IN RE: MATTER OF DANIEL J. LARKOSH
BBO NO. 639569

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

BAR COUNSEL, **Petitioner** **vs.** **DANIEL JAMES LARKOSH, ESQ.,** **Respondent**	**B.B.O. File No. C5-19-00260323**

HEARING REPORT

Procedural History

After an investigation, bar counsel recommended that an admonition be administered to the respondent, Daniel James Larkosh, Esq. S.J.C. Rule 4:01, § 8(1)(c)(i). On July 29, 2022, the Board issued an admonition to the respondent. See S.J.C. Rule 4:01, § 8(2)(b). The respondent objected to the admonition and filed a demand that the admonition be vacated. See S.J.C. Rule 4:01, § 8(2)(c) and the Rules of the Board of Bar Overseers (B.B.O. Rules) § 2.12. As a result, the matter was assigned to a special hearing officer (SHO), who conducted an evidentiary hearing on September 9 and November 9, 2022, pursuant to S.J.C. Rule 4:01, § 8(4)(a) and B.B.O. Rules § 2.12. The SHO issued her report on December 22, 2022, concluding that an admonition should be imposed. The SHO report was filed with the Board and the respondent appealed. See S.J.C. Rule 4:01, § 8(4)(b) and B.B.O. Rules § 3.50(a). On May 8, 2023, the Board voted to remand the matter for formal disciplinary proceedings. S.J.C. Rule 4:01, §§ 8(4)(b) and 8(5)(a).

On October 30, 2023, bar counsel filed a petition for discipline and, on November 27, 2023, the respondent, represented by counsel, filed an answer. The matter was thereafter assigned to us as a hearing committee. S.J.C. Rule 4:01, § 8(4)(b) and B.B.O. Rules § 3.19.

Although S.J.C. Rule 4:01, § 8(4)(b) clearly authorizes a remand, we are unaware of any

other instance in Massachusetts bar discipline where, after review of an appeal from a SHO report recommending an admonition, the Board remanded the matter for a hearing. The rule authorizes a "remand[] for formal proceedings," but does not say whether or not it should be de novo. Despite the lack of precedent or clarity, we opted to err on the side of caution, and we conducted a de novo hearing. We did not read or consider the SHO report, but we did admit the prior sworn testimony from the SHO hearing and, by request, some of the exhibits from the SHO hearing.

We held a public hearing on October 8 and 10, 2024. Bar counsel called five witnesses: Eric L. Peters, Esq.; State Trooper Devin J. Balboni; Amanda Cimeno, RN; Wendy Bujak; and the respondent, who also testified in his own defense. The hearing was conducted in person and was live-streamed, except that Ms. Cimeno testified remotely. Thirty exhibits were admitted into evidence at the hearing, including the transcript of the earlier proceedings before the SHO, as well as many of the exhibits admitted in that proceeding. In addition, on September 17, 2024, the parties filed a stipulation of facts, which was not marked as an exhibit. On November 25, 2024, the parties submitted their proposed findings of fact and conclusions of law (PFCs). The respondent also submitted a separate post-hearing memorandum. There was substantial motion practice (as well as two sua sponte orders), as described in the attached spreadsheet.

In reviewing the parties' post-hearing submissions, we noticed that they both referred to the September 17 stipulation, even though it was never offered into evidence by the parties. (B.B.O. Rules § 3.38 contemplates stipulations as being "received into evidence.") To ensure the record would be clear, on December 13, 2024, we sua sponte reopened the hearing pursuant to B.B.O. Rules § 3.60 for the limited purpose of admitting the stipulation as an exhibit, and designated it as Exhibit 31.

FINDINGS OF FACT[1]

General Background

1. The respondent was admitted to the Massachusetts Bar on July 24, 1998, and to the California Bar in December 1991. (Ans. ¶ 2; Stip. ¶¶ 1, 2). At all times relevant to this petition, the respondent had almost thirty years of legal experience. (Ans. ¶ 2).

2. At all times relevant to this petition, the respondent practiced under Larkosh & Jackson, LLP in Vineyard Haven, Massachusetts. (Ans. ¶ 3; Stip. ¶ 4). His professional work includes wills and trusts as well as probate litigation, complaints in equity, and other types of litigation. (Ans. ¶ 3).

3. In July 2019, Barbara Roberts ("Roberts") was 88 years old and resided in Windemere Nursing and Rehab Center at the Martha's Vineyard Hospital (MV Hospital) in Martha's Vineyard ("Windemere"). (Ans. ¶ 4, admitted or not otherwise denied; Stip. ¶¶ 5, 6; Tr. II:12, Cimeno (Windemere is a long-term or skilled nursing facility within MV Hospital)).

4. Roberts had four adult daughters: Wendy Bujak ("Bujak"), Linda Acton ("Acton"), Lois Hart ("Hart"), and Barbara Anne Roberts ("Anne"). Bujak was Roberts's primary caretaker. (Ans. ¶ 5, admitted or not otherwise denied; Stip. ¶ 7).

5. Attorney Eric L. Peters has practiced law on Martha's Vineyard since 1983. (Ex.

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

9; Ex. 21 at 32-33, Peters; Tr. I:79, Peters). [2] For several years, beginning in 2012 and through approximately 2024, Peters was Roberts's attorney and provided her with legal counsel and assistance in matters concerning her real estate and estate planning; he also assisted Bujak on Roberts's behalf concerning Roberts's trust, estate, and healthcare-related matters. (E.g., Exs. 1, 2, 3, 6, 7, 9, 10, 13, 29 at BC009-BC010, 30; Tr. I:80-88, 90-94, 97-99, 101-103, Peters). His initial work for Roberts included the transfer of the home of Judith Hart (Roberts's sister) to Roberts as a gift and for no monetary consideration. (Ex, 9, Peters affid., at ¶¶ 9, 10; Ex. 21 at 36, Peters; Tr. I:80, Peters).

6. In 2013, Roberts signed a general engagement letter with Peters for work involving real estate and "other matters" concerning her estate planning. (Ex. 10; Tr. I:84, 91, 157, Peters). Thereafter, Peters continued to provide legal services to Roberts, but he did not provide Roberts with any other engagement letter or similar writing describing his legal services and billing rate. (Ex. 21 at 64-65, Peters). Roberts and Peters did not agree to any specific billing schedule (Tr. I:164, Peters; Tr. II:105, Peters) and Peters billed sporadically throughout his relationship with Roberts. (Tr. I:157, Peters). He most recently sent a bill to Roberts's trust account manager, Paul McAfee, in April 2024 for past work "On Account."[3] (Ex. 30; Tr. II:105-108, Peters).

7. As early as 2012/2013, it was clear to Peters that, out of the four daughters, Bujak was the one who was primarily caring for Roberts. (Ex. 21 at 40, Peters; Tr. I:88, Peters).

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[2] Regrettably, many of the exhibits are Bates-numbered beginning with "BC001" or "BC0001"; e.g., Exs. 10, 11, 12, 13, 18, 19, 20, 21, 22, 25, 26, 27, 28, 29, and 30. It would have been more helpful if the documents were uniquely Bates-numbered as required by the Prehearing Order in this case. To reduce confusion, when citing to the prior transcripts (Ex. 21 and 22), we cite to the actual page numbers of those transcripts, rather than to the Bates numbers at the bottoms of the Min-U-Script transcript pages.

[3] A bill "on account" is for services rendered but is not a complete and itemized bill. Rather it is a request for payment against an itemized bill to be rendered in the future. (Tr. II:107-108, Peters).

8. In 2013, Roberts moved from Connecticut into Bujak's home on Martha's Vineyard. (Ex. 21 at 64, Peters; Tr. I:80, 82, 89-90, Peters).

9. On or about October 22, 2013, Roberts signed a durable power of attorney ("DPOA"), prepared by Peters, which appointed Bujak as Roberts's attorney-in-fact. (Ans. ¶ 6; Stip. ¶¶ 8, 10; Ex. 6; Ex. 9 at ¶ 12). The DPOA specified that "[t]his Power of Attorney shall not be affected by my subsequent disability or incapacity, it being my intent that the powers hereby granted shall continue notwithstanding my subsequent disability or incapacity . . . ." (Ex. 6 at 012). The powers granted to Bujak in the DPOA were all-inclusive ("full power to act for me"), including retaining counsel on behalf of Roberts. (Ans. ¶ 6, admitted in part; Ex. 6 at 011-012). It was Roberts's intent that every power that was granted in the DPOA could be exercised by Bujak. (Ex. 21 at 49, Peters). Roberts signed the DPOA willingly and "understood exactly what she was doing." (Ex. 21 at 51, Peters).

10. On or about June 25, 2015, Roberts signed a healthcare proxy, prepared by Peters, appointing Bujak as Roberts's primary health care agent and her sister, Acton, as her alternate health care agent. (Ans. ¶ 7, admitted or not otherwise denied; Stip. ¶¶ 9, 10; Ex. 7; Tr. I:82, Peters).

11. On September 13, 2016, Roberts signed a quitclaim deed whereby Roberts, "in consideration of love and affection, as a gift, and for no monetary consideration" transferred her Chilmark home and a vacant lot to Bujak, reserving a life estate for herself. (Ans. ¶ 9; Stip. ¶¶ 11, 12; Ex. 1; Tr. I:80-81, 94-95, Peters; Stip. ¶ 11, referring to the home as "Abel's Hill" and saying it is located at 15 Overview Road).[4] Peters prepared, notarized, and recorded said deed.

[4] The family refers to the Chilmark house as "Crow Stairs." (Ex. 21 at 123, Bujak; Tr I:79-80, 94, Peters; Tr. I:220, Bujak). To add further confusion, the property consists of two parcels. Parcel One has the house on it and Parcel Two is a vacant lot with a conservation restriction. (Ex. 1; Ex. 21 at 36, Peters;

12. Prior to preparing the deed, Peters met with Roberts, who told him that she wanted to transfer the properties to Bujak. (Ex. 1 at 53-55). Peters was clear that Roberts's transfer of her real estate to Bujak was not in exchange for a promise or agreement that Bujak would keep Roberts in the Chilmark home, or care for her there, for the remainder of Roberts's life. (Ans. ¶ 9; Ex. 1; Ex. 21 at 57-58, Peters; Ex. 21 at 137-138, Bujak; Tr. I:135-136, Peters).

13. In connection with the deed, Peters also prepared a Form LB1, which is an affidavit for the Martha's Vineyard Land Bank Commission, attesting to the fact that this was a gift for no money. (Ex. 15). Bujak signed the form which, stated inter alia, that Peters was the "Grantee's [Bujak's] Legal Rep." (Id.). We credit Peters's testimony that he did not represent Bujak in the real estate conveyance and that his usual practice was to fill out this form as "Grantee's Legal Rep." because he was the one who recorded the deed. (Tr. I:143-144, Peters).

14. On September 13, 2016, the same day that Roberts signed the deed transferring her real estate to Bujak, Roberts executed her Last Will and Testament (which was also prepared and notarized by Peters). Two of Roberts's home care providers, Diane Caponigro and Linda S. Morgan, witnessed Roberts sign her will, signed Roberts's will and acknowledged in writing that Roberts "…signed it willingly, … and that, to the best of our knowledge, the Testatrix is… of sound mind and under no constraint or undue influence." (Tr. I:94-96, Peters; Tr. II:90-94,

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Ex. 9 at ¶ 9). The two parcels are located in the Abel's Hill neighborhood of Chilmark (Ex. 21 at 94, Peters) and are sometimes referred as "Abel's Hill," or "the Abel's Hill house." (Ex. 21 at 35-37, 39, 42, 53, 55, Peters). One of the two parcels is apparently 15 Overview Road, while the other is 20 Overview Road. (Ex. 1; Ex. 14). The appraisal (Ex. 14) says that 20 Overview Road is where the house is located. This is consistent with Peters's testimony, saying that Roberts's sister (Judith) had owned the property with the house and that Roberts owned the vacant lot with a conservation restriction. (Ex. 4 at L036, house was owned by Judith Hart; Ex. 21 at 36, Peters). Bujak also referred to the parcels as "Camp 1 and Camp 2" (Ex. 23 at ¶¶ 7 and 8) and Bujak maintained the "camps" and rented them during the summer months. (Ex. 23 at ¶¶ 7 and 8; Ex. 28, summer lease for 15 Overview Road in Chilmark).

Peters).[5]

15. After transferring the properties to Bujak in 2016, Roberts never expressed to Peters any interest in undoing the transfer or any objection about how Bujak handled her care. (Tr. I:122, Peters; Ex. 21 at 106, Peters). Moreover, neither Roberts nor Bujak, on Roberts's behalf, ever asked Peters to assess whether Roberts had been defrauded in the transfer, to try to undo the transaction, to file a complaint against Bujak concerning the transaction, or to enforce Roberts's life estate in the house against Bujak. (Ans. ¶ 10, admitted or not otherwise denied; Ex. 21 at 96-97, Peters; Ex. 21 at 147-148, Bujak; Tr. I:122, 124, 138, Peters). Roberts continued to live in Crow Stairs, Chilmark for another year, until late 2017. (Ex. 23, Bujak Affid., at ¶ 11).

16. In the 2015-2017 time frame, Roberts had various medical issues, including a head wound sustained in a fall (Ex. 21 at 125-128, Bujak) and a gall bladder problem necessitating care at Massachusetts General Hospital (MGH) in Boston. (Ex. 21 at 130, Bujak). In the autumn of 2017, Roberts underwent hip revision surgery, again at MGH. (Ex. 21 at 134, Bujak; Ex. 23 at ¶ 11; Ans. ¶ 11, admitted or not otherwise denied). Bujak oversaw Roberts's medical care, assisted by two of Roberts's home care providers, Diane Caponigro and Kathleen LeBlanc. (Ex. 23 at ¶¶ 11, 13, 19).

17. After her surgery, Roberts was transferred to MV Hospital in Falmouth, Massachusetts, for rehabilitation. (Ex. 23, Bujak Affid., at ¶¶ 11, 14, 17, 19). When Roberts was scheduled to be discharged from MV Hospital, there were no open beds at Windemere. (Ex.

[5] At the hearing and without objection, bar counsel displayed on the live stream the "Last Will and Testament of Barbara H. Roberts" dated September 13, 2016, which was marked as Ex. DD for identification. On the last page of that document, the witnesses, Diane N. Caponigro and Linda Morgan, swore that Roberts was "of sound mind and under no constraint or undue influence." However, that document was not entered into evidence as an exhibit. It is tantamount to a chalk, which we can rely upon. Moran, supra, 479 Mass. at 1019.

23 at ¶ 22). As a result, Roberts first went to Atria in Falmouth, but after she fell while unattended, Roberts was transferred to Royal Nursing and Rehabilitation in Falmouth. (Ex. 23 at ¶ 23).[6]

18. Between autumn 2017 and early 2018, Bujak became concerned that the costs of Roberts's home care (in 2017) were excessive. (Ex. 23 at ¶¶ 20, 25, 26, 47). Bujak also developed concerns that Caponigro and LeBlanc were not acting in Robert's best interests and were in fact, taking advantage of Roberts. Bujak discovered inconsistencies in Roberts's checking account checkbook, which Caponigro had been managing. (Ex. 23 at ¶¶ 20, 27, 28). In addition, while Roberts had paid for a cruise she was going to take with Caponigro and LeBlanc before her fall, now Caponigro was talking about taking the cruise at Roberts's expense but without Roberts. (Ex. 23 at ¶¶ 12, 14, 26). Due to these developments, Bujak transferred management of Roberts's checking account to a new bookkeeper who, after review of Roberts's records, reported the matter to the local police for investigation of Caponigro and LeBlanc. (Ex. 23 at ¶ 28; Tr. I:97-99, Peters). After consultation with Peters, Bujak terminated the two caregivers around January 2018. (Tr. I:102-103, 172-173, Peters). Beginning in 2018 and on Roberts's behalf, Peters assisted Bujak in working with the local police on the criminal investigation of Caponigro and LeBlanc. (Tr. I:97-99, 102-103, 150, 172-173, Peters). We find and conclude that Peters was representing Roberts in connection with the criminal investigation of Caponigro and LeBlanc, and whether they should be prosecuted.

19. In January 2018, Theresa Patenaude, NP, Roberts's health care provider at Royal, evaluated Roberts and signed a Documentation of Resident Incapacity Pursuant to Massachusetts

[6] This facility is referred to by different names at different times. We take administrative notice that the correct name is Royal Falmouth Nursing & Rehabilitation Center, and we refer to it as "Royal" hereafter.

Health Care Proxy Act form, diagnosing her with ongoing moderate dementia. (Ans. ¶ 12; Ex. 11; Ex. 21 at 140, Bujak). Patenaude determined that Roberts was unable to make or communicate her own healthcare decisions. (Ex. 11).

20. In March 2018, Bujak authorized Roberts's transfer from Royal to Windemere, because a bed opened there and Roberts wanted to be "on island." (Ans. ¶ 12, admitted or not otherwise denied; Stip. ¶ 13; Ex. 21 at 147, Bujak; Ex. 23 at ¶¶ 2, 22, 23; Tr. I:211, 225, Bujak).

21. On or about March 10, 2018, Dr. Roberta Krause, Roberts's physician at Windemere, evaluated Roberts and signed a Documentation of Resident Incapacity Pursuant to Massachusetts Health Care Proxy Act form reflecting "moderate dementia." (Ans. ¶ 13; Ex. 12). Windemere placed Roberts in Unit 4, where Windemere housed dementia patients. (Ex. 22 at 16-17, Cimeno; Ex. 19 at BC0001). Unit 4 was kept locked, because patients with Alzheimer's/dementia tend to wander. (Ex. 22 at 16-17, Cimeno; Tr. II:50, Cimeno).

22. Bujak was listed as Roberts's healthcare agent and emergency contact at Windemere. (Ex. 7; Ex. 21 at 138, Bujak). As a result of the dementia diagnosis, Bujak, as Roberts's legal agent, had to make all of Roberts's healthcare, personal, and financial decisions. (Ex. 21 at 140-141, Bujak; Tr. I:104, 111, Peters; Tr. I:212, Bujak).

23. By 2019, Roberts was not signing documents on her own behalf. Bujak executed any necessary documents on Roberts's behalf pursuant to Roberts's DPOA. (Ex. 21 at 135-16, Bujak).

Hart Engages the Respondent

24. One of Roberts's daughters was Lois Hart. She had been estranged from her family, including Roberts, for many years and did not visit Roberts or Martha's Vineyard between 2010 and 2018. (Ex. 21 at 40-41, 82, Peters; Ex. 23 at ¶ 34; Ex. 29 at BC005, BC007-

BC008). In 2018, Hart was living in Utah and struggling with a number of personal health and financial issues, including that her domestic partner had lost his medical license. (Ex. 23 at ¶¶ 18, 21-22, 35-38; Ex. 29 at BC003, BC004). Hart had previously been an attorney, but she resigned from practice many years ago. (Tr. I:222-223, 228-229, Bujak). At some point in 2011, Roberts had started providing Hart with $1,000 per month, an amount which by March 2018 had increased to $2,000 per month. (Ex. 23 at ¶¶ 17, 38).[7]

25. In or about March 2018, within days of Roberts's admission to Windemere, Hart disagreed with and otherwise refused to believe her mother's dementia diagnosis. (Ex. 29 at 004; Ex. 20 at BC0040-BC0041). (We are unclear as to why Hart said nothing about Roberts's diagnosis with dementia that was made in January 2018 while she was at Royal.)

26. In the fall or winter of 2018, Hart contacted the respondent for legal assistance. (Ans. ¶ 15; Stip. ¶ 14). Hart paid an initial retainer to the respondent. (Ex. 20 at BC0017-BC0018; Ex. 20 at BC0072-BC0074; Ex. 21 at 151-162, respondent; Ex. 29 at BC005, Hart had the respondent meet with Roberts and paid him a retainer to do so).

27. The respondent testified that Hart contacted him about representing her mother, Roberts. (Tr. I:39, respondent). However, Hart never told the respondent that Roberts had asked Hart to find her an attorney (Tr. I:66-67, respondent), nor did Roberts ever tell him that she asked Hart to find an attorney for her. (Ex. 20 at BC0086). While the respondent testified that he "assumed" that "Barbara [Roberts] was always the client" (Tr. II:59, respondent), there was no evidence that Roberts requested to see the respondent (or any other lawyer) and specifically, there is no evidence that Roberts actually told Hart (or anyone else) that she wanted to see a

[7] When Bujak notified Hart about Roberts's surgery in 2017, Hart quickly responded and asked about an additional $2,000 she was expecting to receive on top of the $2,000 she was already getting; Bujak replied that she would not send a check until they had a conversation with Roberts. (Ex. 29 at ¶¶ 17, 18).

lawyer.

28. As discussed below, it appears that Hart's reason for asking the respondent to meet with Roberts was to accomplish her goal of undoing Roberts's 2016 deed to Bujak. Hart told the respondent that Roberts was the victim of elder abuse (Tr. I:41, respondent), in that Roberts was pressured to deed Crow Stairs to Bujak. (Ex. 21 at 191-192, respondent; Tr. I:47, respondent). However, there is an abundance of credible evidence that Bujak did not exert undue influence or elder abuse on Roberts. The respondent was not aware of any complaints filed with elder services concerning Roberts. (Tr. I:48-49, respondent). Peters was also unaware of any complaints or investigation of elder abuse concerning Roberts before July 2019. (Tr. I:124, Peters).[8] We credit Peters's testimony that Roberts executed the 2016 deed of her own free will, and that no one exerted undue influence on Roberts to convey her real estate to Bujak. (Tr. I:97, Peters; Tr. II:93-94, Peters). Further, and significantly, the guardian ad litem ("GAL") appointed in January 2023 as the result of a later lawsuit, noted in her report that "[Roberts] had also told multiple people interviewed [by the GAL] that the transfer was a way to repay [Bujak] for all that she had done for [Roberts]." (Ex. 29, GAL report, at BC021).

29. The respondent also alleged that Hart had told him that Roberts deeded the property to Bujak on Bujak's false promise to care for Roberts in the house for the rest of her life. (Ex. 8 at AE0017). We do not credit the respondent's testimony. While our credibility determination stands on its own, we note that this is not what Hart told the GAL. (Ex. 28 at BC005, where Hart told the GAL that "Wendy [Bujak] told her if she [Roberts] signed over the cottages to Wendy, she would sell them and buy herself a place so she [Bujak] could take care of

[8] As discussed below, after Hart was unsuccessful in her efforts to have the respondent represent Roberts for the purpose of undoing the deed of Crow Stairs to Bujak, Hart filed a probate court action against Bujak, alleging inter alia, elder abuse. A GAL was appointed who rendered a report (Ex. 29); the case went to trial and a directed verdict entered in favor of Bujak.

her [Roberts]."[9]

30. The respondent and Hart had several telephone conversations over the next few months into 2019. (Ex. 20 at BC0018). Among other things, Hart told the respondent that Roberts was "stuck in a nursing home, wanted to return home, and that she had also been a victim of elder abuse." Hart also told the respondent that Roberts deeded her house to Bujak "for no money." (Ex. 21 at 151-152, respondent; Tr. I:41; Ans. ¶ 16, Roberts deeded the house to Bujak on Bujak's false promise to take care of Roberts for the rest of her life).

31. We do not credit that Hart had any information to support her claim that Bujak had promised to keep Roberts in the house to care for Roberts for the rest of her life in the house, or anything to that effect. It is undisputed that Hart had been estranged from her mother and sisters for years before and during the time that Roberts deeded the house to Bujak. (Ex. 29 at BC007 and BC008). The September 13, 2016 deed from Roberts to Bujak states it was "in consideration of love and affection, as a gift, and for no monetary consideration"; no condition was stated therein. (Ex. 1). Caponigro's alleged after-the-fact claim that Roberts was pressured into signing the deed to Bujak is disproved by her own sworn statement that on September 13, 2016, Roberts was under "no constraint or undue influence."[10]

32. We do not find that Roberts's having reserved a life estate in the 2016 deed

[9] We reference this not for the truth of Hart's claims—which we do not credit—but to indicate that Hart herself did not say what the respondent claimed she said. As the GAL report notes, one daughter (Anne) had told Roberts to give the property to Bujak and the other daughter (Linda) had told Roberts that she (Linda) had no interest in owning the property. (Ex. 29 at BC007 and BC008). Either way, we conclude that there was no undue influence on or false promise made to Roberts by Bujak.

[10] We were presented with nothing from Caponigro, who also did not speak with the GAL. (Ex. 29). As noted, Caponigro's and LeBlanc's alleged statements to the respondent that Roberts was "pressured" into signing the deed (Tr. I:47, respondent), are inconsistent with Caponigro's 2016 statement as a witness to Robert's Will that Roberts was not under any undue influence. Moreover, we credit the testimony of Peters, who met with Roberts and prepared the deed, and who testified that there was no such promise or condition. (Tr. I:135-136, Peters: Ex. 21 at 56-58, Peters).

supports the claim that Bujak promised to keep Roberts in the house. As discussed infra, it is an estate planning measure and not evidence of a promise by Bujak to keep Roberts in the house.

33. Hart gave the respondent pertinent background information about the situation and provided him with documents relating to the home transfer. The respondent reviewed a copy of the deed and saw that Peters, a name the respondent recognized, had notarized the deed. Peters was known to the respondent. (Ans. ¶ 17; admitted or not otherwise denied; Stip. ¶¶ 16, 17; Tr. I:41, respondent; Ex. 21 at 153, respondent).

34. Hart also directed the respondent to Roberts's former in-home caregivers, including Caponigro, to corroborate her story. (Ex. 20 at BC0018-BC0020; Tr. I:45, respondent; Stip. ¶ 17, Hart introduced the respondent to Caponigro and LeBlanc). Hart was friends with Caponigro. (Ex. 20 at BC0073). According to the respondent, Caponigro and LeBlanc told him that they witnessed Roberts signing the 2016 deed (Tr. I:46, respondent; Ex. 21 at 192, 203, respondent); that "Bujak had somehow taken control of the situation" (Tr. I:46, respondent; Ex. 20 at BC0020); that Bujak had "Roberts living [in an assisted living facility] against her will" (Tr. I:46, respondent; Ex. 20 at BC0020-BC0021); that Peters was assisting Bujak; and that he had assisted Bujak with the home transfer. (Tr. I:48, respondent; Ex. 20 at BC0042). Accordingly, prior to July 2, 2019, even though the respondent chose not to "recognize" that Bujak "had any position of authority," when he went to meet with Roberts, the respondent was aware that Bujak, not Roberts, was in charge of Roberts's affairs, and that Peters provided legal counsel to Roberts. (Tr. I:54, respondent).

35. The respondent claimed that Caponigro and LeBlanc also told him that Bujak had "pressured" Roberts and had taken a fee interest in Roberts's home for herself (Ex. 20 at BC0021; Tr. I:47, respondent), that Roberts retained a life interest in the home (Ex. 20 at

BC0021), and that Bujak would now rent out the property and keep the money for herself. (Ex. 20 at BC0022; Tr. I:48, respondent). The respondent further testified that the caregivers told him that Bujak and her partner acted harshly toward Roberts and exerted some sort of undue influence relating to the home transfer. (Ex. 20 at BC0022). However, Caponigro's allegation of undue influence is refuted by her own sworn statement in 2016 that there was no undue influence at the time. (See footnote 5, supra).

36. Accordingly, we find and conclude that 1) Roberts did not ask Hart to find an attorney for her for any matter; 2) that Bujak did not exert any undue influence on Roberts to deed the property to Budak; and 3) that Bujak did not make any promises to Roberts to care for her in Crow Stairs as an inducement for Roberts to deed her real estate to Bujak.

37. Hart and the respondent eventually met in person in the spring of 2019. (Stip. ¶ 15; Ex. 20 at BC0017- BC0018 and BC0025; Ex. 23 at ¶¶ 29-31; Tr. I:39, respondent). That visit may have coincided with Hart's visit to Roberts in May 2019. Windemere staff reported that when visiting Roberts, Hart stayed beyond the 9:30 p.m., loudly discussed controversial topics in the hearing of other residents, which, caused discomfort to other residents and necessitated the staff seating Hart and Roberts at a separate dining table. In addition, Windemere staff witnessed Hart telling Roberts that her house was being sold for the money and that Roberts should not trust Bujak. (Ex. 27; Tr. I:39-40, 112-113, respondent).

38. By the time Hart and Roberts met in 2019, Hart had known for more than a year that Roberts was diagnosed with dementia. (Ex. 29 at BC005 n.8). However, the respondent said that Hart told him Roberts was competent (Ex. 20 at BC0040- BC0041) and never disclosed that there was a healthcare proxy in place. (Ex. 20 at BC0041). He further testified that no one else he later contacted "ever said anything to me about [Roberts] being incompetent to make her

own decisions." (Ex. 20 at BC0032, BC0033- BC0034, BC0039- BC0040). Yet, the respondent admitted that he recognized that Roberts was in a nursing facility and advised Hart that they would need to establish whether Roberts was competent. (Ans. ¶ 19; Ex. 21 at 161-162, respondent; Tr. I:43, respondent).

39. Notwithstanding the above, the respondent advised Hart of two legal options, one in which he would represent Roberts directly, and a guardianship option where, presumably, he would have represented Hart directly as Roberts's guardian. (Ans. ¶ 19; Ex. 21 at 158, respondent; Tr. I:42-44, respondent).

40. In early spring 2019, before April 23, the respondent, on behalf of Hart, contacted Dr. Krause about assessing Roberts's competence. (Ans. ¶ 20; Stip. ¶ 20; Ex. 5; Tr. I:50, respondent). Dr. Krause replied, telling the respondent that Roberts "needs an evaluation to determine competency" and that she had previously referred Hart to Dr. Silberstein. (Ans. ¶ 20, admitted or not otherwise denied; Stip. ¶ 21; Ex. 5; Tr. I:49, respondent). Dr. Krause did not perform an evaluation. (Tr. I:50, respondent).

41. The respondent testified that Hart told him that Dr. Krause had said to her, "why is your mother still here [at Windemere]?" (Tr. I:44, 49, 53, respondent; see Ex. 21, at 168-169, respondent, Dr. Krause supposedly told Hart, "what's your mother doing here" and "she should go home"). We do not credit that Dr. Krause said these things to Hart. First, Dr. Krause had previously, on March 10, 2018, signed a "Documentation of Resident Incapacity" for Roberts (Ex. 12), stating that Roberts had moderate dementia, which explained why Roberts was in Windemere. Second, in communicating with the respondent, Dr. Krause never repeated what Hart had claimed; rather, Dr. Krause said that Roberts needed an evaluation to determine her competency—which Dr. Krause had, apparently, previously said to Hart. (Ex. 5). Dr. Krause

referred the respondent to Dr. Silberstein (Stip. ¶ 21), as she had to Hart (Ex. 5), but Dr. Silberstein declined to evaluate Roberts. (Stip. ¶ 22; Tr. I:50, respondent).

42. Thereafter, the respondent gave a copy of the same Massachusetts court standard medical certification form to Hart to give to Dr. Silberstein. (Ex. 20 at BC0038; Tr. I:50, respondent). The respondent was familiar with Dr. Silberstein and knew that he was a psychiatrist, having encountered him in an unrelated prior case. (Ex. 20 at BC0038; Ex. 21 at 167, respondent; Tr. I:49-50, respondent).

43. The respondent did not speak with any other members of Roberts's family or with Peters to corroborate Hart's allegations. (Ex. 20 at BC0048). Other than the documents he testified to reviewing (Exs. 5, 20-22), the respondent obtained nothing else, prior to July 2, 2019, to investigate the merits of Hart's allegations. (Ex. 21 at 171, respondent; Tr. I:56, respondent).

44. As discussed in our conclusions of law, by advising and assisting Hart, at her request, about matters within his professional competence, the respondent and Hart entered into an attorney-client relationship. The respondent represented Hart as her counsel, if not formally, then by representing Hart's interests and thus they had an implied attorney-client relationship.

July 2, 2019

45. On July 2, 2019, Dr. Silberstein declined to evaluate Roberts. (Ans. ¶ 22; Stip. ¶ 22; Ex. 21 at 168, respondent; Tr. I:50, respondent).

46. Thereafter, Hart suggested that the respondent meet Roberts and assess her competency for himself. (Ans. ¶ 23; Stip. ¶ 23; Tr. I:53, respondent). The respondent did not attempt to find another medical professional to perform an evaluation, but instead agreed with Hart to go to Windemere to meet Roberts, where Roberts was living at the time. (Tr. I:52, respondent; Ex. 20 at BC0040- BC0041; Ex. 21 at 169, respondent; Stip. ¶ 5). The respondent

and Hart went to Windemere together later that day, after the respondent left work. (Ans. ¶ 23; Stip. ¶ 24; Ex. 21 at 169, respondent; Tr. I:53-54, respondent). Roberts was 88 years old at the time. (Stip. ¶ 6).

47. The respondent testified that at the time of this meeting, there was still a question in his mind as to whether he would be representing Roberts directly or "indirectly." (Ex. 20 at BC0040). At this meeting, the respondent introduced himself to Roberts as a lawyer and proceeded to attempt to assess Roberts's competence by asking her the day of the week, the U.S. President, and where she had lived in the past. (Ans. ¶ 24; Ex. 20 at BC0045; Ex. 21 at 175-176, respondent; Tr. I:58-59, respondent; Ex. 8 at AE018). We were presented with no evidence that the respondent was in any way trained to assess Roberts's competence.

48. The respondent then asked Hart to leave the room. After Hart left, the respondent questioned Roberts about her medications, why she was at Windemere, how she had hurt her hip, the deed transferring her home to Bujak and the life estate she had reserved, and setting aside the transfer of the house to Bujak. (Ans. ¶ 25; Ex. 21 at 179-181, respondent; Tr. I:60-61, respondent). He also mentioned the possibility of Roberts leaving Windemere and returning home. (Ex. 21 at 180, respondent).

49. The Respondent asked Roberts if she wanted assistance and if she wanted to hire him to address such matters. (Ex. 21 at 181-182, respondent). He told Roberts that he would "do what [he could] to help you get out of here." (Ex. 20 at BC0045). He told her that if she wanted to hire him, she would have to sign a fee agreement with him; that he did not have one with him but would draft one based on their conversation; and he could return with it and discuss it with her. (Ans. ¶ 25; Ex. 21 at 181-182, respondent; Tr. I:64-65, respondent; Ex. 8 at AE0018).

50. The respondent and Hart arranged to return and meet with Roberts the next

evening, July 3, 2019. (Ans. ¶ 26; Ex. 21 at 182-183, respondent). In preparation for that meeting, the respondent drafted a fee agreement for Roberts to sign to hire him as her attorney. (Ans. ¶ 26).

51. The respondent had no discussion with Roberts about a power of attorney or a healthcare proxy; Roberts never mentioned either of them (Ex. 20 at BC0048, respondent) and the respondent never asked. The respondent also admitted that Roberts never said that she had been looking for an attorney. (Ex. 20 at BC0086, respondent).

52. Roberts had no prior professional relationship with the respondent, was not personally related to the respondent, and was not a representative of any organization or otherwise personally engaged in commerce as defined by G.L. c. 93A, §1(b). (Ans. ¶ 27, admitted or not otherwise denied).

53. We do not credit the respondent's self-serving claims that Roberts told him that Peters did not represent her, and that Peters represented Bujak instead. (Ex. 20 at BC0044, BC0049; Tr. I:61, respondent, Roberts told the respondent she was unrepresented; Tr. I:71-72, respondent, Roberts told him that Peters represented Bujak and not her; Ex. 21 at 183, respondent, Roberts told the respondent she was not represented by counsel). However, even if the respondent's claim is true, we find that the respondent should not have credited or relied upon anything Roberts told him on July 2, 2019 and July 3, 2019, due to her declined mental state. There is an abundance of evidence that in July 2019, it was more likely than not that Roberts did not have the ability to manage her own affairs: she was 88 years old, she had repeatedly been diagnosed with dementia, her heath care proxy had been invoked, she relied on Bujak to manage her affairs under her DPOA, she resided in a locked dementia unit, she did not recognize Peters (her long-standing attorney) on/after July 2019 (Tr. II:116, Peters), and she did

not understand why she was even in Windemere. (Tr. I:62, respondent; Ex. 21, at 204, respondent).

July 3, 2019

54. Windemere staff observed the July 2, 2019, meeting among the respondent, Hart, and Roberts. They reported to Bujak that Hart and the respondent had been talking to Roberts. (Ans. ¶ 28, admitted or not otherwise denied; Ex. 21 at 80, respondent; Tr. I:212, Bujak).

55. Any time that Hart visited Roberts, Bujak would usually hear about it from the Windemere staff and sometimes report it to Peters so that he was aware in case they needed to take any action. (Ex. 21 at 80-82, Peters). On July 3, 2019, Bujak notified Peters that Windemere staff reported that Hart and the respondent had met with Roberts. (Ans. ¶ 29, admitted or not otherwise denied; Tr. I:115-116, Peters).

56. At 3:37 p.m. on July 3, 2019, Peters sent an email to the respondent, advising him that he represented Roberts and instructing the respondent that he was not to talk to Roberts. (Ex. 2; Ans. ¶ 30, admitted or not otherwise denied; Ans.¶ 31; Stip. ¶¶ 25 and 26). Because of its importance, we quote the text of the email (Ex. 2) in full:

> Please be advised that I represent Barbara Hart Roberts and have done so for the last seven years or so.
>
> I also represent her daughter, Wendy Bujak, who holds a Health Care Proxy and a Durable Power of Attorney from her mother.
>
> I am informed that you were at Windemere Unit 4 yesterday or the day before with Wendy's sister, Lois Hart, and visiting and conversing with Barbara Roberts.
>
> Please be advised that your contact with Barbara Roberts is not authorized and should immediately cease and desist.
>
> If you have something of concern, please kindly address is to me.

57. The respondent saw Peters's email late in the day on July 3, 2019, as he was finishing and printing the proposed fee agreement for Roberts and preparing to return with Hart to Windemere. (Ex. 20 at BC0043; Ans. ¶ 32, admitted or not otherwise denied; Ex. 21 at 185,

respondent; Tr. I:67-68, respondent; Stip. ¶¶ 25, 28, saw the email before returning to Windemere and meeting with Roberts; Ex. 8, AE019, respondent's letter to bar counsel, saw the email as he was about to leave to meet with Roberts).

58. Upon receiving Peters's email, the respondent knew that Peters had not authorized him to speak with Roberts. (Ex. 2; Stip. ¶ 26; Ans. ¶ 34, admitted that Peters did not want him to speak with Roberts but denied he needed Peters's authorization to speak with her about representing her). Moreover, he was expressly on notice that Bujak was acting as Roberts's attorney in fact under Roberts's DPOA and was acting as Roberts's agent under Roberts's Health Care Proxy. (Ex. 2). Nevertheless, the respondent ignored Peters's request to not contact Roberts and decided meet with Hart and Roberts about the fee agreement he had prepared.

59. We find that upon receipt of Peters's email, the respondent should have stopped all work on Hart/Roberts's matters and should not have contacted Roberts until he spoke with Peters to see if Peters would allow him to meet with Roberts.

60. The respondent attempts to portray his efforts as seeking to get Roberts discharged from the dementia unit of Windemere so she could return to her home (Crow Stairs) in which she had a life estate. However, the stated scope of the proposed employment in his fee agreement was "Complaint in Equity, Enforcement of Life Estate and Return Home against Wendy Bujak" [sic]. (Ex. 3; Stip. ¶ 33). Like Attorney Peters, we do not know what is meant by "enforcing a life estate," particularly where Roberts was not deprived of a life estate.[11] (Tr. I:122,

[11] We recognize the utility of a quitclaim deed that reserves a life estate as an estate planning tool. (Tr. I:74, respondent; Tr. I:94, Peters). It avoids the property passing through probate and the grantor who reserves a life estate maintains to right to live in the property even if she does not do so (Tr. I:74, 128-129, respondent); she is also entitled to the rental income from the property. E.g., Stigam v. Johnson, 2013 WL 773069 at *8 (Mass. Land Ct., Feb. 28, 2013, Long, J). Indeed, Bujak rented the property and paid the collected rents into an account for Roberts. (Ex. 23 at ¶ 7; Ex. 29 at BC002; Tr. I:101, Peters).

139, Peters).

61. We credit that, despite her fixation with leaving Windemere and going home to live (e.g., Tr. II:22, 52-53, Cimeno; Ex 27, at 36, Cimeno), Roberts could not safely live in Crow Stairs because of her dementia and medical conditions, including the fact that she was heavy and confined to a wheelchair, making it difficult to provide care to her. (Ex. 29 at BC008; Ex. 23 at ¶ 10, before the fall of 2017, Roberts needed a wheelchair or a walker). It was not in Robert's best interest to leave Windemere and return home.[12]

62. The fact that the respondent presented a fee agreement to Roberts to hire him to pursue a "complaint in Equity . . . [to] Return Home against Wendy Bujak" is further evidence that the respondent was working on behalf of and in the best interest of Hart, not Roberts, and that is was Hart and not Roberts who was really the respondent's client. There is no credible evidence that anyone other than Hart wanted the 2016 life estate deed vacated. (Ex. 29, at BC006 to BC010, GAL's interviews with Anne Roberts, Linda Acton and Eric Peters; Ex. 29 at BC017, GAL's conclusions). Roberts executed the 2016 deed to Bujak long before there was any question of Roberts's competence, and all of the witnesses interviewed by the GAL corroborated the testimony that Roberts wanted Bujak to have Crow Stairs. (Id.; Ex.1 at 53-56, Peters (Roberts was competent when she executed her will and the deed; she as competent at the time of prior evaluations); Ex. 1, deed). Vacating the deed would not benefit Roberts, as she

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Contrary to the respondent's claims, Roberts held a life interest in her real estate whether or not she actually resided in the real estate.

[12] The uncontradicted testimony was that it was not feasible to have cared for Roberts in the home. (Tr. I:104, Peters). See also the GAL report (Ex. 29 at BC006), where the director of nursing at Windemere noted the limitations on Roberts: "[she] is not able to realize or remember that she is not able to stand and would fall as a result. She can brush her teeth if it is set up for her but she doesn't know how to do it on her own. It takes two staff members to operate the machine that assists Barbara with getting in and out of bed. Barbara requires 24-hour care."

maintained a life interest in the real estate. It is more likely than not that vacating the deed would benefit Hart.[13]

63. We do not credit the respondent's claims that he could not speak to Peters or comply with his instruction because Peters said in his email that he represented both Roberts and Bujak, whom the respondent claimed were opposing parties to a dispute. (Tr. II:61-62, 69, respondent). There was no "dispute" except in Hart's mind and goals, which she conveyed to the respondent. The respondent had no idea of the scope of Peters's representation of Roberts, nor did he know the content of Roberts's DPOA.. (Tr. I:69-70, respondent). At this point, the respondent should have realized that the discrepancies between what Hart and Peters were each saying required him to do further investigation into the situation before returning to meet with Roberts.

64. The respondent did not contact Peters that day or at any point until August 6, 2019, more than one month later. (Stip. ¶ 27; see Exs. 4 and 17, suggesting no interim communications). We do not credit the respondent's claims that he could not speak to Peters or comply with his instruction because he (the respondent) had an ethical duty to Roberts. He claimed that his "ethical obligations" to Roberts prevented him from talking to Peters, and that Roberts had told him that she was not represented. (Ex. 21 at 189-190, respondent). The respondent stated that, based on what Hart had told him, it was possible that Bujak, her boyfriend, and Peters were "potential abusers" of Roberts (Ex. 8 at AE017; Ex. 20, at 19-20, respondent; Ex. 21 at 152-153, 189-191, respondent) or that Peters was representing "the other side in a contested matter" and he was not about to talk to them. (Ex. 21 at 190-191, respondent).

[13] If Roberts's 2016 deed was vacated, the property would revert to being owned by Roberts. Although we do not have copies of Roberts's trusts, the GAL noted that after Roberts's death, "there will be a large sum of money left over that will be shared equally among the four children." (Ex. 29 at BC0021).

However, there was no contested matter then pending, nor do we find there was any legitimate reason why he could not have made a general inquiry of Peters about the scope and timeframe of his representation of Roberts.

65. Likewise, we do not credit the respondent's claims that he could not contact Peters because Peters either could be, or represented, an "adverse party," or that Peters could be a witness. (Ex. 20 at BC0049; Tr. I:57, 70, respondent; Tr. II:62, respondent, saying Peters "could be a witness or possibly even a defendant"; Respondent's PFCs at ¶ 170, arguing that Peters would be a "necessary witness"). At best, since Peters represented Roberts through Bujak as the holder of a DPOA from Roberts, Peters was counsel for a party and not a potential adverse party himself. The possibility that counsel for a person might later be a witness in a future lawsuit does not excuse the respondent from his obligations under Mass. R. Prof. C. 4.2 (contact with a person represented by counsel) and 7.3 (in-person solicitation of a potential client not related to the lawyer). See Lemelson v. Synergistics Research Corp., 504 F.Supp. 1164, 1168 (S.D. N.Y. 1981) (lawyer representing a party in pending litigation not disqualified but allowed to "continue the representation until it is apparent that his testimony is or may be prejudicial to his client," quoting from the predecessor to ABA Model Rule 4.2).

66. The respondent claims that Peters would be a witness about the 2016 deed and his notarization of it. (Respondent's PFCs at ¶ 170). However, Mass. R. Prof. C. 3.7(a) does not prevent a lawyer from being trial counsel in a case where his testimony relates to an uncontested matter.

The Respondent and Hart Meet with Roberts in Windemere on July 3, 2019

67. Notwithstanding Peters's email, which the respondent received and read before leaving his office, that evening the respondent left his office to meet with Roberts at Windemere.

He decided to take the email with him and ask Roberts about it. (Ex. 8 at AE0019; Ex. 21 at 185, respondent).

68. The respondent met Hart outside of Windemere. (Ans. ¶ 35; Tr. II:23, respondent; Ex. 19 at BC011, they arrived around 8:41 p.m.). Hart "buzzed" the respondent and herself into the locked unit where Roberts resided, and they met with Roberts in the common area. (Ex. 8 at AE0019; Ex. 20 at BC0050; Tr. I:71, respondent). The respondent had with him a copy of Peters's email, as well as a copy of his own draft fee agreement. (Ans. ¶ 35; Stip. ¶¶ 29, 31; Ex. 21 at 193, respondent; Tr. I:71, respondent).

69. Cimeno was a registered nurse on duty that night at Windemere when the respondent and Hart arrived. (Ex. 22 at 18-20, Cimeno; Ex. 19 at BC011; Tr. II:15, Cimeno). She observed the respondent and Hart meeting with Roberts and showing her papers. (Ans. ¶ 36; Ex. 19 at BC011; Tr. II:17, Cimeno). Cimeno became concerned that Roberts, who had been deemed incapacitated, "should not be going through or signing any legal records; especially not at nighttime by herself." (Ex. 19 at BC0011; Ex. 22 at 25-26, Cimeno; Tr. II:17, Cimeno; see Tr. II:52, Cimeno, Roberts often "sundowned" in the evening).[14] Cimeno called Bujak and then, at about 8:48 p.m., Cimeno called the police, calling from Unit 3 nearby to avoid any confrontation with the respondent. (Stip. ¶ 34; Ex. 19 at BC005, BC011; Ex. 22 at 25, 48-49, Cimeno; Ans. ¶ 36, admitted or not otherwise denied).

70. Meanwhile, the respondent testified that he had brought Peters's email with him to Windemere and that he showed the email to Roberts. (Tr. I:71-72, respondent; Stip. ¶¶ 29, 30). The respondent testified that he asked Roberts if Peters represented her, and that she said he

[14] "Sundowning" is confusion, typical in people with Alzheimer's Disease, that manifests itself in the evening. For Roberts, she would often make statements that were not true, such as former boyfriends being in her bed. (Tr. II:52, Cimeno).

did not. (Tr. I:71-72, respondent). For the reasons discussed infra, we do not credit the respondent's testimony that Roberts denied Peters was her lawyer. Among other things, when Roberts said thereafter that she wanted to talk with Bujak and someone else before signing any papers, Hart told Roberts that Peters represented Bujak and that the respondent was Roberts's attorney. (Ex. 221 at 41, Cimeno; Ex. 19 at BC0011, Cimeno statement). This is inconsistent with the respondent's claim that Roberts had just told him that Peters did not represent her. Furthermore, for the reasons discussed infra, the respondent should not have relied on any statements Roberts's made to him that night due to her declined cognitive state.

71. The respondent proceeded to discuss the fee agreement with Roberts and she began reading it. (Ans. ¶ 37; Stip. ¶ 32; Ex. 21 at 193-194, 196, respondent; Tr. I:72, respondent). The scope of the proposed representation ("Complaint in Equity, Enforcement of Life Estate and Return Home Against Wendy Bujak") were the subjects the respondent discussed with Roberts the day before. (Ex. 21 at 208, respondent). The agreement was intended to be for the "direct representation" legal option the respondent previously discussed with Hart, i.e., that the respondent would represent Roberts. (Tr. I:73, respondent); Ans. ¶ 38, admitted or not otherwise denied; Ex. 3; Stip. ¶ 33).

72. We find and conclude that the scope of the respondent's proposed fee agreement concerned subjects, and related to matters, for which Roberts was and continued to be represented by Peters; i.e., the transfer and management of the properties described in Exhibit 1. Additionally, the specific transaction that the respondent sought to undo—the property transfer to Bujak—was squarely within the scope of Peters's representation. To the extent that the respondent sought to undo Roberts's deed to Bujak, Hart was the real party in interest and was the respondent's actual client.

73. The proposed fee agreement charged a rate of $350 per hour for the respondent's professional services, and required Roberts to pay an initial retainer of $5,000. (Ans. ¶ 41; Ex. 3). Roberts did not have direct control over her personal funds, as Bujak managed and maintained some[15] of Roberts's funds pursuant to the DPOA. (Ex. 6, Ex. 7, Ex. 12, Ex. 21 at 49, Peters; Tr. I:84, 111-112, Peters).[16]

74. The respondent said he began to "engage in a colloquy" with Roberts. (Ex. 21 at 195, respondent; Tr. I:72-73, respondent). He told Roberts that if she signed the agreement, "we will be able to put the house back in your name and you will be able to come home." (Ex. 19 at 0011; Tr. II:26-27, Cimeno). We find and conclude that the respondent's stating that the reversal of the deed was a precondition to returning Roberts to the house was misleading and deceptive. Roberts had a life estate in the house; if it were feasible, she could live there without undoing the deed to Bujak. He was using Roberts's fixation on leaving Windemere as a "hook" to persuade her to sign the fee agreement and allow him to try to undo the deed, for Hart's potential benefit.

75. Roberts said to the respondent "I'm not sure I should sign anything without Wendy [Bujak] and [someone else]," who we infer was Peters. (Ex. 19, Cimeno, quoting what she heard Roberts say; Ans.¶ 41, admitted or not otherwise denied). While Cimeno, who personally heard the conversation, could not understand the name of the other person mentioned by Roberts, we infer it was Peters because Hart, who was present during this meeting, then said to Roberts (we again quote Cimeno): "Mr. Peters is Wendy's attorney, [and that] Mr. Larkosh is your attorney." (Ex. 19 at BC0011; Tr. II:27, 47-48, Cimeno). We credit Cimeno's

[15] The nursing home bills for Roberts, as well as some of her other expenses, were paid directly by Paul McAfee, of the Webster Bank in Connecticut, as the trustee of two trusts for the benefit of Roberts. (Ex. 29 at BC001; Tr. I:81-84, 91, Peters; Tr. II:105-106, Peters).

[16] It is unclear how the respondent expected Roberts to pay him a retainer, but we note that Hart initially paid the respondent (to determine the competency of Roberts) and he apparently expected Hart to pay the $5,000 retainer as well. (Tr. II:81-82, respondent).

contemporaneous note (Ex. 19 at BC0011) and subsequent testimony about the events of July 3, 2019, and what was said. The respondent did and said nothing to correct Hart's misstatement about his relationship to Roberts.

76. Concerned that Roberts was about to sign the papers, and since the police had not yet arrived, Cimeno called the police again, to ask when they would arrive. (Ex. 19 at BC0011; Tr. II:23, 31, Cimeno).

The Police Arrive at Windemere on July 3, 2019

77. Two police officers (Kyle Sutherland, followed by Devin Balboni[17]), arrived on Unit 4 shortly after 8:50 p.m. (Ex. 19 at BC005, BC011; Tr. I:191, Balboni). The respondent claimed that "the cops burst into the room. Or one cop came in first, then followed by a second officer." (Tr. I:75, respondent). Sutherland approached first and saw Roberts seated with documents opened to the signature line in front of her with a pen resting directly in front of her. Sutherland told them this could not be happening at this time, whatever was happening needed to stop, and that both the respondent and Hart needed to stop. (Ex. 18 at BC0008). The respondent became argumentative; he told Sutherland he had no right to tell him to leave, and falsely said that he was Roberts's lawyer and he (the respondent) needed to speak with her. At some point after the police arrived, they told the respondent and Hart that it was after visiting hours and that they needed to leave. (Stip. ¶ 38; Tr. I:198, Balboni; Ex. 21 at 43-44, Cimeno). Sutherland told them that 9 p.m. at night was not the right time to be speaking with a resident of Windemere and attempting to get her to sign paperwork, and that Bujak, and not Hart, was Roberts's agent under her healthcare proxy and DPOA. (Ex. 19 at BC0002). The respondent said it was not yet 9 p.m. (Ex. 19 at BC0011; Ex. 21 at 44, Cimeno) and again became argumentative about Sutherland

[17] Balboni is now a state trooper and has been, since about May 2021. (Ex. 22 at 84-85, Balboni; Tr. I:176, Balboni).

telling him he needed to leave. (Ex. 18 at BC0008).

78. Hart then told Sutherland that the respondent was her mother's lawyer and she (Roberts) needed to speak with him. Hart also became very argumentative regarding Sutherland's stopping the signing and telling them (the respondent and Hart) that they needed to leave. (Ex. 18 at BC0008).

79. At this time, Balboni arrived. He observed Roberts seated at the end of a table with papers and a pen in front of her, with Hart standing to Roberts's right and the respondent and Sutherland standing to Roberts's left. (Ans. ¶ 43; Stip. ¶ 37; Ex. 22 at 93, Balboni; Tr. I:191-192, Balboni). Balboni further observed that Roberts was sitting quietly, not really saying much, and "just kind of looking off as officers were engaging with" the respondent. (Ex. 22 at 94, Balboni). Cimeno testified that Roberts was "unsure about what she should do," "sitting in her wheelchair," and "she kept – she said that…she wasn't sure this was what she was supposed to do without Wendy [Bujak]." (Ex. 22 at 47, Cimeno).

80. The respondent continued to ask Roberts if she wanted to sign the agreement and told the police officers that Roberts was able to sign the papers. The respondent asked Roberts, "Barbara, do you want to sign these papers now or another time?" The police officers attempted to defuse the situation (Ex. 19 at BC0002, BC0003) and repeated that papers were not going to be signed right now, but the respondent continued to ask Roberts if she wanted to sign the papers now or at another time. (Ex. 19 at BC0011).

81. Cimeno then said, "Barbara cannot sign these papers because she has a POA and health care proxy," to which the respondent replied that "Barbara is competent to sign her own papers." (Ex. 19 at BC0011). The police officers repeated what Cimeno said, to which Hart replied, "you should not be giving her legal advice." (Ex. 19 at BC0011). The respondent kept

telling them that Roberts was able to sign the papers. (Ex. 21 at 47, Cimeno).

82. The respondent and Hart continued to argue with the police officers. (Ex. 19 at BC0002, BC0003). Roberts finally said, "I don't think I should be signing papers if I don't know what they are about." (Ex. 19 at BC0011). On this point, the respondent's version was similar. (Ex. 20 at 58, after the respondent told Roberts she did not have to sign today, Roberts said "I'd like more time to look at it."). After this, the respondent and Hart said they would be leaving; they left the building, with or followed by the police officers. (Ans. ¶ 45; Stip. ¶ 39; Ex. 19 at BC0011, they were escorted out by the police; Ex. 21 at 209, respondent, they left first; Tr. II:18, Cimeno, they left with the police officers; Ex. 20 at 56, respondent denied the police escorted them or followed them out of the building).

83. Roberts did not sign the fee agreement and did not engage the respondent. (Stip. ¶ 41; Ans. ¶ 45, admitted or not otherwise denied).

84. Bujak and Peters arrived at Windemere shortly after the police left. (Ex. 19 at BC0011; Ex. 21 at 85-86, Peters). They requested that Windemere staff call the police if the respondent returned or if Hart returned and attempted to get Roberts to sign papers. (Ex. 13; Ex. 19 at BC0011).

85. In light of the in-person testimony we received, our observations of the respondent and demeanor during his testimony, and the reports of three disinterested witnesses (two police officers and a nurse), we do not credit the respondent's testimony that the police "burst into the room" (Ex. 19 at BC0003), or that he was not argumentative with the police officers. (Ex. 8 at AE0020, respondent said one officer "berated" him in front of Hart and Roberts, while he spoke calmly to the officer; see also Ex. 21 at 209, respondent). While our credibility determinations stand on their own, the respondent's version is in conflict with

disinterested witnesses who testified before us.

86. The respondent's conduct caused harm to third parties, including Roberts and Bujak.

Subsequent Events

The Respondent's Representation of Diane Caponigro

87. On June 18, 2019, a criminal complaint issued against Diane Caponigro from the Edgartown District Court. She was charged with larceny over $250 from a disabled person, felony forgery, and felony uttering. (Ex. 25). The genesis of this was that Roberts and two of her caregivers, Caponigro and Kathleen LeBlanc, were supposed to go on a cruise together in 2018; Roberts had paid for the cruise. After Roberts fell and broke her hip, she was unable to go on the cruise. The travel agent was a friend of Caponigro and, when the trip was cancelled, the money was not retuned to Roberts. (Tr. I:98, Peters). The caregivers re-booked to go on the cruise, travelling at Roberts's expense, but without Roberts. Learning of this, Peters contacted the police, who investigated, beginning in 2018.[18] The police told the caregivers they should not go on the cruise, but they went anyway. (Tr. I:98-99, Peters). Criminal charges were thereafter brought against Caponigro and LeBlanc. (Ex. 21, 59-62, Peters).

88. Hart was friendly with Caponigro and paid a retainer for the respondent to defend Caponigro. (Ex. 20 at BC0073- BC0074, respondent; Tr. II:72, respondent). When the criminal charges were brought in 2019, Hart visited with Roberts and had Roberts sign a statement on behalf of Caponigro and LeBlanc, saying they were authorized to go on the cruise without Roberts. (Ex. 16; Ex. 29 at BC017 to BC018, Hart told the GAL she obtained the statement from

[18] The police interviewed Roberts while she was in the hospital. She told them she did not want Caponigro and LeBlanc going on the cruise without her, and they did not have permission to go on the cruise once it had been cancelled. (Ex. 21 at 117, Peters; Ex. 29 at BC0013, BC0017).

Roberts when visiting Roberts in 2019; Tr. I:151, respondent, Hart typed the letter and had Roberts sign it). While the statement (Ex. 16) purports to be dated October 25, 2018, there is no dispute that Hart, on behalf of Caponigro and LeBlanc, prepared it and had Roberts sign it in 2019. We do not know why Hart felt it was necessary to have the statement backdated to October 2018.

89. In the first criminal case, LeBlanc was defended by someone else (Ex. 20 at BC0075), but Hart paid a retainer for the respondent to defend Caponigro. Hart then gave the respondent the statement she had obtained from Roberts. The respondent then submitted his notice of appearance, a motion to dismiss, and the statement (Ex. 16) to the district court on July 15, 2019; the court dismissed the charges the same day without the respondent appearing to argue the motion. (Ex. 25; Ex. 20 at BC0026, BC0074- BC0075, respondent; Tr. II:72, respondent).

90. The larceny charge was refiled in November 2019. The respondent again defended Caponigro, but the case was subsequently dismissed without prejudice due to an issue with the bill of particulars. (Tr. I:173, Peters; Ex. 26).

91. In September 2019, Hart asked the respondent to represent her personally in an equity action in probate court she was going to pursue against Bujak (essentially, the other option that the respondent had previously suggested to Hart); however, he declined to do so. (Ex. 20 at BC0030). Hart hired Erik Hammarlund, a friend of the respondent (Ex. 21 at 104, Peters) who commenced an equity action against Bujak regarding Roberts in Dukes County Probate Court (Tr. I:223, Bujak; Tr. II:71-72, 102; Tr. II:71-72, respondent; Tr. II:102, Peters). Hammarlund also filed a separate conservatorship action. (Ex. 21 at 164, respondent).

92. On March 4, 2021, the probate court appointed a guardian ad litem to investigate

Hart's allegations that Bujak and others abused, neglected, or financially exploited Roberts. (Ex. 24). On December 5, 2023, the guardian ad litem filed a report concluding in essence, there was no abuse, neglect, or financial exploitation of Roberts by Bujak, Bujak's partner, or Peters. (Ex. 29). Hart's attorney then withdrew and Hart continued to represent herself pro se. (Tr. II:104, Peters). The matter went to trial in March 2024; after Hart presented her case, Bujak's counsel, Mary Downey, Esq., successfully moved for a directed verdict. (Tr. I:165-166, Peters; Tr. II:105, Peters).

CONCLUSIONS OF LAW

Hart Was the Respondent's Client

93. As a preliminary matter, we find and conclude that Hart, not Roberts, was the respondent's actual client as he acted in Hart's best interests, not Roberts's. Since Roberts had a life estate in her real estate, vacating the deed would not benefit Roberts. Vacating the deed would only affect who held the remainder interest in the real estate. Hart was a remainder beneficiary of Roberts's estate. If Roberts had been physically and medically able to live in the house, then she could have done so pursuant to her life estate.[19]

94. While the respondent testified that it is a "common thing that a family member would come and initiate the contact with the lawyer" when "my mother or dad needs legal assistance," (Tr. II:79, respondent), we find and conclude that this is not what happened here. The reasons for our conclusion are as follows:

95. The respondent's interactions with Hart had all the necessary elements of an

[19] The uncontradicted testimony was that it was not feasible to have cared for Roberts in the home. (Tr. I:104, Peters). See also the GAL report (Ex. 29 at BC006), where the director of nursing at Windemere noted the limitations on Roberts: "[she] is not able to realize or remember that she is not able to stand and would fall as a result. She can brush her teeth if it is set up for her but she doesn't know how to do it on her own. It takes two staff members to operate the machine that assists Barbara with getting in and out of bed. Barbara requires 24-hour care."

attorney-client relationship. As the Court said in Bays v. Theran, 418 Mass. 685, 690 (1984) (emphasis added):

> "An attorney-client relationship need not rest on an express contract. An attorney-client relationship may be implied 'when (1) a person seeks advice or assistance from an attorney, (2) the advice or assistance sought pertains to matters within the attorney's professional competence, and (3) the attorney expressly or impliedly agrees to give or actually gives the desired advice or assistance.' " DeVaux v. American Home Assurance Co., 387 Mass. 814, 817–818, 444 N.E.2d 355 (1983), quoting Kurtenbach v. TeKippe, 260 N.W.2d 53, 56 (Iowa 1977). Such a relationship may be established through preliminary consultations, even though the attorney is never formally retained and the client pays no fee. See Mailer v. Mailer, 390 Mass. 371, 374, 455 N.E.2d 1211 (1983) (whether a client has paid an attorney "a fee is not conclusive as to the existence of [an] attorney-client relationship").[20]

96. Hart contacted the respondent, seeking advice that was within the respondent's professional competence. He relied on Hart to direct him to Roberts's caregivers as witnesses to Hart's claims, and reviewed the deed signed by Roberts (and notarized by Peters). The respondent admitted that Hart never told him that Roberts had asked Hart to find her a lawyer.

97. The respondent discussed with Hart that there were two ways to proceed, in one of which he would represent Hart in seeking either a guardianship or conservatorship for Roberts. (The other of course, was to seek to representing Roberts directly.) (Tr. I: 43-44, respondent). The fact that the respondent did not ultimately do either is of no moment, as Hart sought the respondent's advice and counsel, which he provided, and for which she paid a retainer. (While the payment of a retainer was not necessary to form an attorney-client relationship, here Hart paid one to the respondent.)

98. To decide which way to proceed, the respondent took multiple steps to arrange a competency exam of Roberts. Since Hart and the respondent failed twice to find a physician to

[20] In light of the S.J.C.'s holding in Bays v. Theran, the respondent's reliance, to the contrary, on Ageloff v. Noranda, Inc., 936 F.Supp.2d 72 (1996) (miscited in the respondent's PFCs at ¶ 154), is misplaced.

evaluate Roberts, the respondent agreed to Hart's suggestion that he meet Roberts himself, relying again on what Hart told him.

99. All of this was to benefit Hart, who sought the respondent's assistance in the first place. Moreover, and while it is not a necessary element of an attorney-client relationship, Hart paid a retainer to the respondent for this work. Since Hart sought the respondent's advice, on a matter within his professional competence, and paid him a retainer, and since he did work pursuant to Hart's request and gave advice to Hart, we find and conclude that the respondent represented Hart.

100. We put no stock in Hart's having told the GAL, on November 9, 2023, that she had "put down a retainer [to the respondent] for this to get it started for her mother." (Ex. 29, at BC005). This was long after the police had filed a complaint against the respondent with bar counsel, eleven months after the SHO issued her report against the respondent, and more than three years after the respondent had successfully defended one of Hart's putative witnesses[21] in the criminal cases brought against them. (Ex 25 and Ex. 26). By this time, anyone in Hart's position—particularly as a former lawyer—would have known what would be helpful to the respondent.

101. The respondent cited International Strategies Group Ltd. v. Greenberg Traurig, LLP, 482 F.3d 1 (1st Cir. 2007) ("ISG") in support of his claim that there was no attorney-client relationship between Hart and himself. (Respondent's PFCs at ¶ 157). In ISG, the plaintiff company sued the law firm alleging negligence, breach of fiduciary duty and other theories, grounded on a claim of an implied attorney-client relationship. The respondent's reliance is

[21] Neither Caponigro nor LeBlanc testified for Hart in Hart's probate court case against Bujak (Tr. II:96, Peters), nor was the GAL able to reach Caponigro in preparing her report for the probate court case. (Ex. 29, at BC004, n.5).

misplaced because here, unlike in the ISG case, Hart paid a retainer to the respondent. See ISG, supra, at 7 ("There is no evidence here of a retainer agreement or other contract for legal services between ISG and any of the defendants"). Also unlike the ISG case, where no legal advice was requested by the company (ISG, supra, at 9), Hart clearly requested legal advice from the respondent, which he provided to her.

102. Robertson v. Gaston Snow & Ely Bartlett, 404 Mass. 515 (1989), also cited by the respondent (Respondent's PFCs at ¶ 157), is likewise inapposite. In Robertson, the plaintiff, a former corporate officer, claimed that the law firm failed in its duties to represent him in a corporate reorganization where he had been an officer and employee. The Court upheld the trial judge's vacating a jury verdict for the plaintiff. In doing so, it noted that "[a]n attorney for a corporation does not simply by virtue of that capacity become the attorney for ... its officers, directors or shareholders." Id. at 522. It also noted that "at no time during the reorganization process, did the plaintiff ever request personal representation, nor did [the lawyer] ever indicate to the plaintiff that Gaston Snow was representing his interests." Id. At the end, Robertson's claim came down to: "he thought that Gaston Snow represented him but that he failed to communicate this thought to anyone." Id. at 523. This is clearly different from the present case, where the respondent was initially contact by Hart, strategized with her, reviewed documents supplied by her and was in contact with witnesses suggested by her, followed Hart's suggestion about meeting with Roberts directly, and at the meeting, stood by while Hart instructed Roberts about her legal representation.

103. Moreover, it is "objectively reasonable under the totality of the circumstances" to conclude that the respondent represented Hart. See Sheinkopf v. Stone, 927 F.2d 1259, 1265 (1st Cir. 1991). Unlike in Sheinkopf, here there were "objective manifestations of consent" and the

respondent "undertook to act as" Hart's attorney. Id. at 1268.

104. Conversely, the respondent argues that Peters could not be counsel for Roberts in the matter for which the respondent sought to represent her because Peters had a conflict of interest; i.e., he was Bujak's counsel in that transaction. (Respondent's PFCs at ¶ 169). As discussed supra, the mere preparation of Form LB1, signed by Bujak, and the fact that Peters recorded the deed, did not convert Peters to counsel for Bujak in that conveyance. At best, the respondent's argument is "a rather weak reed upon which to rest a defense given the strong case presented by" bar counsel. See Commonwealth v. Milyan, 399 Mass. 171, 179 (1987).

105. Bar counsel charged that, by communicating with Roberts without authorization about subject matter for which he knew she was already represented, without the lawyer's consent or if authorized by law to do so, the respondent violated Mass. R. Prof. C. 4.2. We conclude that bar counsel has proved This charge.

106. There are three elements to rule 4.2: (1) when representing a client, the lawyer shall not communicate about the subject of the representation (2) with a person the lawyer knows (3) to be represented by another lawyer in the matter.[22]

Roberts Was a Continuing Client of Peters

107. We find and conclude that Peters represented Roberts, beginning in 2012 and into July 2019. He provided legal counsel and assistance to Roberts concerning her real estate and estate planning-related matters, as well as to Bujak, on behalf of Roberts as the holder of

[22] We acknowledge that the respondent argues there are four elements: "[i]n representing a client, a lawyer shall not [2] communicate about the subject of the representation with [3] a person the lawyer knows to be represented by another lawyer [4] in the matter, unless the lawyer has the consent of the other lawyer or is authorized to do so by law or a court order." (Respondent's PFCs at ¶ 146). Regarding his [4], the respondent did not have the consent of the other lawyer (Peters), nor was he authorized by law or court order (nor does he claim as much). Rather, his PFCs, at ¶¶ 192-197, refer to the "subject of the representation," which is the same as his [2].

Roberts's DPOA, on Roberts's trust and healthcare-related matters. For example, he worked on a continuing basis with McAfee to handle various financial matters concerning her Roberts's life insurance trust and investments. (Tr. I:83-84, 91, Peters). After 2016, Peters continued to handle matters for Roberts, her estate and her properties, but in doing so he usually dealt with Bujak, who her held DPOA. (Tr. I:100, Peters).[23] When questions arose about financial improprieties by Roberts's caregivers in 2018-2019, Peters worked with the police concerning their investigation and their later efforts to bring criminal charges against the caregivers. (Tr. I:97-99, 103, 150, 172-173, Peters).

108. The respondent argues that there was no attorney-client relationship between Peters and Roberts because Peters's work pertained to specific matters. We disagree. As a preliminary matter, "once established, a lawyer-client relationship does not terminate easily. Something inconsistent with the continuation of the relationship must transpire in order to end the relationship." SWS financial Fund A v. Salomon Bros., Inc., 790 F.Supp. 1392, 1398 (N.D. ll. 1992). Continuing representation does not require daily or ongoing work for the client. E.g., in Manoir-Electroalloys Corp. v. Amalloy Corp., 711 F.Supp. 188 (1989), held that a person was a current client (and not a former client), despite that the fact the law firm provided intermittent services to the client, noting that the law firm itself encouraged an ongoing representation. The court noted that there was no identifiable point in time at which the person became a former client, even though it had been four years since the law firm did specific work for the client. Id.

[23] The fact that Peters dealt with others on behalf of Roberts did not, as the respondent claims (respondent's PFCs at ¶ 43), negate the fact that he provided legal services to her, or that he was her attorney. Given the nature of the legal services that Peters provided after 2016, we credit his testimony that he dealt with others to "avoid bothering" Roberts, who had signed a DPOA in favor of Bujak. (Tr. I:225, Peters). We also credit Peters's testimony that "[w]hen you're living in a community like this," once a lawyer starts representing a client, the lawyer winds up handling a variety of matters for them. (Ex. 21 at 65, Peters).

at 193. IBM v. Levin, 579 F.2d 271, 281 (3rd Cir. 1978) (holding there was an ongoing attorney-client relationship, despite the fact that the law firm had no specific assignment at the time the issue arose; that it performed services for the client on a "on a fee for service basis rather than pursuant to a retainer arrangement, the pattern of repeated retainers, both before and after the filing of the complaint, supports the finding of a continuous relationship"). The sporadic nature of work for a client, or a lull in work do not "support[] a finding that there was not an ongoing attorney-client relationship." Kabi Pharmacia AB v. Alcon Surgical, Inc., 803 F.Supp. 957, 961-962 (D. Del. 1992).

109. To the extent that the respondent argues that his representation of Roberts would have been on different subjects, that is beside the point. That claim did not entitle him to contact Roberts after being instructed not to do so. The ongoing nature of an attorney-client relationship does not depend on the subject matter. IBM, supra, at 280; Cinema 5 Ltd. V. Cinerama, Inc., 528 F.2d 1384 1386 (2nd Cir. 1976) (law firm disqualified from representing company suing its current client, even though the matter of the lawsuit and the matter of the representation of the client were not substantially related). Ransburg Corp. v. Champion Spark Plug Co., 648 F.Supp. 1040 (N.D. Ill. 1986) (disqualification does not depend on substantial relationship between the two matters).

110. Accordingly, we find that Peters was Roberts's attorney as stated in his email to the respondent, and the respondent was required to abide by Peters's instruction to have no further contact with Roberts.

111. The second element was met because Peters expressly told the respondent he was representing Roberts and had done so for several years. As noted supra, we credited these statements. Moreover, the respondent was expressly told by Roberts's attorney—before the

respondent attempted to have Roberts sign a fee agreement with him—that his communication with Roberts was not authorized and should cease. (Ex. 2). Indeed, the respondent was invited to contact Peters with any concerns (Id.), but the respondent failed to do so.

112. We do not credit the respondent's claim that, after receiving Peters's email—telling the respondent that Peters had represented Roberts "for the last seven years or so"—he knew only that Peters represented Roberts in connection with the deed to Bujak, "but that's it." (Tr. I:69, respondent). There is nothing ambiguous or unclear about Peters's email or his instruction to the respondent not to contact Roberts. While comment [8] to rule 4.2 says that knowledge of representation "may be inferred from the circumstances," here there is no need for inference; it was pointedly explicit. Nor was the respondent allowed to disregard Peters's statement and talk to Roberts anyway, or to test Peters's statement. As comment [8] continues, "the lawyer may not evade the requirement of obtaining consent of counsel by closing [his] eyes to the obvious." This is not even a matter of willful blindness on the part of the respondent: he knowingly disregarded the explicit instruction of Roberts's counsel not to contact her. The respondent's argument—that he did not have "actual knowledge" of Peters's representation of Roberts, despite having received and read Peters's fax (Respondent's PFCs at ¶¶ 178-179)—borders on the frivolous.

113. The respondent posits a straw man argument by torturing Peters's email of current representation of Roberts (Ex. 2) into an inchoate claim of future representation and then saying he cannot claim a "blanket inchoate representation." (Respondent's PFCs at ¶¶ 183-184). Building on that, the respondent claims that, since Peters did not know why the respondent was contacting his (Peters's) client (id. at ¶ 185), Peters could not impliedly tell the respondent not to contact Roberts. Needless to say, the respondent has it backwards: having actual knowledge that

Peters represented Roberts, it was incumbent on the respondent to check with Peters as to whether his intended representation of Roberts was within the scope of Peters's representation. He was not entitled to disregard Peters's email, not entitled to test the issue by asking Roberts, and not entitled to assume that Peters would have a conflict and therefore could not continue to represent Roberts—particularly if one were to credit the respondent's own claim that he did not know exactly what form his representation of Roberts or Hart might take.

114. In arguing he had the right to "test" Peters's statement of representing Roberts, the respondent cites to Va. Legal Ethics Op. 1890 (Jan. 6, 2021), which says "if the lawyer is without knowledge or uncertain as to whether the adverse party is represented, it would not be improper to communicate directly with that person for the sole purpose of securing information as to their current representation" (emphasis added). (Respondent's PFCs at ¶ 188). However, the respondent takes this statement of its context, which is when there is concluded litigation, and the question is whether the representation has ended; that is why the opinion refers to the "adverse party." Contacting a former adverse party after concluded litigation is a far cry from contacting someone not involved in litigation, after being told, by that person's counsel, that representation is ongoing.[24]

115. The third element was met because Peters represented Roberts "in the matter"; i.e., the Abel's Hill property (a/k/a Crow Stairs), including but not limited to the deed to the property but also her financial affairs. Peters had met with Roberts years before and determined

[24] The respondent's citation (id.) to Op. 827 of the N.Y. State Bar Comm. on Prof. Ethics is inapposite. That advises a N.Y. city attorney, who is faced with an unattended claimant who appears to give a statement under oath, on the propriety of asking the claimant if he has counsel. It is NOT for the purpose of ascertaining whether the lawyer may then represent the person, which was the issue facing the respondent. Likewise, his citation to ABA Formal Ethics Op. 472 (Nov. 30, 2015) is irrelevant, as that addresses how a lawyer should proceed when the adverse party has limited assistance representation. Again, it is NOT how to proceed when seeking to represent someone after being told the person already has counsel.

that Roberts wanted to convey the property, for no consideration, to Bujak; having done so, Peters prepared the deed for Roberts to sign. Moreover, Peters continued to handle various other matters in connection with the property, including leases of it. (Tr. I:101-102, 137, Peters; Tr. II:87-88, Peters).[25]

116. We do not credit the respondent's claims that Peters was not representing Roberts in connection with the same "matter." The respondent sought to undo the deed of the Abel's Hill property from Roberts to Bujak, in which Peters had previously represented Roberts. It borders on the frivolous to argue that undoing a deed, or the variations on that theme asserted by the respondent (respondent's PFCs at ¶ 41), is not the same "matter" as preparing and recording the deed itself.[26] Cf. Matter of Marshard, 34 Mass. Att'y Disc. R. 283, 292-29 (2018) (while not discussing the scope or meaning of "matter," concluded that the lawyer—an assistant district attorney—violated rule 4.2 by speaking with a witness about a case in which he was a witness (but not a defendant), when counsel had been appointed for him for the limited purpose of protecting his Fifth Amendment privilege against self-incrimination).

117. We disagree with the respondent's narrow view of the meaning of "matter." (Respondent's PFCs at ¶¶ 163-165). As has been noted, in rule 4.2, the American Bar Association replaced the phrase "with a party" with the current phrase "with a person." E.g., ABA Formal Opinion 95-396 (1995); Ind. Ethics Op. 2008-2. The intent was to broaden the scope of the anti-contact rule, and to make clear it is not limited to litigation, either civil or criminal. We agree with the Indiana Ethics Opinion, supra, that it therefore "makes sense to use

[25] Before the hearing, respondent's counsel issued a subpoena duces tecum to Peters for documents pertaining to work he did regarding the house after the deed was recorded. (Tr. II:89, Peters). A lease that Peters reviewed (Ex. 28) was the only such document entered into evidence.

[26] We note that ABA Formal Opinion 92-362 (July 6, 1992) (discussing settlement offers) notes that Model Rule 4.2 "contains no exceptions" on the no-contact prohibition and that the absence of an exception "cannot be considered an oversight by the drafters" of rule 4.2.

a broader definition of 'matter' to include any circumstances in which a person's legal rights may be affected by what he or she does or says in the course of communicating with another person's attorney."[27]

118. We view the present matter as very similar to (but more egregious than) Iowa Sup. Ct. Att'y Disc. Bd. v. Box, 715 N.W.2d 758, 763-764 (Iowa 2006). In the underlying matter, two relatives of an 80-year-old woman, who had an existing estate plan, convinced her to see their own lawyer (Box), for the purpose of revising her estate plan and making other changes in their favor. Advised of this, the lawyer who prepared the first estate plan and deed, wrote to Box, saying, in pertinent part, "In the event you would want to communicate with [the client] you should contact me instead inasmuch as I will be representing [her]." Id. at 761. When Box later met with the client (along with the relatives who recommended him), she told him she could meet with whoever she wanted, which Box took as a renunciation of the lawyer's representation.

119. When disciplinary charges were brought against Box, the court rejected Box's claim that the predecessor to rule 4.2 "does not apply because [the lawyer's] representation of [the client] at the time he wrote the letter did not involve the sale of real estate." The court also accepted the "second paragraph of [the lawyer's] letter [which] is broadly inclusive and indicates that he will be representing [the client] in any matter for which Box might need to communicate with her in Box's professional capacity." It specifically rejected Box's claim that the client's going to his office and rejecting the lawyer's letter as she did was a waiver of counsel. Id. at

[27] Similarly, ABA Formal Op. 95-396, at 7, says: "If the Rule is to serve its intended purpose, it should have broad coverage, protecting not only parties to a negotiation and parties to formal adjudicative proceedings, but any person who has retained counsel in a matter and whose interests are potentially distinct from those of the client on whose behalf the communicating lawyer is acting." Elsewhere in this Opinion, the ABA says that communications are not barred regarding "unrelated matters" (id. at 13), suggesting that communications concerning different but related matters are prohibited. This further supports our analysis that the respondent's hair-splitting is properly rejected.

763-764. Moreover, the Box Court cited cases in other jurisdictions for the proposition that the client, alone, could not waive the protections of rule 4.2 and that "lawyers should independently verify that opposing parties wishing to communicate directly with them are in fact not represented by counsel ....," citing In re Capper, 757 N.E.2d 138, 140 (Ind. 2001).[28] Id. at 764.

120. To limit the meaning of "matter" under rule 4.2, the respondent relies on an unpublished federal court decision from West Virginia. (Respondent's PFCs, ¶¶ 163 and 173, citing CX Transp., Inc. v. Gilkison, Peirce, Raimond & Coulter, P.C., 2011 WL 5445114 (N.D. W.Va., Nov. 9, 2011). In CSX, the plaintiff sought to interview former litigation clients of the law firm, apparently concerning fraud and RICO claims pertaining to asbestos injury claims previously brought by the law firm against CSX. The federal court allowed CSX to contact former clients, noting that the "matter" (their asbestos claims) had all been concluded and the law firm had no continuing representation of them. This is clearly different from Peters's ongoing representation of Roberts in multiple matters concerning the property.

121. The respondent's PFCs, at ¶ 173, also cite to People v. Santiago, 236 Ill.2d 417, 433 (Ill. 2010), which is also clearly distinguishable from the present matter. Santiago was decided under the prior version of rule 4.2, which referenced "representation of a party" "in that matter." In that case, Santiago was "was the respondent in a juvenile court child protection case seeking to declare defendant's two children wards of the court, based upon injuries to defendant's daughter." He was then "arrested for child endangerment, based upon the same facts giving rise to the child protection case" and the detectives and prosecutors questioned Santiago without notifying his counsel in the child protection case. Santiago, supra, at 419. The trial court

[28] In Capper, the husband's lawyer was found to have violated rules 4.2 and 8.4(d) (conduct prejudicial to the administration of justice) for failing to confirm, in a succession of post-divorce proceedings, whether the lawyer who had previously represented the wife still did so, when she told him that her prior lawyer was no longer her attorney.

suppressed Santiago's statements because rule 4.2 had been violated, but the reversal was upheld on appeal because the appellate court held that the civil juvenile court and criminal court cases, arising out of the same facts, were not the same "matter" since Santiago was a "party" in two different cases. Santiago, supra, at 424-425. Massachusetts rejected that interpretation in Matter of Marshard, supra, and before that, in Ad. 16-20, 32 Mass. Att'y Disc. R. 714 (2016) (admonition for conversations with police officer about "general topics" in a state court case that "potentially overlap[ed]" with a federal court case pending at the same time, where officer was pro se—and later dismissed as a defendant—in the state court case, but represented by counsel in the federal court case).

122. Moreover, it is "objectively reasonable under the totality of the circumstances" to conclude that Peters represented Roberts. See Sheinkopf v. Stone, 927 F.2d 1259, 1265 (1st Cir. 1991), cited in the respondent's PFCs (at ¶ 155). As the court noted, "Sheinkopf regularly used another Boston law firm and [the other lawyer] knew as much." Id. Cf., BlueRadios, Inc. v. Hamilton, Brook, Smith & Reynolds, P.C. 2024 WL 4892591 (D. Mass., Jan. 24, 2024, Levenson, Magistrate Judge). In addressing claims of the waiver of attorney-client privilege, and commenting on Sheinkopf, the federal court said that "an attorney's awareness that a businessman was regularly represented by another law firm was relevant to determining whether an attorney-client relationship existed." Id. at *6. Since the respondent was expressly told that Peters regularly represented Roberts—a fact that the respondent cannot ignore or explain away—that knowledge by itself was relevant in determining the existence of that attorney-client relationship.

123. Even if a person tells the lawyer that she no longer has counsel, the lawyer should confirm that the prior counsel has been discharged or otherwise no longer represents the person.

As the ABA advises, the "communicating lawyer" should contact the "representing lawyer directly to determine whether [the representing lawyer] has been informed of [their] discharge." ABA Formal Op., supra, at 16-17. See Iowa Sup. Ct. Atty Disc. Bd. v. Box, supra.

124. Since Roberts did not ask Hart to find her a lawyer, Hart was acting, not only on her own behalf, but also as the respondent's agent. Hart facilitated the respondent's entrance into the locked unit at Windemere; he could not have done so without her at the facility, nor did he contact Windemere in advance to gain entrance for himself. Hart further acted as the respondent's agent by telling Roberts that the respondent was Roberts's lawyer (while trying to negate Roberts's concerns by telling Roberts that Peters was Bujak's lawyer). Clearly, a lawyer may not engage in prohibited conduct through an agent. See Mass. R. Prof. C. 8.4(a) (misconduct to violate the rules of professional conduct through the acts of another); Amer. Law Inst., RESTATEMENT (THIRD) OF THE LAW GOVERNING LAWYERS (2000), § 99A(f).

125. The respondent was not allowed to speak with Roberts, even if it was to ask Roberts what she wanted (or did not want) to do. E.g., in Ad. 01-34, 17 Mass. Att'y Disc. R. 729 (2001), the respondent represented the son of a 90-year-old man who was the subject of a petition by an elder services agency for a protective order. (The father had separate counsel.) The respondent had been friendly with both the father and the son for fifteen years. The father had previously authorized the father's lawyer to have access to certain financial records; despite the respondent's advice that the son grant this access, the son refused to comply. During a break in a hearing concerning court orders on this issue, the son telephoned his father (who was not present), claiming that he was being railroaded. The respondent then spoke to the father to confirm that the father still wanted the father's lawyer to have access to disputed financial records. Even though the respondent did not initiate the call, had been friendly with the father

for fifteen years, and only confirmed the father's previous instructions (which he told his client—the son—to follow), the respondent still violated rule 4.2.

126. Even if we were to find that Hart "authorized" the respondent to speak with Roberts, that would not exculpate the respondent's meeting with her a second time, since by then he was advised that Roberts was represented by Peters. E.g., in Ad. 99-77, 15 Mass. Att'y Disc. R. 795 (1999), the husband and wife had divorced; the court appointed separate counsel (i.e., not a GAL) for the minor child. The issue was where the child was to live. At the time the respondent made a pre-arranged call to her client (the wife), the child happened to be with the wife. At that time, the wife "authorized" the respondent to speak directly with the child about the child's preference, which the lawyer did. Even though the lawyer discussed with the child a proposed parenting agreement (reached with the father's counsel), was "authorized" by the mother, and there was no "overreaching or coercion," the respondent still violated rule 4.2.

127. The respondent claimed it was permissible for him to visit Roberts at Hart's invitation because "[i]t's a common thing, that a family member would come and initiate the contact with the lawyer" on behalf of a parent. (Tr. II:79, respondent). That argument was rejected in Matter of Kent, 21 Mass. Att'y Disc. R. 366 (2005) (public reprimand by stipulation). There the lawyer (Kent) visited an elderly woman in a nursing home at the request of a relative, whom the lawyer represented. The elderly woman "was of uncertain mental capacity" and issues included whether she would return home or sell her house. At the time of visit, the lawyer knew that the woman had counsel and a DPOA. Nevertheless, Kent visited the elderly woman because her relative said that she and her brother were dissatisfied with her counsel, and Kent understood this to mean that she was terminating her counsel, in connection with her house and financial affairs. Like the respondent, Kent did not seek or obtain the consent of her lawyer before

visiting and talking with her.[29] Also like the present case, the woman's counsel learned of Kent's visit from the nursing home staff; her counsel then instructed Kent to have no further contact with her, which he disregarded. Also like the respondent, Kent returned a second time to the nursing home with papers for the elderly woman to sign, but she did not do so. His conduct violated rule 4.2 and, because he did not adequately explain his role, he also violated rule 4.3. The Kent stipulation was silent on whether the lawyer also violated rule 7.3, as here, by soliciting a client in person.)

128. Similarly, in Ad. 05-25, 21 Mass. Att'y Disc. R. 724 (2005), a lawyer was consulted by an adult son about his elderly mother, who lived in a nursing home. The issue was protecting the mother from her daughter and son-in-law, who were trying to take over her affairs on the grounds of mental illness. The lawyer began work, in sole reliance on her communications with the son and did not check to see if the mother already had counsel. The lawyer met with the mother and was subsequently told the mother already had counsel and was instructed to leave, which she did, after leaving the proposed fee agreement with the mother. The lawyer, who was relatively inexperienced, acted out of a sincere desire to protect the mother's interests. Nevertheless, she violated rule 7.3.

129. Bar counsel charged that, by personally soliciting Roberts for professional employment for a fee, where she was not a lawyer, she had no prior professional relationship with him, she was not a member of his family, or a representative of any organization, the respondent violated Mass. R. Prof. C. 7.3(a) (as in effect as of July 2, 2019). We conclude that bar counsel has proved his charge.

130. The reason for prohibiting in-person solicitation as stated in comment [2] to rule

[29] In fact, neither brother nor the woman had asked the lawyer to visit the woman. The lawyer was told this by another relative, but did not check with the brother or the woman's counsel.

7.3, is to avoid undue influence, intimidation, and over-reaching, when the lawyer is physically present, which might make it difficult for the client "to fully evaluate all available alternatives with reasoned judgment."

131. Therefore, comment [3] says that "The potential for overreaching inherent in live person-to-person contact justifies its prohibition, since lawyers have alternative means of conveying necessary information." As the U.S. Supreme Court said in Ohralik v. Ohio State Bar Ass'n, 436 U.S. 447, 457 (1978) (footnote omitted):

> Unlike a public advertisement, which simply provides information and leaves the recipient free to act upon it or not, in-person solicitation may exert pressure and often demands an immediate response, without providing an opportunity for comparison or reflection. The aim and effect of in-person solicitation may be to provide a one-sided presentation and to encourage speedy and perhaps uninformed decision making; there is no opportunity for intervention or counter-education by agencies of the Bar, supervisory authorities, or persons close to the solicited individual.

132. There is no question that Roberts did not ask to see the respondent. For his part, the respondent argues an exception to the prohibition of rule 7.3 when "the prospective client wanted to meet the attorney" and "consented (via a conversation with a third party) to meet with the respondent." Matter of Donaldson, 27 Mass. Att'y Disc. R. 208, 223 (2011) (emphasis added). (Respondent's post-hearing memorandum at 3). Here, we conclude that both elements (espoused uniquely in Donaldson) are lacking: Roberts did not ask or want to meet with the respondent, nor did Roberts "consent" during a communication with Hart. The respondent admitted that Roberts never said that she had been looking for an attorney. (Ex. 20 at BC0086, respondent). Roberts's laments of "why can't I go home" and "I have been here long enough" do not rise to the level of requesting legal assistance from the respondent (or any other attorney).

FACTORS IN AGGRAVATION AND MITIGATION

FACTORS IN MITIGATION

133. The respondent asserts in mitigation the time between when bar counsel opened an investigation, in July 2019, and when bar counsel first sought an admonition against him, in early 2022. [30] While the Court has said that delay may be considered in mitigation, such delay must result in prejudice to the respondent. E.g., Matter of Grossman, 448 Mass. 151, 159-161, 23 Mass. Att'y Disc. R. 243, 252-254 (2007); Matter of Gross, 435 Mass. 445, 451, 17 Mass. Att'y Disc. R. 271 (2001); Matter of London, 427 Mass. 477, 481, 14 Mass. Att'y Disc. R. 431 (1998). He asserts as prejudice the fact that Roberts had died by the time for the formal disciplinary hearing and that "bar counsel took no steps to obtain a statement from [her] or otherwise record her understanding of this matter."

134. The response to this is multi-faceted. First, bar counsel has no obligation to interview a respondent's witnesses. Matter of Ablitt, 486 Mass. 1011 (2021); Matter of London, 427 Mass. 477, 481-82, 14 Mass. Att'y Disc. R. 431, 437 (1998). Second, we would not have expected bar counsel to interview Roberts after the respondent rejected the proposed admonition, since their position is that. Roberts was not competent. Third, and while Roberts was represented by counsel, nothing prevented the respondent, who himself was represented by competent counsel, from seeking to depose Roberts, either pre-petition, under B.B.O. Rules § 4.10, or to obtain a post-petition statement under B.B.O. Rules § 4.9, citing a need to obtain testimony from an elderly person with declining mental faculties. A respondent cannot blame bar counsel for the alleged loss of evidence that the respondent himself took no steps to obtain or preserve. Unlike Ablitt, there was no denial of any request for pre-hearing discovery.

[30] The respondent actually seeks to blame bar counsel for a "delay" from July 2019 to when the formal petition for discipline was filed in October 2023, after the respondent had already rejected a proposed admonition and had a two-day hearing in 2022 before a SHO on his appeal. (Respondent's post-hearing memorandum, at 23). Bar counsel is not responsible for "delays" caused by the respondent's rejection of an admonition or his subsequent exercise of his appellate rights.

Accordingly, we find that there was no prejudice to the respondent, and if there was, it was not attributable to bar counsel.

135. As for the alleged delay in the time between when bar counsel opened an investigation, in July 2019, and when bar counsel first sought an admonition against him, in early 2022, we take administrative notice of the COVID-19 pandemic, which caused the closure of the Office of the Bar Counsel and the offices of the Board of Bar Overseers during part of this time. For a delay to be mitigating, it must be the fault of bar counsel which, under the circumstances, was not true here. See Matter of McBride, 21 Mass. Att'y Disc. R. 455, 466-467 (2005), aff'd 449 Mass. 154, 23 Mass. Att'y Disc. R. 444 (2007). Accordingly, we do not consider the alleged delays to be mitigating.

FACTORS IN AGGRAVATION

136. As a preliminary matter, we are disturbed by the numerosity and severity of the factors in aggravation present in this case. They are entitled to substantial weight.

137. The respondent, who (as appears from our findings) we generally found to be not credible, lacked candor at the disciplinary hearing. He testified falsely under oath before us on multiple occasions. We find that the respondent intended to deceive us with his testimony. Lack of candor before the hearing committee is an aggravating factor. Zankowski, supra; Matter of Hoicka, 442 Mass. 1004, 1006, 20 Mass. Att'y Disc. R. 239 (2004); Matter of Eisenhauer, 426 Mass. 448, 457, 14 Mass. Att'y Disc. R. 251, 262, cert. denied, 524 U.S. 919 (1998); Matter of Friedman, 7 Mass. Att'y Disc. R. 100 (1991).

138. The respondent also failed to appreciate his basic ethical obligations, or specifically to acknowledge the nature, effects, or implications of his misconduct. See Matter of Bailey, 439 Mass. 134, 150 (2003) (failure to recognize or appreciate wrongful nature of

misconduct as factor in aggravation); Matter of Clooney, 403 Mass. 654, 657-658 (1998) (lawyer's "persistent assertions that he did nothing wrong … demonstrated that he 'continue[d] to be unmindful of certain basic ethical precepts of the legal profession'"); ABA Standards for Imposing Lawyer Sanctions § 9.22(g) (refusal to acknowledge wrongful nature of conduct). See also Matter of Moran, 33 Mass. Att'y Disc. R. 328, 348 (2017), aff'd 479 Mass. 1016 (2018) (lawyer's failure to acknowledge his misconduct as a factor in aggravation). The respondent was not contacted by Roberts; he was contacted by Hart and met with Roberts despite being told by Roberts's attorney (Peters) not to communicate with Roberts. That should have been the end of it. (Even if the respondent had been contacted directly by Roberts, rule 4.2 and comment [3] required that he confer first with Peters.) The respondent was not entitled to "test" the veracity of Peters's statement of client representation or instruction by a subsequent in-person solicitation of a vulnerable person.

139. In fact, the respondent's in-person solicitation of a vulnerable elderly client is a separate factor in aggravation. Matter of Palmer, 423 Mass. 647, 650-51 n.1, 12 Mass. Att'y Disc. R. 439 (1996) ("a pattern of gross impositions on older women who appear to have been in 'a particularly vulnerable condition'"); Matter of Pemstein, 16 Mass. Att'y Disc. R. 339, 345 (2000) (taking advantage of "vulnerable elderly women" considered an aggravating factor).

140. Harm to others, including non-client third parties, is a factor in aggravation. Matter of Gleason, 28 Mass. Att'y Disc. R. 352, 356 (2012).

141. The respondent's substantial experience in the practice of law is a factor in aggravation. Matter of Zankowski, 487 Mass. 140, 153, 37 Mass. Att'y Disc. R. 555, 571 (2021); Matter of Grayer, 483 Mass. 1013, 35 Mass. Att'y Disc. R. 31 (2019); Matter of Moran, 479 Mass. 1016, 1022, 34 Mass. Att'y Disc. R. 376, 387 (2018); Matter of Luongo, 416 Mass.

308, 311-312, 9 Mass. Att'y Disc. R. 199 (1993). It is particularly significant when the misconduct occurred in a field where the respondent has substantial experience in the practice of law. Matter of Kasilowski, 31 Mass. Att'y Disc. R. 357, 364 (2015) (noting the lawyer's substantial experience specifically in the field where his misconduct occurred).

DISCUSSION

Bar counsel seeks "at least" a public reprimand; the respondent seeks a dismissal. We recommend that the respondent be suspended for three to six months.

We previously noted the parallels between the present case and the Box case from Iowa, supra. However, Box did not violate rule 7.3 because the elderly client came to Box's office, whereas the respondent went to solicit Roberts at a locked ward in a nursing home. While both clients were elderly (Roberts was 88 while Box's client was 80), Roberts was more vulnerable because she suffered from dementia and was fixated on the unrealistic and infeasible desire to leave the nursing home. Finally, Box's sanction was mitigated by factors not recognized in Massachusetts: his "fine reputation as a competent attorney who has served his clients well for many years" and the fact that this "was an isolated incident that was inconsistent with his normal pattern of care and concern for the profession." Box, supra, at 766.[31] Box also lacked all but one factors in aggravation present in the case before us (vulnerable client). Accordingly, the respondent's sanction should be greater than the public reprimand in Box.

While this case has much in common with Matter of Kent, 21 Mass. Att'y Disc. R. 366 (2005), that case was a stipulation, it did not include a violation of rule 7.3, and there were no factors in aggravation present in that case. E.g., Matter of Marion, 23 Mass. Att'y Disc. R. 435,

[31] Matter of Luongo, 416 Mass. 308, 311-12, 9 Mass. Att'y Disc. R. 199 (1993) (length of time in practice aggravating, not mitigating); Matter of Alter, 389 Mass. 153, 157, 3 Mass. Att'y Disc. R. 3 (1983) (clean disciplinary history and good reputation in the community are not mitigating).

437 (2007) (Board will not treat stipulations as authoritative in the absence of fully contested proceedings). Similarly, Ad. 05-25, 21 Mass. Att'y Disc. R. 724 (2005), the lawyer, who was inexperienced, received an admonition for violating only rule 7.3. Accordingly, it is not markedly disparate for the respondent to be suspended because of his misconduct, both because of the nature and scope of his misconduct, but also the presence of factors in aggravation, to which we accord great weight, and the absence of mitigating factors present in Box and Ad. 05-25.

Conclusion:

For the foregoing reasons, we recommend that the respondent be suspended for three to six months.

date: April 8, 2025

Respectfully submitted,

By David W. Robinson
David W. Robinson, Esq.
Hearing Committee Chair

By Catherine Oatway
Catherine Oatway, Esq.
Hearing Committee Member

By Bernard Goulding
Bernard Goulding
Hearing Committee Member

BC v. Larkosh
table of motions

date	pleading	order
05/31/24	assented-to mtn to continue hearing	06/04/24, allowed by HC chair
08/09/24	R's mtn in limine concerning competence (BC opp on 8/23/24)	denied without prejudice, subject to being renewed at hearing, by HC chair on 09/03/24
08/09/24	R's mtn for leave to file a bench memo (BC opp on 8/23/24)	denied by HC chair on 09/03/24
08/09/24	R's req. for the issuance of subpoena duces tecum to Windemere Nursing & Rehab (BC opp on 8/23/24)	deferred on 9/3/24, pending R's notice to record-keeper, data subject & counsel, with right to object. After R said (9/26/24) that notice was given & there was no objection, subpoena issued 9/27/24
08/09/24	R's req. for the issuance of subpoena duces tecum to Eric Peters (BC opp on 8/23/24)	conditionally allowed, to appear & produce non-privileged documents, by HC chair on 09/03/24
09/03/24	BC's mtn in limine for late filing and in limine to admit evidence (transcript of R's mtg; day 1 tr. of SHO hrg.; day 2 tr. of SHO hrg.; SHO report) (R's opp on 9/10/24)	mtn to file late, allowed 09/13/24; mtn to admit prior transcripts, allowed 09/13/24; mtn to admit R's recorded statement, allowed 09/13/24; mtn to admit SHO report, denied 09/13/24
09/17/24	BC's req for remote hearing testimony of a witness (R's opp on 9/18/24)	allowed by HC chair, 09/18/24
09/25/24	order on disputed exhibits	09/25/24, parties to provide to AGC who will provide them to the HC chair; no ruling will be made in advance of hrg.
10/09/24	R's mtn to strike certain statements & documents in Ex. 19 (BC opp on 10/9/24)	denied at hearing on 10/10/24
12/13/24	sua sponte order on stipulation of the parties	record reopened to admit stip of parties as ex. 31, 12/13/24