. Union Oil Co. of Calif., 64 Mass. App. Ct. 115, rev. den. 445 Mass. 1104 (2005).

[25] We take administrative notice of the fact that Superior Court Rule 30B would have allowed the lawyers to affix a facsimile signature of the expert. The penalty for the failure to have the expert sign the disclosure could have been the exclusion of the expert at trial, but again that was a non-issue, since Dr. Kennedy was never called to testify.

FAR application, the respondent alleged that the courts had intentionally denied Saninocencio's due process rights for over five years. (Ans. ¶ 145; Ex. 70, docket sheet, and Ex. 71, respondent's request for further appellate review).

204. The respondent also alleged, inter alia, as follows:[26]

(a) "If this application is denied, the Appellant will be forced to allege in federal court that every judge involved in this controversy was racially biased in covering up an egregious and unprecedented fraud committed by the Appellees." (Ex. 71, AGR-1143).

(b) "Trial Court Judge Richard Welch implemented the [bifurcation] procedure on the second day of the trial in order to give himself a five day weekend." (Ex. 71, AGR-1143).

(c) "This case was assigned to Judge Maureen Hogan and hijacked by Judge Christopher Barry-Smith. He used a protective order allowing the Appellees to conceal evidence they were ordered to disclose three times in the underlying case." (Ex. 71, AGR-1145).

(d) "The Appellant's appeal was assigned to Judges Rubin, Wolohojian and Henry before it was hijacked by Judges Meade, Sullivan and Neyman." (Ex. 71, AGR-1145).

(e) Defendants withholding evidence "which would have proven every allegation in this action […] Judge Smith issued a protective order knowing it was being used to conceal this evidence." (Ex. 71, AGR-1145 to 1146).

(f) "The forgery that has been used to support this claim is a monument to the level of corruption in these courts." (Ex. 71, AGR-1146).

(g) "The Appeals Court wrote in its decision: 'Other points, relied upon by [the parties] but not discussed in this opinion have not been overlooked.' […] Whoever originally wrote this ridiculous statement is only slightly more an idiot than everyone who's quoted it for the last 60 years. The judges who represented the Appellees in this action intentionally overlooked everything." (Ex. 71, AGR-1146).

(h) "They argued that I knew or should have known Dr. Kennedy's name was in the document and waived the Appellant's right to challenge his admissibility before trial. Apparently, these judges are as sleazy and underhanded as the Appellees and were lousy lawyers before becoming crooked judges." (Ex. 71, AGR-1148).

[26] All of this is also admitted in the respondent's answer. (Ans. ¶ 146).

(i) "An earthworm could see the motion was late-filed to create a last minute unfair advantage over the Appellant and prevent her from filing an interlocutory appeal. The Appeals Court argued that the motion wasn't late-filed because I had time to file an opposition. The trial transcript shows Welch intentionally ignored my opposition to prevent me from discovering the bogus expert disclosure in the record." (Ex. 71, AGR-1149).

(j) "The trial transcript shows Welch and the Appellees skillfully avoided any discussion which would have led to the discovery of the forgery in the record." (Ex. 71, AGR-1149).

(k) "Welch looked like he jerked himself off under the bench when he realized this would give him a five-day weekend." (Ex. 71, AGR-1149).[27]

(l) "The same bull-shit argument has repeatedly been used to cover up this fraud; that I agreed to bifurcate the trial between liability and damages." (Ex. 71, AGR-1150).

(m) "Welch knew he was about to lose his five-day weekend and allowed the Appellees to overcome this evidence by destroying the Appellant's credibility on cross-examination." (Ex. 71, AGR-1150).

(n) "A crustacean could see Welch allowed them to portray [the plaintiff] as a scam artist who was using her arthritic condition to gain the jury's sympathy. Otherwise, what the fuck does her arthritis have anything to do with proving where she fell or proving liability?" (Ex. 71, AGR-1150).

(o) "Welch knew the forgery was in the record and forced me into an unnecessary appeal." (Ex. 71, AGR-1152).

(p) "[T]he allegations in Count II of this Complaint have been conclusively proven and overlooked by the miscreants who dismissed it." (Ex. 71, AGR-1151).

(q) "I suspected this case was being manipulated when Judge Smith hijacked it from Judge Hogan. I knew the case was rigged when he issued a protective order allowing the Appellees to conceal evidence they were ordered to disclose five years ago. It was comical when Judges Meade, Sullivan and Neyman hijacked the appeal from the panel it was originally assigned to. What these legal geniuses overlooked is that the Appellees' bifurcation procedure turned the Appellant's trial into a sham proceeding and that they have been hiding this fact for over five years now." (Ex. 71, AGR-1152).

(r) "Proving where the Appellant fell was as relevant to establishing liability as proving what color socks she was wearing when she fell." (Ex. 71, AGR-1152).

[27] The respondent testified that he had no basis for saying this, but wrote it in an unsuccessful effort to get a hearing on his request for further appellate review. (Tr. III:203-204, respondent).

(s) "Dr. Kennedy's medical opinion will prove that the Appellees and Judge Welch knew the bifurcation procedure would turn the trial into a sham proceeding." (Ex. 71, AGR-1152).

(t) "According to R.A.P. 27.1(e), the Appellant needs either three judges on the SJC or thirteen on the Appeals Court to allow further appellate review. I doubt there are enough honest judges in this entire state court system to start a decent card game." (Ex. 71, AGR-1152 to 1153).

(u) "When this application is rejected, it will conclusively prove that the courts have refused the Appellant an opportunity to even explain the fraud that was perpetrated here. It will also prove the courts issued a protective order to deny the Appellant her right to evidence which would have proven every allegation in this Complaint." (Ex. 71, AGR-1153).

(v) "As far as sanctions, I would consider it an honor to be kicked out of this sleazy profession by the likes of judges who overlooked what the Appellees have done to the Appellant for the last five years. The SJC's recent letter regarding racial bias against black litigants is laughable considering what the courts have done to cover up this fraud. I guess it was the Appellant's tough luck that respecting brown rights isn't also currently fashionable." (Ex. 71, AGR-1154).

(w) "Judicial immunity unfairly protects corrupt judges engaged in the performance of their duties. Conspiring to commit a fraud on his own court and hiding the evidence in the attic of the Newburyport Courthouse were not part of Welch's duties." (Ex. 71, AGR-1154).

(x) "Finally, the SJC should send this case back to the trial court for further proceedings because the Appellees have admitted to every allegation in this Complaint (see Appellees' Admissions and Confessions attached here as Exhibit 1). Any arguments that this document is a fake should be rejected as they were when I made them two years ago. This document is no less a fake than the expert witness disclosure which was used to defeat the Appellant's prior appeal." ((Ex. 71, AGR-1153 to 1154).

205. The respondent's assertions were frivolous, without merit, and were made about the integrity or qualifications of judges, without a good-faith basis, and/or made with reckless disregard as to their truth or falsity, as follows:

(a) The alleged coverup was not racially motivated. The respondent admitted that he had no basis for this allegation, other than the fact that the plaintiff was Puerto Rican and every judge (to his knowledge) was white. (Tr. III:191-193, respondent; Tr. V:200-201, respondent). The respondent made the allegation of racial bias based upon the fact that Saninocencio was Hispanic and that the

judiciary in the Commonwealth is primarily white. The respondent accused judges who rendered decision in Saninocencio's cases of racial bias, unintelligence and corruption to "poke the bear in the case," hoping to get a hearing to "admonish [him] and punish [him] for accusing them falsely." (Id.).

(b) The groundless accusation, that the trial judge bifurcated the case in order to give himself a five-day vacation, has previously been discussed as unsupported. The respondent did not know Judge Welch's vacation or trial schedule. (Tr. III:172, respondent).

(c) The false allegations (that the case was hijacked by Judge Barry-Smith and that a protective order was issued as part of a coverup) has previously been discussed as unsupported; the respondent did not know why the case was transferred to Judge Barry-Smith. (Tr. III:183, 189, 194-196, respondent).

(d) The false allegations (that the case was hijacked by one panel of Appeals Court judges to take it away from another panel) has previously been discussed as unsupported; he did not know why the case was assigned to them. (Tr. III:195-197, respondent).

(e) The false allegation (that Judge Barry-Smith issued a protective order, knowing it was used to conceal evidence) has previously been discussed as unsupported. The respondent admitted that it was only issued as a stay of discovery pending the outcome of the motion to dismiss. (Ex. 46; Tr. III:195-196, respondent).

(f) The claims (that the Executed PTC Memorandum was a forgery and that the courts were corrupt) as previously been discussed as unsupported. At the disciplinary hearing, the respondent went further and claimed that the Appeals Court panel said the Executed PTC Memorandum was a forgery and that "if [the respondent] had been more diligent, he could have prevented this fraud." (Tr. III:198, respondent). He had no "evidence" of corruption of the judiciary. (Tr. V:201-202, respondent). His only evidence to support allegation of corruption was the Appeals Court decision itself (Ex. 68). (Tr. III:198-199, respondent). However, the Appeals Court decision (Ex. 68) makes not such statements. First, it did not say there was a forgery, but that for the sake of the decision, it accepts this statement as true. The decision said that, when reviewing the allowance of a motion to dismiss, the Appeals Court "accept[s] the allegations in the complaint as true and draw[s] all reasonable inferences from the nonmoving party's favor." (Ex. 68, AGR-1108, citations omitted). Even with that assumption, the Appeals Court held that the respondent's "contention that the bifurcation was the product of a fraud on the court was unsupported, and that any alleged egregious conduct by the condo defendants was insufficient to constitute fraud." (Ex. 68, AGR-1107). It did not say that the respondent could have ferreted out the alleged fraud if he had been more diligent, as it found there was no fraud on the court. (Ex. 68, AGR-1107, 1111 to 1112).

(g) The claims (that the Appeals Court judges "intentionally overlooked everything")

is belied by their decision. (Ex. 68). The assertion that "judges" represented opposing parties in the appeal was made because the rulings were against the respondent and his client. Further, the respondent did not know what the judges considered in making their rulings. (Tr. III:200-201, respondent).

(h) The Appeals Court decision does repeat the respondent's admissions that he received the email with the draft that later became the Executed PTC Memorandum, and it contains Dr. Kennedy's name (Ex. 68, AGR-1106 and n.7), and that the prehearing order, inter alia, required the respondent to state an intent to file a Daubert/Lanigan challenge to preserve the plaintiff's rights. (Ex. 68, AGR-1105 to 1106 and n.6). However, these statements do not translate into the respondent's assertions that they are "sleazy and underhanded," and were "lousy lawyers before becoming crooked judges." The respondent knew nothing about the legal careers of the judges involved in these matters when they were lawyers. (Tr. III:198-199, 203, respondent). At the hearing, the respondent defended his statements by claiming that "the facts were changed" and that precedential "case law was intentionally overlooked." (Tr. III:201-202, respondent). When pressed, the respondent defended his statements by citing Tilton v Union Oil of Calif., discussed above. (Tr. III:202-203, respondent).

(i) The Appeals Court correctly pointed out that the emergency motion to bifurcate was filed three weeks before the trial date and that the respondent both filed an opposition to it (Ex. 7) and was heard in opposition (Ex. 8), "thus mitigating any adverse effects from the defendants' failure to comply with any previous orders." (Ex. 68, AGR-1112). However, the respondent's statement ("The trial transcript shows Welch intentionally ignored my opposition to prevent me from discovering the bogus expert disclosure in the record") is patently false. As discussed above, the respondent was allowed to argue his opposition at length, and eventually he agreed to the bifurcation. (Ex. 8). Judge Welch did not "ignore" the respondent's opposition and more importantly, did not "prevent" the respondent from discovering Dr. Kennedy's name in the Executed PTC Memorandum, which the respondent received but never read in advance and signed at the time of the conference.

(j) As previously discussed, it was not a "bullshit argument" that the respondent agreed to bifurcate the trial" nor was the motion to bifurcate an attempt to "cover up" a "fraud."

(k) Judge Welch did not "know he was about to lose his five-day weekend." As he said when discussing the motions, if the plaintiff prevailed at the liability phase of the trial, they would move directly to a trial on damages. (Ex. 8, AGR-0068). Since the trial began on a Thursday, it would have continued to the beginning of the following week. (Tr. I:107, Pierce). The judge had said nothing about a vacation or days off if the trial were bifurcated. (Tr. I:107-108, Pierce).

(l) While not asked about it at the disciplinary hearing, the defense lawyers did not appear to ask the plaintiff about her arthritis in order to portray her "as a scam

artist." From the context of the questions, they appeared to ask in order to show that she should have been walking with a walker at the time she fell. (Ex. 9, AGR-0123 to 0124).

(m) The respondent's statement ("[Judge] Welch knew the forgery was in the record and forced me into an unnecessary appeal") fails at the beginning, because the Executed PTC Memorandum was not a "forgery." Beyond that, the bifurcation was not as a result of Dr. Kennedy's name being in the Memorandum, but because of the complexities of the medical issues, and in particular, that the plaintiff was seriously injured by the surgeon in his treatment of fall-related injuries. The respondent's subsequent appeal was unrelated to the Executed PTC Memorandum, which he did not know about until after he filed his appeal.[28]

(n) The respondent's allegations in count two of the respondent's complaint against the lawyers was that they committed a fraud upon the Appeals Court by misrepresenting the Executed PTC Memorandum as "authentic," when the respondent claimed it was "a forgery." (Ex. 41, AGR-0679). These allegations are factually untrue, as discussed above. It is also untrue that they "have been conclusively proven."

(o) Contrary to the respondent's statements (and as previously discussed), Judge Barry-Smith did not hijack the case from Judge Hogan; the case was not rigged; the protective order (issued during the pendency of the motion to dismiss) was not so as to enable the lawyers to "conceal evidence"; Judges Meade, Sullivan and Neyman did not hijack the appeal from the original panel; the bifurcation did not turn the plaintiff's trial into a sham; nor was this hidden by anyone for five years.

(p) The respondent's claim (that where the plaintiff fell was irrelevant as the color of her socks) was factually incorrect. To the contrary, the location of her fall was central to her case. In his opening statement at the trial of the Personal Injury Action, the respondent told the jury that the main issue in the case was to determine where Saninocencio fell. (Ex. 8, AGR-0082; Tr. III:207, respondent). His argument was the defendants failed to adequately shovel the sidewalk where she claims she fell. The respondent's closing argument repeatedly stated that the plaintiff fell on the walkway. (Ex. 10, AGR-0235, 0236, 0238). He maintained that the bruise on the plaintiff's knee proved that she fell on the hard walkway and not on a grassy surface. (Ex. 10, AGR-0239 to 0240).[29] Accordingly, the respondent's claim in his brief was a knowingly false statement of fact.

(q) We do not find in the record where the respondent explained why Dr. Kennedy's opinion would prove that Judge Welch and the lawyers "knew the bifurcation

[28] It is also not mentioned in the respondent's post-trial motions or supporting memoranda. (Ex. 12, Ex. 13, Ex. 14, Ex. 15).

[29] At one point during his closing argument, the respondent did argue in the alternative, that it made no difference where she fell, if she was not on the walkway because it was not shoveled. (Ex. 10, AGR-0238 to 0239). But in the end, he argued she fell on the unshoveled walk.

procedure would turn the trial into a sham proceeding." Dr. Kennedy's opinion was that the plaintiff suffered disk extrusion at the L3-L4 area due to her fall on January 16, 2012, and that her surgery on February 27, 2012 was necessitated by that injury. (Ex. 168, R505). However, she also had a long history of back problems and her other symptoms were caused by degenerative changes in her lower back that were not caused by her fall. (Ex. 168, R489-R491, R505, R506). The respondent did not have a copy of Dr Kennedy's report at the time he wrote his petition for further appellate review on July 17, 2020 (Ex. 71). (The respondent did not receive a copy of it until 2024, when its production as ordered by us.) The respondent therefore made this statement without a good faith basis that was not frivolous.

(r) While we do not address the respondent's opinion that law is a "sleazy profession," his FAR petition implies that the "fraud" was "covered up" because his client was brown and not black. Aside from the fact that there was no "fraud" and no "cover up," the respondent did nothing to support his claim that the "cover up" was racially motivated. Accordingly, we find that it was a statement concerning the qualifications and integrity of judges, knowing the statements to be false or with reckless disregard as to their truth or falsity.

(s) In criticizing judicial immunity, the respondent stated that Judge Welch conspired to commit a fraud on his own court and was "hiding evidence in the attic of the Newburyport Courthouse," which "were not part of [Judge] Welch's duties." To the contrary, the respondent had been told that the documents were left behind when the case was transferred for the appeal and misfiled. (Ex. 59, AGR-0854, 0884-0885; Ex. 62, AGR-0921; Tr. III:208-214, respondent). At the disciplinary hearing, the respondent admitted he was told by a clerk that some originals had been located in the attic of the Newburyport courthouse and had sent them to Salem for inclusion in the record. This was on May 12, 2019, so it was a year before the respondent filed his July 17, 2020, FAR petition, where he alleged that Judge Welch had hid them. (Tr. III:211-214, respondent). In other words, the respondent knew, when he wrote his FAR petition, that the documents had simply been misfiled. (Tr. III:209-210, respondent).[30] Accordingly, we find that these were statements concerning the qualifications and integrity of a judge, knowing the statements to be false or with reckless disregard as to their truth or falsity.

(t) While we do not consider, for the truth of the matters stated in them, the respondent's sarcastic unsigned "affidavits" he wrote on behalf of the defense lawyers, he then wrote that the supposed affidavits were "no less a fake than the expert witness disclosure which was used to defeat the Appellant's prior appeal." (AGR-2114 to 2115). Since the disclosure of Dr. Kennedy in the Executed PTC Memorandum was not a "fake," the respondent therefore made this statement

[30] At the disciplinary hearing, when pressed for evidence to support the allegation that Judge Welch concealed the Executed PTC Memorandum and Unexecuted PTC Memorandum, the respondent claimed he had a witness who would support his allegations, but he refused to identify the witness in the disciplinary proceeding to defend himself. (Tr.VI:197, respondent).

without a good faith basis that was not frivolous.[31]

206. As part of the request for FAR, the respondent also submitted unsigned affidavits purportedly on behalf of the Appellees. The respondent wrote:

(a) "I, Robert Pierce, Appellee in the above referenced action do hereby admit to all of the allegations in the Appellant's complaint. I also further confess that I assassinated JFK and conspired with the C.I.A. to frame Lee Harvey Oswald." (Ex. 71, AGR-1157).

(b) "I, John Jarosak, Appellee in the above referenced action do hereby admit to all of the allegations in the Appellant's complaint. I also further confess that I kidnapped the Lindbergh baby." (Ex. 71, AGR-1157).

(c) "I, Joseph Noone, Appellee in the above referenced action do hereby admit to all of the allegations in the Appellant's complaint. I also further confess that I have been stealing employees' lunches out of the company refrigerator for the last 2 years." (Ex. 71, AGR-1158).

207. The respondent's assertions were without merit, without a good-faith basis, frivolous, and/or made with reckless disregard as to their truth or falsity because: (a) the respondent signed the Executed PTC Memorandum; and (b) the assertions contained in the affidavits are plainly false and constitute a burden on the court, even if intended as sarcasm.

208. On August 4, 2020, the Appellees submitted a response in the Middlesex SJC Appeal. In their response, the Appellees argued that respondent's request for FAR: (a) was devoid of legal analysis explaining the basis for further review; (b) was strewn with inflammatory, baseless, ad hominem attacks against the Appellees; and (c) contained patently false affidavits allegedly on the Appellees behalf. The Appellees also reiterated that the

[31] Dr. Kennedy's report was dated July 24, 2015 (Ex. 168), while the Executed PTC Memorandum that disclosed him as a potential expert was filed on June 17, 2015. (Ex. 4, AGR-0021). However, that disclosure was only a reservation of possibly calling him as a witness and not the requisite disclosure under Superior Court Rule 30B. (Ex. 4, AGR-0027). As one of the defense lawyers stated, this was a "disclosure" of his name, "but that's not a sufficient disclosure before a trial to allow that person to testify." (Tr. I:80, 81, Pierce). His name was included so there could not be a later claim of an undisclosed witness. (Tr. I:81-82, Pierce).

respondent and Saninocencio's prior claims were properly dismissed. The Appellees also sought sanctions pursuant to Mass. R. App. P. 25, Mass. General Laws c. 211 § 10, and c. 231 § 6F, based on the frivolousness of Appellant's request for FAR, the redundancy of the issues raised, and the respondent's accusations of serious ethical violations by the Appellees and the court. (Ans. ¶ 150; Ex. 72).

209. On October 1, 2020, the SJC denied the Appellant's request for FAR in the Middlesex SJC Appeal. (Ans. ¶ 151; Ex. 70).

210. The SJC did not rule on the Appellees' request for sanctions. (Ans. ¶ 152).

COUNT TWO --CONCLUSION OF LAW

211. Bar counsel charged that the respondent's conduct, in asserting claims that lacked a basis in law or fact that were not frivolous, was in violation of Mass R. Prof. C. 3.1 and 8.4(d) (conduct prejudicial to the administration of justice). For the reasons detailed above, we conclude that bar counsel has proved these charges. Among other things, and as the respondent admits, by August of 2019, the courts "denied eleven post-trial motions, an appeal and petition to [the Appeals] Court, and an application for further review by the SJC." Despite these adverse rulings, he persisted in claiming that the Executed PTC Memorandum was a forgery, there was no Dr. Kennedy retained by the defendants, and that the defense lawyers had perpetrated a fraud.

212. Bar counsel charged that the respondent's conduct of making statements concerning the qualifications and integrity of judges and attorneys, knowing the statements to be false or with reckless disregard as to their truth or falsity, was in violation of Mass. R. Prof. C. 8.2 and 8.4(c), (d), and (h). For the reasons detailed above, we conclude that bar counsel has proved these charges. As to the charge that the respondent made knowing false statements about Judge Welch concerning the alleged concealment of evidence (and his refusal to present

evidence concerning what he was allegedly told), we add the following: when a respondent is in possession of evidence that could explain or defend the charged misconduct, but does not present it, "the hearing committee [is] warranted in drawing an 'adverse inference from the respondent's failure to offer materials, readily available to [him], that would presumably support [his] version of the facts if true.'" Matter of Zankowski, 487 Mass. 140, 149, 37 Mass. Att'y Disc. R. 554, 565 (2021). We draw such an adverse inference in this case.

COUNT THREE--FINDINGS OF FACT

"The Federal Court Action"—against judges and personal injury defense lawyers

213. On September 6, 2021, the respondent filed a complaint in the United States District Court for the District of Massachusetts against Pierce Mandell, Avery Dooley, Litchfield Cavo, Judge Welch, and the SJC ("Federal Defendants") on Saninocencio's behalf. See Nellie Saninocencio v. Welch et al, D. Mass., Docket No. 1:21-cv-11455-RGS ("Federal Court Action"). (Ans. ¶ 155; Ex. 73, docket sheet; Ex. 74, civil complaint).

214. The complaint in the Federal Court Action was substantially similar to the complaint in the Middlesex Superior Court Action, with additional allegations that Judge Welch conspired with the Middlesex Defendants to commit fraud, that the SJC denied Saninocencio her right to due process and that the SJC instigated a Board of Bar Overseers investigation of the respondent in retaliation for threatening to pursue litigation in federal court. (Ans. ¶ 156; Ex. 74; Tr. III:216, respondent).

215. On September 26, 2021, the respondent filed a motion for partial summary judgment against Litchfield Cavo, Pierce Mandell and Avery Dooley in the Federal Court Action. In support, the respondent repeated his prior claims regarding the alleged "forged" Executed PTC Memorandum and the motion to bifurcate in the Personal Injury Action. (Ans. ¶

157; Ex. 75, AR-1222). As previously discussed, these statements were false.

216. On September 28, 2021, Litchfield Cavo, Pierce Mandell, and Avery Dooley filed a motion to dismiss the complaint in the Federal Court Action. They also requested attorneys' fees and expenses incurred in defending the matter, as well as for any future attempts at litigating the same claims in Federal Court. (Ans. ¶ 158; Ex. 76).

217. On October 4, 2021, the respondent filed an amended complaint in the Federal Court Action. (Ans. ¶ 159; Ex. 77).

(a) In ¶ 51 of his federal court complaint, the respondent alleged: "Defendant Welch removed the Original PTC Memo and the Altered PTC Memo from the case file and concealed them in the attic of the Newburyport Courthouse before it was transferred to the Salem Courthouse for the Plaintiff's appeal." (Ex. 77, AGR-1232; Tr. III:218, respondent).

(b) In ¶ 52 of his federal court complaint, the respondent alleged: "Defendant Welch knowingly concealed evidence that the Defendant Attorneys had committed a fraud on this court and deprived the Plaintiff of a fair trial. The missing evidence also enabled them to commit a fraud on the Appeals Court to cover it up." (Ex. 77, AGR-1232).

The respondent made these allegations despite the fact that, prior to filing the Federal Court action, the respondent had been told by a clerk that the Unexecuted PTC Memorandum and Executed PTC Memorandum had been left behind in the attic of the courthouse and were misfiled. (Tr. III:218, respondent; Ex. 116, AGR-1839). Accordingly, we find that these allegations were knowing false statements of fact to a tribunal and statements that he knew to be false or with reckless disregard as to its truth or falsity concerning the integrity of a judge.

218. On October 5, 2021, Pierce Mandell, Litchfield Cavo, and Avery Dooley filed a motion to dismiss the amended complaint in the Federal Court Action. (Ans. ¶ 160; Ex. 78).

219. On October 7, 2021, Pierce Mandell, Litchfield Cavo, and Avery Dooley filed an opposition to the respondent's motion for partial summary judgment in the Federal Court Action and requested that the court stay, deny and/or strike the summary judgment motion until the

motion to dismiss filed by the defendants was ruled upon by the court. The defendants also sought, inter alia, sanctions against the respondent. (Ans. ¶ 161; Ex. 79).

220. On October 12, 2021, the respondent filed an opposition to the motion to dismiss filed by Pierce Mandell, Litchfield Cavo, and Avery Dooley. (Ans. ¶ 162; Ex. 80).

221. To this, the respondent attached an affidavit he signed under the pains and penalties of perjury dated October 12, 2021. In the affidavit, the respondent stated: (a) he gave a copy of the Unexecuted PTC Memorandum to defense counsel prior to the beginning of the pre-trial conference in June of 2015 (¶ 1); (b) he informed defense counsel that he had already filed the Unexecuted PTC Memorandum with the court (¶ 2); and (c) defense counsel failed to inform him of the changes made in the Executed PTC Memorandum the day prior to the pre-trial conference (¶ 3). (Ex. 80, AGR-1268).

222. Bar counsel asks us to find that the respondent's affidavit contains knowing misstatements of fact under oath to a tribunal. To do so, we would need to credit two of the defense lawyers over the respondent about what occurred at the pre-trial conference, with nothing more than conflicting testimony. (Tr. I:68, 73-74, Pierce; Tr. II:182, Adukonis). Given the number of lawyers present and the obvious confusion that occurred at the pre-trial conference (as evidenced by, among other things, losing track of who had the only signed copy of the Executed PTC Memorandum (Tr. I:72, Pierce), we are unwilling to do so. As to the respondent's statement that defense counsel failed to inform him of the changes in the Executed PTC Memorandum, other than to send it as an attachment to an email (affidavit, ¶ 1), this statement was false. They advised the respondent of the changes made in the unsigned version of what became the Executed PTC Memorandum and in the transmittal email. (Tr. I:69-71, Pierce).

223. On October 15, 2021, Pierce Mandell, Litchfield Cavo, and Avery Dooley filed a

motion for sanctions and costs pursuant to Fed. R. Civ. P. Rule 11(c)(2) and a supporting memorandum in the Federal Court Action on the grounds that the respondent had filed a frivolous amended complaint. In addition to a request for sanctions, attorneys' fees and costs, Pierce Mandell, Litchfield Cavo, and Avery Dooley also requested the court order that respondent and Saninocencio be barred from further pursuit of the claims raised in the Federal Court Action without court approval. (Ans. ¶ 163; Ex. 81, defendants' motion; Ex. 82, defendants' memorandum).

224. On November 19, 2021, Judge Welch of Essex Superior Court and the SJC filed a motion to dismiss the respondent's amended complaint and a memorandum in support thereof. (Ans. ¶ 164; Ex. 83).

225. On November 19, 2021, the respondent filed an opposition to the motion to dismiss the amended complaint. (Ans. ¶ 165; Ex. 84).

226. On December 9, 2021, Judge Richard Stearns denied the respondent's motion for partial summary judgment and granted the motions to dismiss filed on behalf of all of the defendants. (Ans. ¶ 166; Ex. 85; Tr. III:219, respondent).

227. As to Pierce Mandell, Litchfield Cavo, and Avery Dooley, the court found, inter alia, that the principle of res judicata barred the claims asserted by the respondent because: (a) Pierce Mandell, Litchfield Cavo, and Avery Dooley were all parties to the Middlesex Superior Court Action; (b) the allegations in Count 1 (fraud on the trial court) and Count 2 (fraud on the Appeals Court) of the Federal Court Amended Complaint mirrored the allegations in Counts 1 and 2 of Middlesex Superior Court Action complaint; and (c) the Middlesex Superior Court dismissed both claims and the Appeals Court affirmed, satisfying the requirement of a final judgment on the merits. (Ex. 85).

228. Concerning subject-matter jurisdiction, Judge Stearns cited Lance v. Dennis, 546 U.S. 459, 463 (2006) for the following proposition: "'[U]nder what has come to be known as the Rooker-Feldman doctrine, lower federal courts are precluded from exercising appellate jurisdiction over final state-court judgments.'" (Ans. ¶ 168; Ex. 85, AGR-1322).

229. On January 5, 2022, the respondent filed a response to Pierce Mandell, Litchfield Cavo, and Avery Dooley's motion for sanctions and costs. (Ans. ¶ 169; Ex. 86).

230. On January 14, 2022, Judge Stearns allowed the motion for sanctions and costs against the respondent and Saninocencio pursuant to Fed. R. Civ. P. Rule 11(b)(2). (Ans. ¶ 170; Ex. 87).

231. In his January 14, 2022, decision, Judge Stearns found, inter alia, as follows:

> "Sanctions are appropriate where a party or an attorney's 'claims, defenses, and other legal contentions' are not 'warranted by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law or for establishing new law.' Fed. R. Civ. P. 11(b)(2). The court may also impose sanctions upon a lawyer for 'advocating a frivolous position' or 'pursuing an unfounded claim.' […] [a]s the court noted in dismissing the Amended Complaint, the claims against [Pierce Mandell, Litchfield Cavo, and Avery Dooley] were also barred by the litigation privilege, the statute of limitations, and the doctrine of res judicata, while the claims against the SJC and Judge Welch were barred by the doctrine of absolute judicial immunity. […] These obvious preclusions would have been apparent to any reasonable attorney contemplating the filing of a lawsuit in federal district court. Attorney Dolan's conduct cannot be excused as a simple mistake about an issue of law, but rather amounts to a deliberate disregard of the law itself. The court therefore will order sanctions."

(Ans. ¶ 171; Ex. 87).

232. In the memorandum, Judge Sterns was particularly troubled by the respondent's allegations that Judge Welch removed the pre-trial memoranda from the court record and hid them in the attic. (Ex, 87, AGR-1335 to 1336; Tr. III:220-221, respondent).

233. The respondent was ordered to pay attorneys' fees and costs to Pierce Mandell, Litchfield Cavo, and Avery Dooley. The respondent and Saninocencio were also enjoined from

pursuing any claim arising from the Personal Injury Action without the court's prior permission. (Ans. ¶ 172; Ex 87, AGR-1339 to 1340).

234. On January 26, 2022, Pierce Mandell, Litchfield Cavo, and Avery Dooley filed a request for attorneys' fees in the amount of $18,174.50. (Ans. ¶ 173; Ex. 88).

235. On February 8, 2022, the respondent filed a response to the request for attorneys' fees. (Ans. ¶ 174; Ex. 89).

236. On February 11, 2022, Judge Stearns ordered the respondent individually responsible for $17,730.50 in attorney's fees which were to be paid to Pierce Mandell, Litchfield Cavo, and Avery Dooley within forty-five days of the entry of the order. The order also enjoined the respondent and Saninocencio from filing further actions relating to the subject matter of the complaint without leave of court was made permanent. (Ans. ¶ 175; Ex. 90).

237. On February 13, 2022, the respondent filed a Notice of Appeal of the January 14, 2022 order allowing sanctions. (Ans. ¶ 176; Ex. 91).

"The First Circuit Action"—against judges and personal injury defense lawyers

238. On February 18, 2022, the First Circuit docketed the appeal. See Dolan v. Pierce and Mandell, P.C. et al., United States Court of Appeals for the First Circuit, Docket No. 22-1110 (the "First Circuit Action"). (Ans. ¶ 177; Ex. 92, AGR-1404).

239. On April 13, 2022, the respondent filed an Appellant Brief in the First Circuit Action. Among multiple arguments set forth by the respondent in the brief, the respondent argued that: (a) the Federal Court Action should not have been dismissed pursuant to the Rooker-Feldman doctrine or the principle of res judicata; (b) Litchfield Cavo, Pierce Mandell, and Avery Dooley had been deceiving the courts for the prior six years; (c) bifurcation in the Personal Injury Action prevented the respondent from establishing liability; and (d) bifurcation in the Personal Injury Action may have led to an erroneous verdict. (Ans. ¶ 178; Ex. 93).

240. The respondent's assertions were without merit, without a good-faith basis, frivolous, and/or made with reckless disregard as to their truth or falsity because: (a) the respondent's appeal attempted to relitigate issues already settled by the courts; (b) the respondent signed the Executed PTC Memorandum; and (c) the respondent had agreed to bifurcation in the Personal Injury Action. At the disciplinary hearing, there was no discussion or testimony at the hearing concerning the Rooker-Feldman doctrine or res judicata in federal court, and we do not address them.

241. On May 12, 2022, Litchfield Cavo, Pierce Mandell, and Avery Dooley filed an Appellee Brief with the First Circuit. (Ans. ¶ 180; Ex. 94).

242. On May 16, 2022, Pierce Mandell, Litchfield Cavo, and Avery Dooley filed a motion for sanctions, fees and costs with the First Circuit on the grounds that the respondent's appeal was frivolous. (Ans. ¶ 181; Ex. 95).

243. On June 1, 2022, the First Circuit Court issued and order that the motion for sanctions and costs is reserved to the panel deciding the merits of the appeal. (Ex. 96).

244. On June 27, 2022, Pierce Mandell, Litchfield Cavo, and Avery Dooley filed a brief with the First Circuit and argued that the sanctions and costs imposed in the Federal Court Action were appropriately imposed because the respondent "continued to pursue and file objectively unreasonable papers that were futile, frivolous, and lacked *any* factual *or* legal bases." (Ex. 97 at AGR-1747; italics in the original).

245. Pierce Mandell, Litchfield Cavo, and Avery Dooley all retained the firm of Sloane and Walsh to represent them and shared the legal expenses. (Ex. 40; Tr. I:104, Pierce; Tr. III:24, Jarosak). Pierce, Jarosak and Noone and their respective law firms incurred $96,311.01 in attorneys' fees and costs for Sloane and Walsh to represent them as of the time of the

disciplinary hearing. (Ex. 154; Tr. III:24-27, Jarosak; Tr. I:104, Pierce).

COUNT THREE --CONCLUSION OF LAW

246. Bar counsel charged that the respondent's conduct in asserting claims that lacked a basis in law or fact that were not frivolous was in violation of Mass R. Prof. C. 3.1 and 8.4(d). For the reasons detailed above, we conclude that bar counsel has proved these charges.

247. Bar counsel charged that the respondent's conduct in making statements concerning the qualifications and integrity of judges and attorneys, knowing the statements to be false or with reckless disregard as to their truth or falsity, was in violation of Mass. R. Prof. C. 8.2 and 8.4(c), (d), and (h). For the reasons detailed above, we conclude that bar counsel has proved these charges.

COUNT FOUR --FINDINGS OF FACT

248. On December 31, 2013, Lubin & Meyer, A Professional Corporation ("Lubin & Meyer") filed a lawsuit on behalf of Saninocencio that alleged medical malpractice arising out of treatment for the injuries she sustained in the underlying Personal Injury Matter. See Saninocencio vs. Abumeri, M.D., et al., Essex Superior Court, Docket No. 1377CV02091 ("Med Mal Action"). (Ans. ¶ 185; Ex. 104, AGR-1589, docket sheet).

249. Saninocencio had been referred to Lubin & Meyer by the respondent. (Tr. IV:13, Thompson; Ex. 150). Saninocencio signed a contingency fee agreement with Lubin & Meyer. (Tr. IV:13, Thompson).

250. Attorney William Thompson ("Thompson") of Lubin & Meyer handled the Med Mal Action on Saninocencio's behalf. (Tr. IV:7, Thompson). Thompson is a partner at Lubin & Meyer, has worked at the firm for twenty-five years and primarily handles medical malpractice

cases. (Tr. IV:4, Thompson).[32]

251. Before it would file a lawsuit was filed on behalf of a client, Lubin & Meyer would obtain medical records, perform an in-house review of the medical records and consult with experts in the applicable medical field. (Tr. IV:5, Thompson).

252. In Massachusetts, medical malpractice cases are screened by a medical malpractice tribunal. The purpose of the tribunal is to determine whether there is sufficient evidence such that the case would survive a directed verdict at trial. The medical malpractice tribunal is not a predictor of whether a plaintiff will be successful at trial. (Tr. IV:8, Thompson).

253. The Med Mal Action survived the medical malpractice tribunal, which meant that there was sufficient evidence to raise a legitimate question as to liability. (Tr. IV:24, Thompson).

254. Thompson first became aware of the identity and opinion(s) of the defense medical experts when the joint pre-trial memorandum was prepared and filed on June 29, 2017. (Tr. IV:26, Thompson; Ex. 104, AGR-1594).

255. The jury trial in the Med Mal Action was scheduled to begin on October 31, 2017. (Ex. 104, AGR-1590).

256. After the joint pre-trial memorandum was filed and as the trial date approached, Thompson along with other partners of Lubin & Meyer discussed the likelihood of success of the Med Mal Action. They agreed that the case had a very low chance of success and recommended dismissal of the case. (Tr. IV:26-29, Thompson).

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[32] Thompson was aware that the respondent had filed a slip and fall action on behalf of Saninocencio and was representing her in that case. On a few occasions, the respondent asked Lubin & Meyer to handle the slip and fall case in addition to the Med Mal Action. (Tr. IV:14-15, 51, 55, Thompson). Lubin & Meyer declined to handle the slip and fall case because they did not think it "had a lot of merit" and because it did not "fit the profile of a case that [Lubin & Meyer] would be interested in handling." (Tr. IV:15, 50-51, Thompson).

257. The determination that the Med Mal Action has little chance of success was based upon multiple considerations, including an assessment of Saninocencio as a witness, whether the jury would be sympathetic to Saninocencio, how well she would perform under cross-examination, and the strength of expert opinions. (Tr. IV:27-29, Thompson). Contrary to the respondent's subsequent allegations (Ex. 99, AGR-1500), it had nothing to do with the outcome of any other case being handled by Lubin & Meyer at the time. (Tr. IV:38-39, Thompson).

258. If the firm recommends that a case be dismissed and the client does not agree, Lubin & Meyer will honor the client's decision and try the case. Pursuant to the terms of the contingency fee agreement, however, the costs incurred by Lubin & Meyer from that point forward are borne by the client. (Tr. IV:12-13, Thompson).

259. The contingent fee agreement that Saninocencio signed with Lubin & Meyer contained the provision that said that, if she disagreed with a recommendation to dismiss her case, she would bear the costs from that point forward. (Tr. IV:13, Thompson).[33]

260. Thompson's secretary scheduled a meeting for Thompson to meet with Saninocencio to inform her of the firm's recommendation to dismiss the case. Contrary to the respondent's subsequent allegations (Ex. 101, AGR-1510, ¶ 17), Thompson's secretary did not tell Saninocencio that the purpose of the meeting was to prepare for her trial testimony. (Tr. IV:30, Thompson).

261. The meeting between Thompson and Saninocencio occurred close to the trial date because Thompson wanted to wait to see if the defense would make a settlement offer before the case was dismissed. (Tr. IV:31-32, Thompson). This was because, in a medical malpractice case, settlement discussions typically occur near the trial date. (Tr. IV:9, Thompson).

[33] Saninocencio knew that Thompson had retained experts to testify on her behalf in the case. (Tr. IV:32, 57, Thompson).

262. Thompson met with Saninocencio, in person, on October 23, 2017. (Tr. IV:35-36, Thompson; Ex. 112). Contrary to the respondent's subsequent allegations concerning the plaintiff's deficiencies (Ex. 99, AGR-1500; Ex. 128, AGR-1937 and 1938; Ex. 130, AGR-1942; Ex. 132, AGR-1961 and 1967; Ex. 135, AGR-1975 and 1982), Thompson did not have any issues communicating with Saninocencio during their meeting. (Tr. IV:32, Thompson).[34] Thompson told Saninocencio Lubin & Meyer was prepared to try the case if Saninocencio did not agree to dismiss the action. (Tr. IV:34, Thompson). He also told her that, if they went to trial and the defendants prevailed, the defendants could seek costs; however, in his experience, it was not likely that the defendants would do so. (Tr. IV:35, 84, Thompson).

263. That same day, after discussion with Lubin & Meyer, Saninocencio signed an Authorization and Instructions to Dismiss ("Authorization"), which authorized and instructed Lubin & Meyer to dismiss the pending Med Mal Action based upon the unlikelihood of success. Saninocencio was provided the opportunity to consult with separate counsel before signing the Authorization and chose not to do so. According to the Authorization, Saninocencio understood that once the lawsuit was dismissed, she would be barred from pursuing the claims against the named defendants in the Med Mal Action and she released any and all claims against Lubin & Meyer relating to dismissal of the action. (Ex. 112; Tr. IV:32-34, 37, Thompson).

264. Thompson observed Saninocencio sign and date the Authorization on October 23, 2017, after he was confident that she fully understood each and every term and statement in the Authorization. (Tr. IV:35-36, Thompson). During the meeting, Saninocencio did not appear

[34] Throughout the time that Lubin & Meyer represented Saninocencio, its attorneys and staff members did not have difficulty communicating with Saninocencio and believed her to understand those communications. (Tr. IV:19-20, 23, Thompson; Ex. 146). Saninocencio was deposed in the Med Mal Action in 2015 and did not have difficulty understanding or responding to questions at her deposition. (Tr. IV:21-23, Thompson).

distraught, was not crying and did not appear to be impaired in any way. (Tr. IV:37-38, Thompson). He did not tell Saninocencio that if she did not sign the Authorization, that she would be responsible for the defendant surgeon's legal fees. (Tr. IV:35, Thompson). We credit this testimony.

265. On October 25, 2017, Lubin & Meyer filed a Stipulation of Dismissal with prejudice in the Med Mal Action. (Ans. ¶ 187; Ex. 104, AGR-1595, docket sheet at dkt. #64; and Ex. 104, AGR-1597, stipulation of dismissal). Lubin & Meyer did not receive any financial compensation from the insurer as an incentive to dismiss the case; in fact, Lubin & Meyer absorbed tens of thousands of dollars they had invested in the case. (Tr. IV:39-40, Thompson).

"The 2020 Suffolk Superior Court Action"—against Lubin & Meyer, P.C.

266. On October 20, 2020, the respondent filed a complaint ("2020 Complaint") against Lubin & Meyer in Suffolk Superior Court on Saninocencio's behalf, alleging legal malpractice and fraud. See Saninocencio, Nellie vs. Lubin & Meyer PC, Suffolk Superior Court, Docket No. 2084CV02420 ("2020 Suffolk Superior Court Action"). (Ans. ¶ 188; Ex. 98, Ex. 99).

267. In the complaint, the respondent alleged Lubin & Meyer coerced Saninocencio into signing the Authorization to dismiss the Med Mal Action and that they pressured her to sign the document to obtain a more favorable settlement for another client who also had a claim against the defendants. (Ans. ¶ 189; Ex. 99).

268. In paragraph 10 of the 2020 Complaint, the respondent alleged Lubin & Meyer coerced Saninocencio into signing the Authorization to dismiss the Med Mal Action and that they pressured her to sign the document to obtain a more favorable settlement for another client who also had a claim against the defendants. (Ans. ¶ 189; Ex. 99, AGR-1500). We credit Thompson's testimony that this was not true. (Tr. IV:38-39, 42-43, Thompson). During the

disciplinary hearing, the respondent said there had to be a reason for Lubin & Meyer's dropping Saninocencio's case, but did not offer a reason. (Tr. I: 47-49, respondent). We find and conclude that the respondent made this claim without any basis in fact. (We also note that it does not appear in the respondent's subsequent amended complaint, Ex. 101, which was verified by the plaintiff.)

269. The respondent failed to serve the complaint in a timely manner. (Ans. ¶ 190; Ex. 100). The respondent understood that it was his duty to arrange for timely service of the complaint in the 2020 Suffolk Superior Court Action. (Tr. IV:146-147, respondent).

270. During the COVID-19 pandemic, including during January of 2021, the building in which Lubin & Meyer was located was not closed, but only those with key fobs, including tenants, could access the property. (Tr. IV:118-119, Thompson; Ex. 109). However, during January of 2021, Lubin & Meyer had procedures in place to enable them to accept service of pleadings despite the havoc that was created by the COVID-19 pandemic. (Tr. IV:118, Thompson).

271. The respondent was aware that the COVID-19 pandemic began around March of 2020 and that some businesses were closed as a result of the pandemic for a period of time. (Tr. IV:145-146, respondent).

272. The respondent engaged a sheriff to make service of process on Lubin & Meyer, which was attempted on the last day of the service period on January 20, 2021. The sheriff failed to make service because he could not gain access to the building where their office is located, as the building itself was locked. (Tr. II:11-13, 14, Lipchitz; Ex. 109). Thus, the respondent failed to timely serve the complaint. (Ans. ¶ 190).

273. On January 21, 2021, the day following the expiration of the date for service of

process, Lubin & Meyer filed a Motion to Dismiss for failure to serve the complaint within ninety days after filing the complaint pursuant Mass. R. Civ. P. Rule 4(j). (Ans. ¶ 191; Ex. 100; Tr. II:14, Lipchitz).[35]

274. Lubin & Meyer's attorney, Joseph Lipchitz, testified that he directed Kelsey Westrich, his associate, to file the Motion to Dismiss directly with the court, rather than serving it on the respondent pursuant to Superior Court Rule 9A, because the statute of limitations was expiring and Lipchitz wanted to alert the court that service had not been timely made. (Tr. II:14-15, Lipchitz; Ex. 114, AGR-1789, fn. 3). We do not credit this explanation. Even if the motion was served in accordance with Superior Court Rule 9A (and therefore the court would receive it in about two weeks), the court would still be alerted to the fact that the statute of limitations had expired by that time.

275. On January 26, 2021, Judge David Deakin of Suffolk Superior Court denied Lubin & Meyer's motion to dismiss for failure to comply with Superior Court Rule 9A. (Ans. ¶ 192; Ex. 98, docket sheet, AGR-1496).

276. On February 25, 2021, Lubin & Meyer filed a Motion to Dismiss pursuant to Mass. R. Civ. P. 12(b)(6), 9(b) and 4(j). In its motion, Lubin & Meyer argued that, inter alia: (a) the respondent failed to make timely service of the October 2020 Complaint; (b) the respondent failed to plead Saninocencio's fraud claims with sufficient factual specificity; and (c) Saninocencio released any potential claims against Lubin & Meyer concerning the dismissal of the Med Mal Action when she signed the Authorization to dismiss the lawsuit. (Ans. ¶ 193; Ex. 98, AGR-1496; Tr. II:16, Lipchitz).

[35] Lubin & Meyer was represented by Attorney Joseph Lipchitz ("Lipchitz") of Saul Ewing in the 2020 Suffolk Superior Court Action. (Ex. 98). He has been commercial litigation counsel for Lubin & Meyer for nearly ten years. (Tr. II:10, Lipchitz). Lipchitz was aware that the respondent had filed the 2020 Superior Court Action before service was attempted by the respondent. (Tr. II:10, Lipchitz).

277. On February 25, 2021, the respondent's written opposition to Lubin & Meyer's Motion to Dismiss was filed with the court. (Ex. 98, AGR-1496, dkt. #7).

278. Between the failed service attempt in January of 2021 and the date of the hearing on the Motion to Dismiss on June 10, 2021, the respondent never filed a motion to extend time for service of the complaint. (Ex. 98; Ex. 13, AGR-1744; Tr. IV:147, respondent).

279. On June 10, 2021, a hearing was held on the motion to dismiss. (Ans. ¶ 194; Ex. 98, docket sheet, AGR-1496 and 1497; Ex. 113). At the hearing on the motion to dismiss, Judge Deakin provided the respondent with the opportunity to argue and present his opposition to the motion to dismiss. Multiple times, Judge Deakin asked the respondent if there was anything else he wanted to say to the court. (Tr. II:17, Lipchitz; Ex. 113, AGR-1736 to 1775; Ex. 105, AGR-1659; Ex. 118, AGR-1864, fn. 4; Tr. IV:147-148, responent).

280. Judge Deakin also asked the respondent why he did not file a motion to extend time for service. The respondent answered that he was unaware he could file such a motion after Lubin & Meyer filed their motion to dismiss. (Ex. 113, AGR-1744).[36]

281. On the same day, the respondent filed an Amended Complaint in the 2020 Suffolk Superior Court Action on Saninocencio's behalf that was very similar to the original complaint. However, we note that the Amended Complaint was verified by Saninocencio and pleaded fraud with more particularity. (Ex. 98, docket sheet, AGR-1496, dkt. #8; Ex. 101, amended complaint).

282. On June 11, 2021, the respondent filed an emergency motion to enlarge the time for service of process. (Ex. 98, AGR-1497; Tr. II:21, Lipchitz).

[36] The respondent was correct in this regard. A motion to extend time to make service of process has to be made within the ninety-day period. Kennedy v. Beth Israel Deaconess Medical Ctr., 73 Mass. App. Ct. 459 (2009), as cited in Lubin & Meyer's opposition to the respondent's "emergency motion to enlarge time" (Ex. 104, AGR-1637 to 1638). But the respondent offered no reason why he could not have filed a motion to extend time, within that first ninety days, to make service of process.

283. On June 17, 2021, Judge Deakin allowed Lubin & Meyer's motion to dismiss the 2020 Complaint without prejudice. There was no specific action taken on the amended complaint that was filed on the day of the hearing. In the memorandum of decision and order, the court found that: (a) the respondent failed to make any attempt at service until the afternoon of January 20, 2021, the final date for service; (b) the attempt was unsuccessful because the office of Lubin & Meyer was closed due to the COVID-19 pandemic; and (c) as of the date of the hearing, the respondent took no action to seek an extension of time to serve Lubin & Meyer. The court concluded that the respondent did not provide "good cause" as to why service was not made. The court rule did not rule on Lubin & Meyer's request for sanctions. (Ans. ¶ 196; Ex. 102).

284. In a footnote in the memorandum of decision and order, Judge Deakin denied the respondent's emergency motion to enlarge time for service. (Ex. 102, AGR-1514; Tr. II:22, Lipchitz).

285. On June 27, 2021, the respondent filed a motion to recuse Judge Deakin from the 2020 Suffolk Superior Court Action and argued that Judge Deakin's order that allowed the motion to dismiss "evince[d] an extreme bias against the Plaintiff." (Ans. ¶ 197; Ex. 103). At the disciplinary hearing, the respondent said this was because the judge "refused to let me present the evidence," of Lubin & Meyer's agreeing to accept service of process, and because Judge Deakin did not rule in his client's favor. (Tr. IV:149, respondent). We note, however that the Memorandum of Decision and Order on the Defendant's Motion to Dismiss (Ex. 102) does not turn on this issue. The respondent also claimed he had evidence that Judge Deakin communicated ex parte with counsel for Lubin & Meyer, but the respondent initially refused to show or explain it at the disciplinary hearing. (Tr. IV:149-150, respondent).

286. Ultimately, the respondent had no evidence of bias by Judge Deakin or any evidence that the judge had an improper relationship with counsel for Lubin & Meyer; the respondent made these allegations based upon his disagreement with the judge's interpretation and application of case law. (Tr. IV:149-154, respondent). Lipchitz denied having personal relationship with Judge Deakin and had not appeared before Judge Deakin prior to the motion to dismiss hearing. (Tr. II:23, Lipchitz).

287. On June 27, 2021, the respondent filed a motion to vacate dismissal of Saninocencio's lawsuit pursuant to Mass. R. Civ. P. 60(b)(1) and 60(b)(3). (Ans. ¶ 198; Ex. 104).

288. On June 29, 2021, Lubin & Meyer filed oppositions to the respondent's motion to recuse and motion to vacate dismissal in the 2020 Suffolk Superior Court Action. (Ans. ¶ 199; Ex. 105, Ex. 106; Tr. II:22-23. Lipchitz).

289. In its opposition to the motion to recuse, Lubin & Meyer argued that the respondent made unsupported allegations of bias, which represented "a continuation of the same litigation strategy the [respondent] has employed throughout his career: baselessly accusing members of the judiciary and members of the bar when decisions do not go his way" and that the respondent was engaging in "judge shopping." Lubin & Meyer also requested sanctions against the respondent and an award of attorneys' fees and costs. (Ans. ¶ 200; Ex. 105, AGR-1663).

290. In its opposition to the motion to vacate dismissal, Lubin & Meyer opposed the substance of the respondent's motion and requested that the respondent be sanctioned for the continued filing of frivolous motions that contained baseless accusations. (Ans. ¶ 201; Ex. 106; Tr. II:26-29, Lipchitz).

291. On July 1, 2021, Judge Deakin denied the respondent's motion to recuse and the

motion to vacate dismissal. The denial was set forth as an endorsement on the motion to recuse in which the court stated that the court conducted a "two-stage analysis" as required by case law and discerned no bias. The court also found that the plaintiff had not met her burden of establishing any basis to question the court's objectivity in its denial of the motion to dismiss. (Ans. ¶ 202; Ex. 107; Tr. II:26-27, Lipchitz).

"2020 Suffolk Appeal"—against Lubin & Meyer, P.C.

292. On July 14, 2021, the respondent filed a Notice of Appeal of the June 17, 2021, judgment of dismissal without prejudice in the 2020 Suffolk Superior Court Action. (Ans. ¶ 203).

293. On December 15, 2021, the Appeals Court docketed the respondent's appeal. See Nellie Saninocencio vs. Lubin & Meyer PC, Appeals Court, Docket No. 2021-P-1126 ("2020 Suffolk Appeal"). (Ans. ¶ 204; Ex. 110, docket sheet).

294. Justices Meade, Milkey and Massing were assigned to the 2020 Suffolk Appeal. (Ex. 110).

295. On January 26, 2022, the respondent filed an appellant brief in the Appeals Court. In his brief, the respondent argued that Judge Deakin abused his discretion in dismissing the October 2020 Complaint and that Lubin & Meyer engaged in fraud by intentionally evading service. (Ans. ¶ 205; Ex. 111).

296. On February 18, 2022, Lubin & Meyer filed its Appellee Brief in the 2020 Suffolk Appeal. (Ans. ¶ 206; Ex. 114).

297. On March 3, 2022, the respondent filed a Reply to Lubin & Meyer's Appellee Brief. (Ans. ¶ 207; Ex. 115).

298. On September 22, 2022, the respondent filed a motion to recuse Justice William J.

Meade, an Appeals Court panel member in the 2020 Suffolk Appeal. Judge Meade also served on the Appeals Court panel for the Middlesex Appeal. In the motion to recuse, the respondent argued that Judge Meade had "demonstrated an extreme bias" against Saninocencio in the Middlesex Appeal. (Ans. ¶ 208; Ex. 116).

299. The respondent had no evidence of bias; rather the respondent argued that Judge Meade issued an adverse ruling without permitting the respondent the opportunity to present oral argument and relied upon legal points that had not been raised by the opposing party. The respondent also attempted to relitigate the issues that were conclusively decided in the Personal Injury Action, Middlesex Superior Court Action and subsequent appeals in the motion. (Ex. 116; Tr. II:34-35, Lipchitz; Tr. IV:156-157, respondent).

300. On September 26, 2022, Lubin & Meyer filed a response to the motion to recuse. (Ans. ¶ 209; Ex. 117).

301. On September 27, 2022, Judge Meade denied the respondent's motion to recuse. (Ans. ¶ 210; Ex. 110, AGR-1682).

302. On October 14, 2022, the Appeals Court panel affirmed the judgment of dismissal without prejudice in the 2020 Suffolk Superior Court Action, opining that the respondent did not show good cause for failing to make service on Lubin & Meyer within the ninety-day service period and that Judge Deakin therefore did not abuse his discretion in dismissing the complaint. (Ans. ¶ 211; Ex. 118).

"2020 Suffolk SJC Appeal"—against Lubin & Meyer, P.C.

303. On November 4, 2022, the respondent filed a FAR Application with the SJC seeking further review of the Appeals Court panel's October 14, 2022, order. See Nellie Saninocencio vs. Lubin & Meyer PC, S.J.C. Docket No. FAR-29101 (the "2020 Suffolk SJC

Appeal"). (Ans. ¶ 212; Ex. 119, docket sheet; Ex. 120, FAR application).

304. On November 16, 2022, Lubin & Meyer filed a Response to the respondent's FAR Application in the 2020 Suffolk SJC Appeal. (Ans. ¶ 213; Ex. 119).

305. On February 16, 2023, the S.J.C. denied the respondent's FAR Application in the 2020 Suffolk SJC Appeal. (Ans. ¶ 214, Ex. 119).

306. On February 23, 2023, judgment entered for Lubin & Meyer without prejudice in the 2020 Suffolk Superior Court Action. (Ans. ¶ 215; Ex. 119).

COUNT FOUR --CONCLUSION OF LAW

307. Bar counsel charged that the respondent's conduct, in asserting claims that lacked a basis in law or fact that were not frivolous, was in violation of Mass R. Prof. C. 3.1 and 8.4(d). For the reasons detailed above, we conclude that bar counsel has proved these charges.

308. Bar counsel charged that the respondent's conduct, in making statements concerning the qualifications and integrity of judges and attorneys, knowing the statements to be false or with reckless disregard as to their truth or falsity, was in violation of Mass. R. Prof. C. 8.2 and 8.4(c), (d), and (h). For the reasons detailed above, we conclude that bar counsel has proved these charges.

COUNT FIVE—FINDINGS OF FACT

"The June 2022 Complaint"—against Lubin & Meyer, P.C.

309. On June 13, 2022, while the 2020 Suffolk SJC Appeal was pending, the respondent filed another complaint (the "June 2022 Complaint") against Lubin & Meyer on Saninocencio's behalf in Suffolk Superior Court, alleging legal malpractice and fraud. See Saninocencio, Nellie vs. Lubin & Meyer, PC, Suffolk Superior Court, Docket No. 2284CV01319 (the "2022 Suffolk Superior Court Action"). (Ans. ¶ 218; Ex. 122, docket sheet; Ex. 123, June 2022 complaint).

310. The June 2022 Complaint asserted the same allegations as the 2020 Complaint in the 2020 Suffolk Superior Court Action. (Ans. ¶ 219; Ex. 123; Tr. II:237, Lipchitz).

311. On August 8, 2022, Lubin & Meyer served a motion to dismiss the 2022 Suffolk Superior Court Action, under Superior Court Rule 9A. In the motion to dismiss, Lubin & Meyer argued that the action was barred by the statute of limitations, the Authorization that Saninocencio signed and that the June 2022 Complaint failed to state a claim. (Ex. 124; Tr. II:38, Lipchitz).

312. On August 22, 2022, the respondent served an opposition to the motion to dismiss. (Ex. 125).

313. On August 29, 2022, Lubin & Meyer served a reply brief in support of its motion to dismiss in response to the respondent's opposition. In its reply brief, Lubin & Meyer argued that the respondent disregarded the controlling law, Judge Deakin's prior rulings, and the clear terms of the Authorization signed by Saninocencio. (Ans. ¶ 220; Ex. 126, reply brief).

314. On March 1, 2023, Judge James Budreau allowed Lubin & Meyer's motion to dismiss. Judge Budreau found that the plaintiff's claims for legal malpractice and fraud were time-barred. The order was a typed marginal endorsement on the motion with citations to cases upon which the court relied. (Ans. ¶ 221; Ex. 127; Tr. IV:160, respondent).

315. In the endorsement, Judge Budreau referenced COVID-19 Order OE-144, which extended the statute of limitations period from October 20, 2017, until February 6, 2021, and further, noted that on June 7, 2021, when the court dismissed the 2020 Suffolk Action for failing to timely serve the complaint, the statute of limitations had effectively expired. (Ex. 127, COVID-19 Order OE-144).

316. On March 20, 2023, the respondent filed an ex parte motion for clarification

pursuant to Superior Court Rule 9A(d)(1) in the 2022 Suffolk Superior Court Action, in which he "demand[ed] Judge Budreau clarify his decision to dismiss this case." (Ans. ¶ 222; Ex. 128).

317. In the March 20, 2023, ex parte motion for clarification of the March 1, 2023, order (Ex. 127), the respondent alleged, inter alia, as follows:[37]

(a) "Without this clarification, the Plaintiff's counsel will argue on appeal and in federal court that Judge Budreau conspired with others to intentionally deny the Plaintiff's due process rights." (Ex. 128, AGR-1936).

(b) "If M.G.L. Chapter 260, Section 12 did not apply in this case, Judge Beadreau [sic] literally tried the Plaintiff's case at the motion hearing and found as a matter of law that there was no fraudulent concealment of the her [sic] cause of action by the Defendant." (Ex. 128, AGR-1938).

(c) "For Judge Budreau to say a woman with a sixth grade education should have known her cause of action at the time she signed the release is just plain stupid." (Ex. 128, AGR-1939).

(d) "The Plaintiff's counsel demands Judge Budreau clarify his position on these issues. If he declines, the Plaintiff's counsel will argue on appeal and in federal court that he intentionally denied her due process rights and soiled his own reputation." (Ex. 128, AGR-1939).

318. The respondent's assertions were without merit, without a good-faith basis, frivolous, and/or made with reckless disregard as to their truth or falsity because they were conclusory, speculative, an attempt to relitigate issues already settled by the courts and presented without grounds to justify why the motion should be considered ex parte.

319. On March 21, 2023, Judge Budreau denied plaintiff's ex parte motion for clarification without prejudice because the respondent did not demonstrate why the motion was filed ex parte and not filed pursuant to Rule 9A. (Ans. ¶ 225; Ex. 129).

320. On March 29, 2023, the respondent filed Plaintiff's Notice of Appeal of the March 1, 2023, allowance of Lubin & Meyer's motion to dismiss. (Ans. ¶ 226; Ex. 122, AGR-

[37] All of this is also admitted in the respondent's answer. (Ans. ¶ 223).

1894).

321. On April 18, 2023, the respondent refiled the plaintiff's motion for clarification in the 2022 Suffolk Superior Court Action (Ex. 130), Lubin and Meyer's opposition (Ex. 131) and plaintiff's reply to Lubin & Meyer's opposition (Ex. 132), all pursuant to Superior Court Rule 9A. Plaintiff's refiled motion was substantially similar to plaintiff's ex parte motion and did not raise any additional issues. (Ans. ¶ 227).

322. In its opposition to the motion for clarification, Lubin & Meyer: (a) recharacterized plaintiff's motion for clarification as a motion for reconsideration; (b) alleged that in a March 29, 2023 email concerning Judge Budreau's March 21, 2023 denial of the plaintiff's ex parte motion for clarification, the respondent stated, "Evidently the coward wants you to give him a valid reason for screwing my client on these issues."; (c) argued that Saninocencio's claims were properly found to be time barred; and (d) requested sanctions against the respondent and Saninocencio. (Ex. 131; Ans. ¶ 228, admitted in part).

323. In the reply to the defendant's opposition (Ex. 132), also filed on April 18, 2023, the respondent alleged, inter alia, as follows:[38]

(a) "The Plaintiff's counsel has shown the Defendant, their counsel, and the judges involved in this dispute all the respect they deserve. This is a case study in unethical lawyering and judicial corruption." (Ex. 132, AGR-1957).

(b) "Judge Deakin again refused to allow the Plaintiff to present her evidence in a motion to vacate the judgment pursuant to Mass. R. Civ. P 60(b). Judges Meade, Milkey, and Massing falsely claimed that the Plaintiff was given at least two opportunities to present this evidence during the hearing." (Ex. 132, AGR-1958).

(c) "These facts conclusively proved the Defendant and their counsel committed a fraud on the court." (Ex. 132, AGR-1958).

(d) "Apparently, the Defendant has finally realized that they can say anything in this litigation with impunity." (Ex. 132, AGR-1959).

[38] All of this is also admitted in the respondent's answer. (Ans. ¶ 229).

(e) "The Plaintiff is not asking this court to reconsider its decision to dismiss this case. That would be futile as every judge involved in this controversy has conspired to prevent the Plaintiff from presenting her case to a jury." (Ex. 132, AGR-1959).

(f) "The court obviously fabricated grounds to take her case out of the protection of Saving Statute and left it to the next judge to fabricate grounds to take it out of the protection of the Discovery Rule and M.G.L. 260, § 12." (Ex. 132, AGR-1959).

(g) "This court is obviously relying on the Defendant to provide it with grounds to retroactively uphold a clearly erroneous decision." (Ex. 132, AGR-1960).

324. The respondent's assertions were without merit, without a good-faith basis, frivolous, and/or made with reckless disregard as to their truth or falsity because they were, among other things, conclusory, speculative and an attempt to relitigate issues already settled by the courts. However, we specially address the respondent's claim, in subparagraph (f) above, that the "court obviously fabricated grounds to take her case out of the protection of Saving Statute and left it to the next judge to fabricate grounds to take it out of the protection of the Discovery Rule and M.G.L. 260, § 12." Judge Budreau's order (Ex. 127) did not "fabricate" any grounds, nor did he even mention the savings statute. He cited cases concerning the narrow definition of "good cause" and the Draconian requirements of Mass. R. Civ. P. 4(j), including Bratica v. Miller, which points out that the Massachusetts version of rule 4(j) is stricter than the federal version. The respondent's statement (that the "court obviously fabricated grounds") was either knowingly false or made with reckless disregard as to its truth or falsity concerning the qualifications or integrity of a judge.

325. Also in his reply, the respondent also claimed that two cases cited by the defendants, Barron v. Otis, 98 Mass. App. Ct. 1108 (2020) and Ruggieri v. Friendly Ice Cream Corp., 53 Mass. App. Ct. 1105 (2001) were fabricated case law. (Ex. 132, AGR-1965). This accusation against defense counsel was without merit because both cases are actual

Massachusetts Appeals Court cases. (Tr. II:45, Lipchitz; Ex. 145; Tr. IV:163-164, respondent).[39]

COUNT FIVE --CONCLUSION OF LAW

326. Bar counsel charged that the respondent's conduct, in asserting claims that lacked a basis in law or fact that were not frivolous, was in violation of Mass R. Prof. C. 3.1 and 8.4(d). For the reasons detailed above, we conclude that bar counsel has proved these charges.

327. Bar counsel charged that the respondent's conduct making statements concerning the qualifications and integrity of judges and attorneys, knowing the statements to be false or with reckless disregard as to their truth or falsity, was in violation of Mass. R. Prof. C. 8.2 and 8.4(c), (d), and (h). For the reasons detailed above, we conclude that bar counsel has proved these charges.

COUNT SIX—FINDINGS OF FACT

"2023 Suffolk Appeal"—against Lubin & Meyer, P.C.

328. On May 15, 2023, the respondent filed an Appellate Court Entry Statement and a Civil Appeal Entry Form in the Appeals Court and appealed Judge Budreau's order of March 1, 2023 (Ex. 127), which allowed Lubin & Meyer's motion to dismiss in the 2022 Suffolk Superior Court Action. See Nellie Saninocencio vs. Lubin & Meyer PC, Appeals Court, Docket No. 2023-P-0552 ("2023 Suffolk Appeal"). (Ans. ¶ 235; Ex. 134, docket sheet).

329. Lubin & Meyer PC is represented by Attorneys Joseph Lipchitz, Esq. ("Lipchitz") and Kelsey Marron, Esq. ("Marron") in the appeal. (Ans. ¶ 236; Ex. 134).

330. On June 27, 2023, the respondent filed an appellant brief and an accompanying

[39] In admitting his error at the disciplinary hearing, the respondent stated that he could not find the cases at the time because they were unpublished decisions. (Tr. IV:163-164, respondent). We take administrative notice of Rule 23.0 (formerly Rule 1:28) concerning unpublished decisions by the Appeals Court and that, while they may not have appeared in the bound volumes of Appeals Court decisions, they were available online from services such as Westlaw.

appendix in the 2023 Suffolk Appeal. (Ans. ¶ 237; Ex. 135).

331. In the brief, the respondent alleged, inter alia, as follows:[40]

(a) "The evidence in the record proves that Judge Budreau is part of a crooked cabal of judges in this court who have conspired with the Defendant to deny the Plaintiff her due process rights. This appeal will undoubtedly be assigned to three judges who will deny it without oral arguments and without a published opinion." (Ex. 135, AGR-1976).

(b) "The stench of corruption emanating from this case whould [sic] stagger a pig farmer." (Ex. 135, AGR-1986).

(c) "Judge Budreau dismissed this second complaint because the Plaintiff filed it over four years after her medical malpractice case had been dismissed. He obviously ignored the Discovery Rule and the Fraudulent Concealment Statute in order to deny the Plaintiff's right to sue the Defendant. However, it was the crooked judges involved in the first complaint who fabricated the grounds for him to dismiss this one." (Ex. 135, AGR-1987).

(d) "When the Plaintiff presented Governor Baker's order to the Three Stooges on appeal, the Defendant changed their story and argued that they voluntarily closed due to COVID. Meade, Milkey and Massing once again stated as a matter of fact that the Defendant was closed due to COVID." (Ex. 135, AGR-1986).

(e) "Either Judges Deakin, Meade, Milkey and Massing are incredibly incompetent or just plain corrupt." (Ex. 135, AGR-1996).

(f) "Either Judges Deakin, Meade, Milkey, Massing and the seven dwarfs on the SJC are crooked or they've completely abandoned all logic and common sense in dismissing the Plaintiff's case." (Ex. 135, AGR-2001).

332. The respondent's assertions were without merit, without a good-faith basis, frivolous, and/or made with reckless disregard as to their truth or falsity because they were conclusory, speculative, and an attempt to relitigate issues already settled by the courts. For instance:

(a) Regarding subparagraphs (a) and (c), the respondent said that Shuman v. The Stanley Works, 30 Mass. App. Ct. 951, rev. denied 410 Mass. 1103 (1991) was "constitutionally flawed"; therefore, when Judge Budreau relied on Judge Deakins's misplaced reliance on Shuman, that meant that they were both part of crooked cabal. (Tr. IV:169-172, respondent).

[40] All of this is also admitted in the respondent's answer. (Ans. ¶ 238).

(b) Regarding subparagraph (d), the respondent said the basis for his claiming that the Appeals Court panel was corrupt, was their "failing to comply with well-established precedent," by which he meant the saving statute and the discovery rule. (Tr. IV:170-172, respondent).

(c) Regarding subparagraph (e), the respondent said that the Appeals Court panel was not incompetent, but corrupt, for the same reasons. (Tr. IV:172-173, respondent).

(d) Regarding subparagraph (f), the respondent said that the Justices of the SJC (whom he referred o as the "seven dwarfs") were likewise all corrupt and part of the same cabal, all for the same reasons. (Tr. IV:173-174, respondent).

333. In his appellant brief, the respondent cited Corleone v. Howard, Fine and Howard, 53 Mass. App. Ct. 1105 (2001). The respondent also identified the case in the brief's Table of Authorities. (Ans. ¶ 240; Ex. 135, AGR-1974, table of authorities, and AGR-1979, citation in the text of the brief; Tr. IV:166-167, respondent).

334. Also in the appellant brief, the respondent alleged "[…] there is no Ruggieri case" in reference to Ruggieri v. Friendly Ice Cream Corp., 53 Mass. App. Ct. 1105 (2001), which Lubin & Meyer cited in its February 25, 2021, motion to dismiss the 2020 Complaint. (Ans. ¶ 241, admitted or not otherwise denied; Ex. 135, AGR-1994).[41]

335. Ruggieri v. Friendly Ice Cream Corp., 53 Mass. App. Ct. 1105 (2001) is an unpublished decision from the Massachusetts Appeals Court. (Ans. ¶ 242).

336. The citation the respondent referenced for Corleone v. Howard, Fine and Howard, was the actual citation reference for the Ruggieri case, as referenced above. Corleone v. Howard, Fine and Howard is a fictitious case and does not exist. (Ans. ¶ 243; Tr. II:49, Lipchitz;

[41] We note that Lubin & Meyer's brief did not identify the Ruggieri case as an unpublished decision, as required by Appeals Court Rule 23.0(2), which may have engendered confusion on the part of the respondent.

Tr. IV:166-167, respondent).[42]

337. In the appellant brief, the respondent also: (a) occasionally referred to former Massachusetts Governor Charlie Baker as "Charlie Parker;" and (b) substituted the phrase "ipso fatso" for the phrase "ipso facto." (Ans. ¶ 244; Ex. 135, AGR-1995 and 1996 ("Charlie Parker") and AGR-1981, 2002 and 2175 ("ipso fatso")).

338. On June 7, 2023, the respondent sent an email to Lipchitz and Marron, counsel to Lubin & Meyer in the 2023 Suffolk Appeal, which stated:

> "PS - I know who Charlie Parker is and I enjoy baiting pseudo-intellectual lawyers into using my colorful 'non-confidential' communications to ignorant judges. My BBO investigation number is C2-20-00266763 if you care to forward this one to them." (Ans. ¶ 245).

339. On August 16, 2023, Lubin & Meyer filed its appellee brief and a supplemental appendix. Lubin & Meyer argued that Judge Budreau's March 3, 2023 allowance of Lubin & Meyer's motion to dismiss in the 2022 Suffolk Superior Court Action was proper because, inter alia: (a) Saninocencio's claims were time-barred; (b) the Discovery Rule provided no basis to save Saninocencio's claims; (c) M.G.L. Chapter 260, §12 did not toll the statute of limitations because there was no fraudulent concealment; (d) Saninocencio's claims were barred by her signing the Authorization; and (e) the June 2022 Complaint failed to aver facts to state viable claims. Lubin & Meyer also requested the issuance of sanctions against the respondent and the referral of the respondent to the Board of Bar Overseers. (Ans. ¶ 249; Ex. 137, appellee brief; Ex. 138, supplemental record appendix).

340. On September 7, 2023, the respondent filed a reply brief and argued that, inter alia: (a) Lubin & Meyer tricked Saninocencio into signing the Authorization; and (b) Lubin &

[42] Corleone v. Howard, Fine and Howard is a reference to "The Godfather" and the Three Stooges. In making this reference, the respondent was calling the Appeals Court panel the Three Stooges. (Tr. IV:167, respondent).

Meyer, its counsel, and the judges involved in this matter conspired to deprive Saninocencio her due process rights. (Ans. ¶ 250; Ex. 139).

341. In the reply brief, the respondent further alleged, inter alia, as follows:[43]

(a) "Anyone with the intelligence of a mollusk could see the Appellee tricked the Appellant into signing the Release in order to cover something up." (Ex. 139, AGR-2165).

(b) "The Appellee, their counsel and the judges involved in this case have conspired to deprive the Appellant of her due process rights." (Ex. 139, AGR-2165).

(c) "The Appellant's complaint would have survived a motion to dismiss under the legal definition of good cause. The courts have used more than the 'stringent standard' to fabricate grounds to dismiss it and deprive the Appellant her right to re-file pursuant to statutory law." (Ex. 139, AGR-2167 to 2168).

(d) "An earthworm could see it was to cover up the fact that they had evaded service so their lawyers could file their first motion with the court the following morning and pre-empt the Appellant from filing for more time." (Ex. 139, AGR-2173).

(e) "If Judge Deakin did his job, he would have taken judicial notice that Appellee's counsel twice lied to him." (Ex. 139, AGR-2176).

(f) "Judge's Meade, Milkey and Messing stated as a matter of fact that '(Appellee's) office was closed and its staff was working remotely due to the COVID-19 pandemic.' To this date, the Appellee has never presented any affidavit in support of this claim and any competent judge would have ordered this long ago." (Ex. 139, AGR-2177-2178).

(g) "How can an honest judge say she made and [sic] informed decision without knowing what the Appellee advised her of during these discussions?" (Ex. 139, AGR-2181).

(h) "The judges involved in this case have ignored clear and convincing evidence that the Appellee committed a fraud on the court by falsely claiming they were closed due to COVID." (Ex. 139, AGR-2181).

(i) "The judges involved in this case intentionally used legally flawed case precedent in order to deprive the Appellant her right to re-file her complaint under the Saving Statute." (Ex. 139, AGR-2181).

(j) "Considering the history of this case, three judges on this court have already been selected to dismiss it without oral arguments and without a published opinion."

[43] All of this is also admitted in the respondent's answer. (Ans. ¶ 251).

(Ex. 139, AGR-2182).

342. The respondent's assertions were without merit, without a good-faith basis, frivolous, and/or made with reckless disregard as to their truth or falsity because they were conclusory, speculative, and an attempt to relitigate issues already settled by the courts. Specifically:

343. Regarding subparagraph (a), above, the respondent said that Lubin & Meyer had the plaintiff agree to drop the case to "cover something up." However, during the disciplinary hearing, the respondent was unable to offer a reason for Lubin & Meyer's dropping Saninocencio's case. (Tr. I: 47-49, respondent). We find and conclude that the respondent made this claim without any basis in fact.[44]

344. Regarding subparagraph (b), above, the respondent said his claim of a conspiracy between Lubin & Meyer, their counsel and the judges was based on the Appeals Court panel's refusal to listen to the audio recording, which purportedly has the deputy sheriff saying that Lubin & Meyer's receptionist had agreed to accept service if the deputy sheriff returned the next day. (Ex. 139, AGR-2168 to 2169).

345. From October 2020 through at least January of 2021, only partners at Lubin & Meyer were authorized to accept legal service of complaints, subpoenas and similar pleadings. The receptionist could not authorize the acceptance of service of process. (Tr. II:13, Lipchitz). Aside from the fact that the secretary could not speak for the partners of the law firm, it does not overcome the respondent's lack of due diligence by waiting until the last day to attempt to have service made at the law firm's office, nor the fact that service could have been made under Mass.

[44] The verified amended complaint (Ex. 101) would provide a basis in fact for the respondent's claim that the plaintiff had been "tricked" by Lubin & Meyer. We therefore address only his unfounded speculation as to a reason.

R. Civ. P. 4(d)(2) by leaving it at the home of any one of the Lubin & Meyer partners.[45]

346. Indeed, the respondent was not diligent and intentionally delayed making service of process, for which he offered different explanations at different times. At the June 10, 2021, hearing on the motion to dismiss, the respondent stated that he "had [his] own reasons for serving on the last day of the 90-day allotment," but did not say what they were. (Ex. 113, AGR-1746). In his appellant brief, filed January 26, 2022, said he delayed service of process, first to try to obtain competent counsel and, failing that, to familiarize himself with the applicable law:

> The Plaintiff's counsel is not familiar with medical or legal malpractice law and attempted to use the 90 days to obtain adequate counsel to properly prosecute the Plaintiff's case.
>
> After failing to obtain experienced counsel, Plaintiff's counsel needed the 90 days to familiarize himself with medical and legal malpractice law to adequately prosecute this case. This was good cause not to dismiss the Plaintiff's Complaint. Kennedy v. Beth Israel Deaconess Med. Ctr., Inc., 73 Mass. App. Ct. 459 (2009) (good cause shown for extension of service period where plaintiff sought expert witness to draft amended complaint).
>
> The Plaintiff would have been unfairly prejudiced and extremely disadvantaged if litigation was commenced before her counsel was prepared to prosecute her case. The Plaintiff's use of the full service period was irrelevant as there is no authority which gives a judge discretion to determine which [sic] of the 90 days the complaint should have been served. (Ex. 111, AGR-1690).

347. On October 14, 2022, in its Memorandum and Order, the Appeals Court noted the respondent's inconsistent explanations for his intentional delay in making service of process:

> Saninocencio has provided little justification for the lack of diligence prior to the ninetieth day. In her brief, Saninocencio states that her attorney's attempt to familiarize himself with legal malpractice or to find alternate counsel caused the delay. However, her January 2021 opposition to L&M's motion to dismiss for lack of service indicated the delay occurred because Saninocencio was in Florida and her attorney was looking for alternate counsel because he was under investigation by bar counsel. (Ex. 118, AGR-1863, n.3).

[45] There was a discussion at the June 10, 2021, hearing on the motion to dismiss, that service could have been made by simply leaving it at the law firm's door (see Ex. 113, AGR-1766), but we take administrative notice of the fact that this is not what Rule 4(d)(2) permits. See Crossetti v. Cargill, Inc., 924 F.3d 1, 2 (1st Cir. 2019) (Mass. state law).

348. In his reply brief, filed September 7, 2023, the respondent essentially admitted the initial complaint (Ex. 99) was defective,[46] and said he delayed service to allow time to file a better complaint:

> This complaint was hastily filed to avoid a Statute of Limitations problem and was based on the limited facts counsel had at that time. The court argued that the Appellant had failed her obligation [sic] to make 'prompt service of the summons and complaint' on the Appellee. Shuman at 953. If this complaint had been 'promptly' served as the court argued, it would have been 'promptly' dismissed pursuant to Rule 12(b)(6). Re-filing it would be outside the Statute of Limitations period and the Appellant would have lost her right to sue. In fact, the complaint had to later be amended with the facts and evidence counsel discovered during the 90-day service period. (R.II at 5, docket date 06/10/2021). Appellant's counsel 'reasonably' delayed service to avoid his client losing her right to sue the Appellee. (Ex. 139, AGR-2167).[47]

349. At the disciplinary hearing, the respondent testified that he worked as a heating fuel delivery truck driver. At the time the complaint was filed in October 2020, he was working six days a week. Besides what he did not know about medical malpractice and legal malpractice, he did "not have time to do this," and delayed service of process and tried to "push it all the way out to January 20," after which Lubin & Meyer would have to file an answer, and he would be laid off on April 1. As he explained, "That's why I delayed service, and I freely admit that I delayed service." (Tr. V:152-154, respondent).

350. Thus, the respondent's intentional delay in making service of process belies his claim of due diligence when, for the first time, he attempted to have service made in the afternoon of last possible day under Mass. R. Civ. P. 4(j).

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[46] Mass. R. Civ. P. 9(b) requires that allegations of fraud be pleaded with particularity, which was not done in the original complaint against Lubin & Meyer. (Ex. 99, AGR-1500; Ex. 13, AGR-1749 to 1750, respondent's statements on June 10, 2021, at hearing on motion to dismiss).

[47] The respondent testified that the legal malpractice complaint was admittedly defective because, as the statute of limitations was approaching, the plaintiff was in Florida and he did not have time to confer with her before the statute was going to expire. (Tr. V:151-152, respondent). He had previously offered that as an excuse at the hearing on the motion to dismiss, on June 10, 2021. (Ex. 113, AGR-1749 to 1750).

351. Moreover, we need not decide which of the respondent's mutually inconsistent explanations is the truth. The fact that he offered them is proof that at least one or more of them had to have been knowingly false statement(s) of fact to one or more tribunals.

352. Regarding subparagraph (c), above, the courts did not "fabricate grounds to dismiss" the legal malpractice complaint. The respondent based his claim on his saying that the court's using "that fraudulent Shuman case to avoid the saving statute." (Tr. IV:183, respondent; see Tr. IV:170, where he called Shuman "constitutionally flawed"). Essentially, he took issue with the court in Shuman v. The Stanley Works, 30 Mass. App. Ct. 951, 953, rev. denied 410 Mass. 1103 (1991), having adopted the federal court definition of "good cause" as " 'a stringent standard requiring diligen[t]' albeit unsuccessful effort to complete service within the period prescribed by the rule." (citations omitted). But that does not make the Shuman case "fraudulent" nor does it constitute "fabricated grounds." (And as noted above, Judge Budreau's order of March 1, 2023, Ex. 127, cited Bratica v. Miller, which noted that the Massachusetts rule 4(j) is stricter than the federal rule.) Accordingly, the respondent made statements he knew to be false or with reckless disregard as to its truth or falsity concerning the integrity of the Appeals Court judges.

353. Regarding subparagraph (d), above, Lubin & Meyer did not "evade service" by being closed due to Covid-19.[48] His offer to Lubin & Meyer's counsel, two days after the failed attempt to serve the law firm, to have the complaint served again (which was not accepted, Tr. V:5-6, respondent), was also not an evasion of service. "Defense counsel has no obligation to

[48] The respondent confused Governor Baker's Order Number 13, which he said exempted law firms from having to be closed, with a duty to remain open. (Ex. 139, AGR-2176 to 2177). In one place, he apparently did not dispute the claim that Lubin & Meyer's "office was closed and its staff was working remotely due to the COVID-19 pandemic" (Id.), but later in the same brief he said that "any competent judge would have ordered [an affidavit in support of this claim] long ago." (Id. at AGR-2178).

accept service of process on behalf of his client for the convenience of plaintiff's counsel." Commissioner of Revenue v. Carrigan, 45 Mass. App. Ct. 309, 312 (1998) (reversing denial of summary judgment for defendant and ordering that the complaint be dismissed pursuant to Mass. R. Civ. P. 4(j)).

354. Regarding subparagraph (e), above, the respondent wrote that "If Judge Deakin did his job, he would have taken judicial notice that Appellee's counsel twice lied to him." (Ex. 139, AGR-2176). The "lie" was that Lubin & Meyer was closed due to Covid-19 and the Court could take judicial notice of Governor Baker's order closing non-essential businesses. (Ex. 139, AGR-2176). Again, the respondent confused the requirement that certain non-essential businesses had to remain closed with the fact that a law firm, while exempt, had the option to be closed.

355. Regarding subparagraph (f), above, it was not "incompetent" for the Appeals Court panel to rely on the statement of Lubin & Meyer's counsel that the law firm was closed and not to require an affidavit to that effect. The respondent overlooks the fact that his own deputy sheriff told him that Lubin & Meyer was closed, which the respondent admitted elsewhere in the same brief. (Ex. 19, AGR-2168).

356. Regarding subparagraph (h), above, there was not "fraud on the court" by "falsely claiming [that Lubin & Meyer was] closed due to COVID," since the respondent already represented to the Appeals Court that Lubin & Meyer was in fact closed. (Ex. 19, AGR-2168).

357. Regarding subparagraph (i), above, the "flawed legal precedent" was the Shuman case, as discussed above.

358. Regarding subparagraph (j), above, the respondent admitted that he had no evidence as to why these three judges were assigned to this case (Tr. V:8-9, respondent), and

therefore could not say they were "selected to dismiss it without oral arguments and without a published opinion."

359. In the reply brief, the respondent continued to substitute the phrase "ipso fatso" for the phrase "ipso facto." (Ans. ¶ 253).

360. On September 14, 2023, the Appeals Court received 18 letters from the respondent, each addressed to a different Appeals Court Justice. The letters were sent via first class mail by the respondent. They were not served upon defense counsel. (Ans. ¶ 254; Ex. 140, multiple letters).

361. In the letters, the respondent wrote, inter alia, the following:

> My name is Attorney Gary Dolan and I filed a reply brief in the above referenced appeal last week. I am assuming and hoping that you are an honest and competent judge. I believe the SJC has already assigned this appeal to three corrupt judges on this court with instructions to dismiss it without a hearing and without a published opinion. I can prove beyond a reasonable doubt that the SJC and other judges in the lower courts are fixing cases.
>
> There are currently seven corrupt judges on this court that have already denied my client's due process rights in three previous appeals filed in two separate but related cases (2021-P-1126, 2019-P-0480 and 2016-P-1265). The SJC will have to assign three of these judges to the current appeal to avoid having an honest judge write a dissenting opinion which will trigger an en banc rehearing. Assuming the remaining 17 judges on this court are honest, the odds that three of these seven are randomly assigned to this appeal are less than 2%.
>
> If you have any regard for the integrity of this court or the oath you took, I beg you to read my reply brief before this appeal is dismissed. I also urge you to Google search 'Operation Greylord' if you doubt my accusations and I will gladly send my evidence to anyone who cares to see it. (Ans. ¶ 255; Ex. 140).

362. "Operation Greylord" refers to a federal investigation conducted in the 1980s concerning corruption in the Illinois judiciary. (Ans. ¶ 256).

363. On September 14, 2023, after receipt of the letters, Appeals Court Clerk Joseph Stanton ("Stanton") notified the parties to the 2023 Suffolk Appeal that the respondent's letters

needed to be e-filed and that no action would be taken on the letters for failure to comply with this requirement. (Ans. ¶ 259; Ex. 134, AGR-1971).

364. The respondent testified that he was hoping that, by addressing the letters to the Appeals Court justices, they would read the reply brief and somehow intervene. (Tr. V:12-13, respondent). Accordingly, we find that, by attempting to communicate with the justices ex parte, the respondent attempted to influence the justices and to prejudice the administration of justice.

365. On September 14, 2023, the respondent emailed an Associate Justice of the Appeals Court at a non-court email address directly and asserted the same claims set forth in the letter mailed to the justices as described above. (Ans. ¶ 259; Ex. 141; Tr. V:13-14, respondent).

366. On September 15, 2023, Stanton responded to the respondent's email and advised him that an ex parte communication to a Justice about a pending matter was improper and a violation of the Massachusetts Rules of Professional Conduct. Stanton also informed the respondent he would notify the Board of Bar Overseers of this conduct. (Ans. ¶ 260; Ex. 141; Tr. V:14, respondent).

367. Since Ex. 141 (the email) is substantially the same as the individually mailed letters (Ex. 140), we find that, by communicating with the justice ex parte, the respondent attempted to influence the justice.

368. On September 19, 2023, the respondent filed a motion seeking to disqualify eight Associate Justices from panel assignment in the 2023 Suffolk Appeal. In the motion, the respondent argued that, inter alia: (a) the identified judges have been empaneled on the respondent's previous appeals; (b) the identified judges have shown a complete disregard for the Appellant's due process rights; (c) the identified judges will dismiss the appeal without oral arguments and without publishing an opinion to avoid an en banc rehearing; and (d) in previous

appeals, the identified judges changed undisputed facts to reach conclusions contradicted by evidence the judges intentionally ignored. (Ans. ¶ 262; Ex. 144).

369. The respondent's assertions were without merit, without a good-faith basis, frivolous, and/or made with reckless disregard as to their truth or falsity because they were conclusory, speculative, and an attempt to relitigate issues already settled by the courts. The respondent sought to disqualify them solely based on their past rulings, which were adverse to the respondent's client. (Tr. V:14-15, respondent).

COUNT SIX—CONCLUSIONS OF LAW

370. Bar counsel charged that the respondent's conduct, in asserting claims that lacked a basis in law or fact that were not frivolous, was in violation of Mass R. Prof. C. 3.1 and 8.4(d). For the reasons detailed above, we conclude that bar counsel has proved these charges.

371. However, we do not consider incorrect statements about the nonexistence of the Ruggieri case to be a violation of rule 3.1. That rule requires a "knowing" false statement of fact or law to a tribunal and since the respondent did not know his statement was false, it did not constitute a violation of rule 3.1.

372. Bar counsel charged that the respondent's conduct making statements concerning the qualifications and integrity of judges and attorneys, knowing the statements to be false or with reckless disregard as to their truth or falsity, was in violation of Mass. R. Prof. C. 8.2 and 8.4(c), (d), and (h). For the reasons detailed above, we conclude that bar counsel has proved these charges.

373. Bar counsel charged that the respondent's conduct, in knowingly making false statements of fact and law to a tribunal, was in violation of Mass. R. Prof. C. 1.1, 3.3(a) and 8.4(d). For the reasons detailed above, we conclude that bar counsel has proved these charges.

374. The respondent's conduct, in communicating ex parte with a judge during a proceeding in attempt to influence the judge, was in violation of Mass. R. Prof. C. 3.5(a) and (b) and 8.4(d). For the reasons detailed above, we conclude that bar counsel has proved these charges.

The Respondent's Conduct Between Days 3 and Day 4 of the Disciplinary Hearing

375. In between days of the public hearing, the respondent visited two courthouses with the avowed purpose of obtaining information relative to his allegations of corruption and to investigate portions of Pierce's testimony about the court. (Tr. IV:143, respondent).

376. On March 18, 2024, the respondent went to the Lawrence Superior Court to obtain information related to the 2012 Personal Injury Action. (Tr. IV:120, respondent). At the clerk's office, he asked the staff various questions about mail handling, case assignments to sessions and judges, file transfers, file storage, and the movement of case files from one courthouse to another. He also asked where files were kept and whether they were kept in the attic (Tr. IV:120-129, respondent), which was germane to his claims about documents being misfiled or hidden in the attic. (Ex. 71, AGR-1151, 1154).

377. On March 18, 2024, the respondent also went to the Newburyport Superior Court to ask more questions about the Personal Injury Action and to try to obtain documents. (Tr. IV:121, respondent; Ex. 155, BC-072). The respondent had some discussion with the court officers and was permitted to go into the clerk's office. The respondent told the court officers that he was "doing a documentary about corruption in the courts" and tried to make a video recording using his cell phone. (Ex. 155, Ex. 156; Tr. IV:126-127, respondent).

378. The Newburyport police received an "officer wanted" call and were dispatched to the Newburyport Superior Court. Dispatch informed responding Officer Charles Vorderis "that

an attorney was exhibiting bizarre behavior and the court officers did not wa[nt] him in the court." (Ex. 155, BC-072).

379. Officer Vorderis reported that upon arrival, he was met by the respondent, who was standing outside the courthouse speaking on the phone, and that he overheard the respondent say that the police had just arrived and he might get "thrown to the ground." (Ex. 155, BC-072).

380. After the respondent left with the document he was seeking, the court officers told Officer Vorderis that they were "suspicious of [the respondent] "because he was trying to video and was asking 'bizarre questions.'" (Ex. 155, BC-072; Ex. 156; Tr. IV:127, respondent).

381. On March 19, 2024, the respondent returned to the Newburyport Superior Court; Officer Vorderis was again dispatched to the scene. (Ex. 155, BC-072).

382. The respondent told Officer Vorderis that he had not been allowed access to the courthouse and that he was "'willing to take a trespass' for what he believes in." (Ex. 155, BC-072).

383. He also told Officer Vorderis that he "wanted to 'get a visual' of the courtroom for his documentary." The respondent had a tape measure with him and said he wanted to take measurements. (Ex. 155, Ex. 156; Tr. IV:130, respondent).

384. The respondent was ultimately permitted to enter the courthouse but was told that he could not enter the courtroom until the case being heard that day was ready to begin. The respondent was also told that he could not videorecord inside the courthouse. (Ex. 155, Ex. 156).

385. The respondent continued to videorecord and was told to leave by a state police trooper who had been called to the scene. A verbal "no-trespass order" was issued by Judge Karp who was at the court at the time. (Ex. 155, Ex. 156; Tr. IV:131-132, respondent).

386. The respondent told the state police trooper that he believed a judge in a prior

case was under the influence and that he wanted to take measurements between the judge's chambers and the courtroom to support the theory. (Tr. IV:135, respondent).

387. The respondent told Officer Vorderis that he had "made a decision that he wanted to get arrested for the publicity that he would get for his documentary on the corruption" of the judiciary and that "he would probably get on the 'Howie Carr Show.'" (Ex. 155, BC-073; Tr. IV:132-133, respondent).

388. When told that a no-trespass order had been issued and that, if he set foot in the building he would be arrested for trespass, the respondent said, "let's do it." He walked back across the street, entered the building, and was arrested by the state police trooper. (Ex. 155, BC073). After being taken by cruiser to the Newbury State Police barracks (Ex. 155, BC-073), the respondent said that he would rather be placed in a cell while the trooper wrote his report, "because it would make a good story." (Tr. IV:139-140, respondent).

389. The respondent was charged with trespass and arraigned on the charges. (Ex. 157, 158; Tr. IV:141, respondent). As one of the conditions of the respondent's pretrial release, he was ordered to stay away from the Salem, Lawrence and Newburyport Superior Courts. (Ex. 159; Tr. IV:140, respondent).

Matters in Mitigation and Aggravation

Mitigation

390. While the respondent does not urge it, it is our responsibility to apply the law correctly. Therefore, we take note of the fact that the respondent's lack of experience (this was his only case in eight or nine years and his regular employment is as a truck driver) is a factor in mitigation. E.g., Matter of an Attorney, 448 Mass. 819, 24 Mass. Att'y Disc. R. 786 (2007); Matter of McIntyre, 426 Mass. 1012, 1015, 14 Mass. Att'y Disc. R. 526, 531 (1998). Among other things, the respondent did not add Erhardt, the company actually responsible for snow

removal, as a direct defendant in that case. (See e.g., Ex. 4, AGR-0024, showing that Erhardt is only a third-party defendant).[49] He took no depositions to prepare the case. (Tr. VI:177, Pierce). When one of the defense counsel offered to settle on behalf of his client, the respondent did not understand how to settle a case where there was a Medicare lien and was therefore unable to negotiate a settlement. (Tr. I:90-92, Pierce). He did not know that the pre-trial memorandum is normally negotiated down to the last minute and filed at the pre-trial conference, rather than five days in advance, as mandated by the form order. He did not know about unreported Appeals Court decisions. (Tr. IV:163-164, respondent). He did not know or consider filing a timely motion to extend the time to serve Lubin & Meyer under Mass. R. Civ. P. 4(j), which would have avoided all of the problems (and appeals) that later occurred in connection with it. We note that much of the respondent's misconduct flows from his basic failure to understand civil litigation and how to prepare and try a case.

391. While neither in mitigation or aggravation, we note that bar counsel spent much of the fourth day of the hearing inquiring of the respondent concerning his trips to the Lawrence Superior Court and the Newburyport District Court following the third day of hearing, where he tried to obtain documents, asked about how cases were assigned, where files were kept, the handling of court papers, etc. (Tr. IV:120-127, respondent). He also testified that the purpose of his visits to the Lawrence and Newburyport Superior Courts on March 18 and 19, 2024 was to obtain information related to his allegations of corruption and to investigate portions of Pierce's testimony about the court. (Tr. IV:143, respondent). He was arrested after police responded to a call that he "was exhibiting bizarre behavior" and that the court officers did not want him in the

[49] That being said, Judge Welch "hinted" to the respondent that he should orally amend his complaint to name Erhardt as a direct defendant, which the respondent agreed to, and Erhardt was moved up on the jury verdict slip. (Ex. 9, AGR-0215 to 0216; Ex. 10).

court. (Tr. IV:120-127, respondent; Ex. 155, BC-072). Bar counsel also introduced several exhibits relevant to this. (Exs. 155, 156, 158, 159).

Aggravation

392. However, a respondent's inexperience can only get him just so much leeway, and there are several factors in aggravation. In aggravation, the respondent engaged in multiple violations of the disciplinary rules over an extended period of time. Matter of McBride, 21 Mass. Att'y Disc. R. 455 (2005) (multiple independent violations considered as an aggravating factor); Matter of Saab, 406 Mass. 315, 326-328; 6 Mass. Att'y Disc. R. 278, 290 (1989) (consideration of cumulative effects of several violations properly considered in aggravation).

393. Also in aggravation, the respondent has harmed the lawyers and law firm defendants by requiring them to spend time and resources defending against the respondent's frivolous claims in the Middlesex Superior Court, Suffolk Superior Court, Massachusetts Appeals Court, the United States District Court and the First Circuit Court of Appeals. Matter of Balser, 32 Mass. Att'y Disc. R. 15 (2016) (harm to others considered in aggravation); Matter of Aufiero, 13 Mass. Att'y Disc. R. 6 (1997) (harm to third parties correctly considered in aggravation).

394. In aggravation, the respondent has, to a great extent, failed to acknowledge his misconduct. Matter of Clooney, 403 Mass. 654 (1988) (respondent's "persistent assertions that he did nothing wrong … demonstrated that he 'continues to be unmindful of certain basic ethical precepts of the legal profession'."); Matter of Kirby, 29 Mass. Att'y Disc. R. 366 (2013) (failure to acknowledge misconduct factor in aggravation).

395. In aggravation, during bar counsel's investigation which began in December of 2019, the respondent continued to engage in his course of misconduct. Even after the petition for

discipline was filed in this matter, the respondent's misconduct continued to such a degree that bar counsel was compelled to file an amended petition for discipline to add charges. *See* Count Six. The fact that the respondent knew he was under investigation and being prosecuted for misconduct, yet engaged in ongoing similar misconduct for which he was being prosecuted, is an aggravating factor. Matter of Palmer, 413 Mass. 33, 8 Mass. Att'y Disc. R. 185 (1992); see also Matter of Kerlinsky, 428 Mass. 656, 665, 14 Mass. Att'y Disc. R. 304, 314 (1999) ("[t]hat the [attorney] continued to engage in the unethical behavior at issue in this case during and subsequent to his earlier disciplinary proceedings warrants more severe discipline.").

396. The respondent also continued to engage in the unethical behavior at issue during the disciplinary hearing. Not only did he respondent fail to acknowledge his misconduct during his testimony at the heating, but after the hearing started, he traveled to the Lawrence Superior Courthouse and Newburyport Superior Courthouse to gather video evidence of his misguided claims of corruption and was subsequently arrested after violating a "no trespass" order.

SANCTION RECOMMENDATION

Bar counsel recommends that the respondent be disbarred. The respondent, obviously frustrated with the travel of the underlying case as well as the disciplinary process, submitted no PFCs and makes no recommendation. We recommend that the respondent be suspended for three years, with an additional condition (beyond what is required by the case law interpreting S.J.C. Rule 4:01, § 18).[50]

[50] A petitioner for reinstatement to the bar bears the burden of proving that he has satisfied the requirements for reinstatement set forth in S.J.C. Rule 4:01, § 18(5), namely that he possesses "'the moral qualifications, competency and learning in law required for admission to practice law in this Commonwealth, and that his or her resumption of the practice of law will not be detrimental to the integrity and standing of the bar, the administration of justice, or to the public interest.'" Matter of Leo, 484 Mass. 1050, 1051, 36 Mass. Att'y Disc. R. 296, 298 (2020), citing Matter of Weiss, 474 Mass. 1001, 1002, 32 Mass. Att'y Disc. R. 263, 264-265 (2016). The S.J.C.'s rule establishes two distinct

Bar counsel correctly points out that, in deciding the appropriate sanction to impose, the primary consideration "is the effect upon, and perception of, the public and the bar." Matter of Corona-Perez, 34 Mass. Att'y Disc. R. 63 (2018), quoting Matter of Crossen, 450 Mass. 533, 573 (2008), and that the sanction should serve both to deter other attorneys from the same type of conduct and to protect the public. Id. And while it is true that the respondent filed multiple frivolous lawsuits, and made misstatements about members of the judiciary, and demonstrated increasing disdain for and frustration with, the legal system,[51] they all stem from his representation of his only client for most of his legal career.

Notwithstanding the respondent's statement in a request for further appellate review, "As far as sanctions, I would consider it an honor to be kicked out of this sleazy profession …" (Ex. 71, AGR-1154), we have examined the case law (particularly that cited by bar counsel) and find it would be markedly disparate to recommend disbarment, which is the standard to be followed. E.g., Matter of Lupo, 447 Mass. 345, 359, 22 Mass. Att'y Disc. R. 513, 533 (2006) ("The standard of review for a recommended sanction is 'whether it is markedly disparate from judgments in comparable cases.'"); Matter of Moore, 442 Mass. 285 (2004) (same). Two cases cited by bar counsel and that involved vexatious litigators, Matter of Corona-Perez, 34 Mass. Att'y Disc. R. 63 (2018) and Matter of Kim, 32 Mass. Att'y Disc. R. 297 (2016), both

requirements, focusing on (1) the personal characteristics of the petitioner and (2) the effect of reinstatement on the bar and the public. Matter of Gordon, 385 Mass. 48, 52, 3 Mass. Att'y Disc. R. 69, 73 (1982). In making these determinations, a panel considering a petition for reinstatement "looks to '(1) the nature of the original offense for which the petitioner was [suspended], (2) the petitioner's character, maturity, and experience at the time of h[er] [suspension], (3) the petitioner's occupations and conduct in the time since h[er] [suspension], (4) the time elapsed since the [suspension], and (5) the petitioner's present competence in legal skills.'" Matter of Daniels, 442 Mass. 1037, 1038, 20 Mass. Att'y Disc. R. 120, 122-123 (2004), quoting Matter of Prager, 422 Mass. 86, 92 (1996), and Matter of Hiss, 368 Mass. 447, 460, 1 Mass. Att'y Disc. R. 122, 133 (1975).

[51] As bar counsel points out, the respondent's final comment about his disciplinary proceedings was to write, "Go fuck yourselves." (Ex. A to bar counsel's PFCs).

resulted in suspensions of a year and a day. However, neither of them engaged in misconduct as extensive as that of the present respondent. We note that Kerlinsky, another vexatious litigator, was suspended for three years. However, he also filed false and misleading affidavits, and had a history of prior discipline. In Matter of Gargano, 460 Mass. 1022, 27 Mass. Att'y Disc. R. 383 (2011), the lawyer was indefinitely suspended. However, in addition to being a vexatious litigator (always for his own personal benefit), he also withheld (without the client's knowledge or permission) a portion of one client's partial settlement to use it for expenses in litigation against some remaining defendants but then did not refund it.

The only case cited by bar counsel in which a lawyer was disbarred is Matter of Cobb, 445 Mass 452, 21 Mass. Att'y Disc. R. 93 (2005). While it is true that Cobb filed numerous lawsuits (including against bar counsel and the Board of Bar Overseers) and made unsupported statements impugning the integrity of various judges and lawyers, what drove Cobb's disbarment was his conversion of client funds for his own benefit. As the Court noted in Cobb, 445 Mass. at 479, 21 Mass. Att'y Disc. R. at 125, "The presumptive sanction for conversion or misappropriation of client funds is disbarment or indefinite suspension," citing Matter of Schoepfer, 426 Mass 183, 186, 13 Mass. Att'y Disc. R. 679 (1997). And while Cobb, like the respondent, "continues to lack insight into his behavior and persists in blaming everyone but himself," another critical distinction is that Cobb was an experienced lawyer, a factor in aggravation not present in the case before us. Matter of Cobb, 445 Mass. at 480, 21 Mass. Att'y Disc. R. at 125-126. Moreover, we do not see that Cobb was charged violations of Mass. R. Prof. C. 8.2 or the predecessor analog under the Code of Professional Responsibility.

More to the point are cases such as Matter of Harrington, 27 Mass. Att'y Disc. R. 432 (2001). There, the lawyer, representing himself in post-divorce proceedings, attempted to drive

the presiding judge out of the case by making baseless accusations about the judge's honesty, character, fitness and qualifications. He was sanctioned and fined for frivolous and bad-faith pleadings. He also made false statements about the record, obfuscated facts and misstated the holding of reported appellate cases. He later filed a civil action against the judge, and threatened disciplinary action against the judge and opposing counsel. Harrington's misconduct was not as extensive as that of the present respondent, and he was suspended for a year and a day.

In terms of the nature and extent of a lawyer's frivolous litigation and misstatements, we consider the present matter to be closer to Matter of Belanger, 37 Mass. Att'y Disc. R. 25 (2021). While bar counsel correctly points out that the Single Justice in Belanger imposed a two-year suspension for attorney who made knowingly false statements about the integrity of members of the judiciary and violated court orders, Belanger had additional misconduct. She made false statements under oath to multiple tribunals and her conduct ultimately was motivated by an effort to control the assets of her father for her own benefit. Id. at 29-30, 40. By contrast, the present respondent sought no direct financial gain for himself, other than impliedly a contingent fee if he were successful on behalf of his personal injury client.

In an older case, Matter of Kurker, 18 Mass. Att'y Disc. R. 353 (2002), the lawyer was suspended for a year and a day for misconduct similar to the present case. He was involved in a family business dispute and filed five lawsuits and twelve appeals in state courts, all of which were ultimately resolved against him. He subsequently filed two federal court lawsuits, naming the opposing parties and their lawyers and law firms as defendants. (He did not name the state court judges as defendants but alleged that they engaged in a conspiracy that deprived him of his due process rights.) He attempted to appeal the dismissals of his federal court lawsuits but his notices were untimely and the appeals were dismissed. At the disciplinary hearing, he produced

no evidence to support his claims against the judges.

In another older case, Matter of Cohen, 435 Mass. 7, 17 Mass. Att'y Disc. R. 129 (2001), the lawyer had been held in contempt or sanctioned seven times by four different courts, in several cases arising from his representation of former employees of a corporation. The Court affirmed the judgment of the single justice, suspending the lawyer for a year and a day.

To the extent that the respondent mispresented the facts or holdings in various cases, rule 3.3(a) requires a "knowing" misstatement.

And while the respondent made numerous false statements to various tribunals, none of the knowing false statements were under oath. (The putative affidavits, drafted by the respondent and attributed to Messrs. Pierce, Jarosak and Dooley, were not signed.) The SJC has repeatedly considered a false statement to a tribunal, not under oath, to warrant a lesser sanction than a statement that was under oath.[52]

Accordingly, we recommend that the respondent be suspended for three years, which carries with the requirements that the respondent take and pass the Multi-State Professional Responsibility Examination and that he undergo a reinstatement hearing.

However, we are also concerned about the respondent's obsession with the Saninocencio case, such that he perceived each adverse ruling to be part of an ever-increasing conspiracy by lawyers and judges. We note that in Matter of Harrington, 28 Mass. Att'y Disc. R. 412 (2012), the Court adopted the hearing panel report of the Board in denying the petition for reinstatement.

[52] Massachusetts treats "false statements under oath" differently (and more severely) than statements "not under oath." E.g., Matter of Shaw, 427 Mass. 764, 14 Mass. Att'y Disc. R. 699 (1998) (two-year suspension for repeated false statements under oath); Matter of Macero, 27 Mass. Att'y Disc. R. 554 (2011) (presumptive sanction is a suspension of one year for false statement not under oath), citing Matter of Neitlich, 413 Mass. 416, 422, 8 Mass. Att'y Disc. R. 167 (1992) (one-year suspension). Of course, at the time of Neitlich, his one-year suspension required a reinstatement hearing, which is not the current requirement for suspensions of one year or less. S.J.C. Rule 4:01, § 18(b).

In its report, the hearing panel said that, "[b]ased on the evidence before us, the petitioner appears to have psychological issues related to his difficult experiences." It recommended against reinstatement because of the petitioner's "problematic personal conduct, the psychological problems associate with that conduct, and the public perception of the impact of that conduct," as well as "the absence of treatment" for these and "evidence that the petitioner has effectively dealt with these issues." Id. at 430-431. We recommend that these be considered when the petitioner applies for reinstatement. We believe that this is sufficient to protect the public interest.

Respectfully submitted
The hearing committee,

By: Matthew A. Kane
Matthew A. Kane, Esq., chair

By: Sheree Denson
Sheree Denson, member

By: Jonathan Mannina
Jonathan Mannina, Esq., member

Date: February 20, 2025