COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS.

SUPREME JUDICIAL COURT
FOR SUFFOLK COUNTY
NO: BD-2024-011

IN RE: MICHAEL A. JOHNSON

MEMORANDUM OF DECISION

This matter came before me on an Information and record of proceedings filed by the Board of Bar Overseers (board) pursuant to S.J.C. Rule 4:01, § 8 (6), as appearing in 453 Mass. 1310 (2009). The board recommended that the respondent, Michael A. Johnson, be suspended from the practice of law for two and one-half years for, inter alia, professional misconduct related to his representation of four separate clients and making false statements under oath to the Office of Bar Counsel (bar counsel) during its investigation of the same, as well as to the hearing committee (committee). I have reviewed the record and pertinent papers in this case (including legal memoranda) and heard and considered the parties' arguments. For the reasons set forth below, it is ordered that the respondent's license to practice law be, and the same hereby is, suspended for a period of two and one-half years, with conditions on reinstatement as set forth in § (3) infra as well as the order that will issue with this memorandum.

1. Background. I summarize the relevant factual findings of the committee, as adopted by the board. Matter of Williams, 491 Mass. 1021, 1022 (2023). The respondent was admitted to the Massachusetts bar in 2014; he worked as a solo practitioner with a focus on family law.

a. Count one. In May 2020, Client One retained the respondent to represent her in her divorce. At their first meeting, Client One informed the respondent that she wanted to contest her husband's right to parenting time, information that the respondent acknowledged was protected by attorney-client privilege.

In July 2020, the parties to the divorce proceeding held a telephonic pretrial meeting. A few days later, Client One told the respondent that she was unhappy with what she perceived to be his passive performance at the meeting and terminated the attorney-client relationship. On July 14, 2020, the respondent wrote to opposing counsel in the divorce matter, stating, "I am sorry to say that I have been terminated as counsel for this matter." He also filed a motion to withdraw in the matter, representing to the judge that "there has been a breakdown in the attorney/client relationship and counsel has been terminated."

After terminating the relationship, Client One authored an

online review of the respondent's law firm, which included a "one star" rating and her opinion that the respondent was "very passive." Because she had included her initials, the respondent identified Client One as the author. Shortly thereafter, the respondent posted the following reply, disclosing privileged information without Client One's consent:

> "Thank you for your input. As I told you from the outset, I am a negotiator. One must choose when to fight carefully. You wished to fight in [sic] the issue of parenting time, whicH [sic] you have denied the father of a child you had together. In the end, he will have parenting time and if you are not careful, custody too. You have your expertise[,] and I have mine. All that being said, good luck" (emphasis added).

On July 21, 2020, Client One wrote to the respondent, expressing that she was "flabbergasted" by his inclusion of "such specific information about [her] situation" and his disclosure of confidential information regarding her divorce.

The next day, July 22, 2020, the respondent replied stating, "[i]t [was] your remedy to [] sever[] our attorney/client relationship as you wished to do." Five days later, Client One filed a complaint with bar counsel. On September 14, 2020, in response to an inquiry from bar counsel, the respondent stated that Client One had terminated their relationship.

In January 2021, the respondent edited his original online

reply to read: "Unfortunately, this client did not agree with my strategy and the requirement that she provide the [father] parenting time absent good cause. I regret that I had to terminate our relationship" (emphases added). The respondent testified similarly before the committee, contrary to his prior statements and representation to bar counsel and to the judge in the divorce proceedings, that he, and not Client One, had terminated the attorney-client relationship.

The committee found his testimony to be "knowingly false" and that the respondent's edited online response to his former client contained false information regarding the representation in violation of Mass. R. Prof. C. 8.4 (c) (engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation). The committee further found that the respondent violated rules 1.9 (c) (2) (revealing confidential information relating to former client) and 1.6 (a) (revealing confidential information related to representation absent client's informed consent) on two separate occasions: once in his original response to the online review; and again in his edited online response.

b. Count two. In April 2021, during the pendency of bar counsel's investigation into Client One's complaint, Client Two retained the respondent to assist her in gaining custody of her minor granddaughter, who was then in the custody of the

Department of Children and Families. The respondent represented to Client Two and Client Two's daughter (the aunt of the child in question) that he had filed guardianship petitions previously and assured them that he would be able to secure guardianship.[1]

Before the committee, the respondent testified that he attempted to file the guardianship paperwork three times: twice unsuccessfully with the Probate and Family Court before learning that the Juvenile Court was the proper forum for the petition; he claimed to have successfully filed the paperwork in person on his third attempt in October 2021. Yet, as the respondent conceded, as of December 2021, no docket entry evinced such a filing. The respondent blamed the courts' docketing staff. The committee observed that the respondent's account of the filing, in addition to being "implausible and far-fetched," was contradicted by an August 20, 2022, letter from the respondent's counsel to bar counsel, which told a materially different version of his purported attempts to file the petition.[12]

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[1] The committee did not credit the respondent's testimony that he told Client Two and her daughter that he had never filed such a petition.

[2] In that letter, the respondent represented to bar counsel that after he was turned away from the Probate and Family Court -- ostensibly because he did not have the child's birth certificate -- he went to the Juvenile Court and was instructed

The committee concluded that the respondent's testimony that he attempted to file the petition for guardianship in both the Probate and Family Court and the Juvenile Court was knowingly false, thereby violating Mass. R. Prof. C. 8.1 (a) (knowingly making false statement of material fact to bar counsel in connection with disciplinary matter), 8.1 (b) (failing to disclose fact necessary to correct misapprehension known by attorney to have arisen in matter, or knowingly failing to respond to lawful demand for information from disciplinary authority), 8.4 (c), 8.4 (d) (engaging in conduct prejudicial to administration of justice), and 8.4 (h) (engaging in any other conduct that reflects adversely on attorney's fitness to practice law).

The committee also found that the respondent failed to file a guardianship petition on Client Two's behalf "despite having [misrepresented] to[] [his client] that he had done so," in violation of rules 1.4 (a) (3) and 1.4 (a) (4) (failing to keep client reasonably informed about status of their matter and failing to comply promptly with reasonable requests for information), as well as rules 1.1 (failing to provide competent representation and/or to prepare adequately) and 1.3 (failing to

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to file for guardianship there. The filing required information he did not have, so he purportedly left to meet with Client Two, and, according to the respondent, returned to the Juvenile Court to file the guardianship paperwork on October 4, 2021.

represent client with reasonable diligence and promptness). Further, the committee reasoned -- and the respondent agreed -- that his failure to learn the correct forum in which to file a petition for guardianship during the representation demonstrated a lack of competence and diligence, also in violation of rules 1.1 and 1.3.

On December 14, 2021, Client Two wrote to the respondent, terminating his services and demanding a refund of the $4,000 flat fee she had paid him on the basis that "nothing was done on [her] matter" during his nine-month representation. On or about February 23, 2022, after her third demand for a refund went unanswered,[3] Client Two filed an action against the respondent in small claims court; and in March 2022, she filed a complaint with bar counsel.

On May 26, 2022, the respondent settled the small claims matter, agreeing to pay one thousand dollars ($1,000) to Client Two in exchange for her withdrawal of the bar complaint. While Client Two did not withdraw her bar complaint, the committee found that the respondent's attempt to condition settlement on

[3] The respondent took several weeks to responded to Client Two's first and second demands for a full refund; he refused to refund the full amount explaining that he "did many hours of work on the matter" and was required to travel to Boston "four times."

the withdrawal violated S.J.C. Rule 4:01 § 10,[4] as well as rules 8.4 (d) and 8.4 (h).

c. Count three. In June 2021, also during the pendency of bar counsel's investigation into Client One's complaint, Client Three retained the respondent to represent her in her divorce. Nearly a year later, on June 2, 2022, the respondent informed her that a mandatory, in-person meeting was scheduled with the opposing party for June 7, 2022. Previously unaware of the upcoming meeting, Client Three told the respondent that she could not attend the meeting on that date and repeatedly asked the respondent to reschedule the meeting. As the respondent admitted, he failed to communicate Client Three's scheduling issue to opposing counsel and failed to attempt to reschedule the meeting. On the scheduled day of the mandatory meeting, neither the respondent nor Client Three attended.[5] That same

[4] Rule 4:01 § 10 provides, in relevant part, that "[a] lawyer shall not, as a condition of settlement, compromise, or restitution, require the complainant to refrain from filing a complaint[with bar counsel] [or] to withdraw the complaint."

[5] In response to opposing counsel's email inquiry regarding why neither the respondent nor his client were at the meeting, the respondent replied that he "got held up in F[lorida] with an emergency having to do with my sister. . . . Can we please reschedule?" To which, opposing counsel expressed sympathy, but observed that "your client was not here either[;] [t]hat means she knew you couldn't make it, and we didn't get the same courtesy." The respondent wrote back stating, "I had not told my client either that I was[not] going to make it. Stuff happens."

day, the respondent texted Client Three saying, "We missed the [meeting] today. I didn't get back in time."

On July 28, 2022, the Probate and Family Court held a pretrial conference, and the respondent failed to appear; the respondent conceded that his failure in this regard reflected a lack of competence and diligence. As a result of the absence, the court rescheduled the hearing to August 22, 2022, noting that, because the respondent and Client Three had failed to attend both the mandatory meeting and the pretrial conference, the court would consider sanctions at the August hearing and would consider entering judgment "regardless of whether [Client Three] and/or her counsel are present."

On August 3, 2022, Client Three asked for an update on the matter.[6] The respondent did not respond. Five days later, Client Three sent another message to the respondent requesting a certain document; the respondent again did not reply. On August 16, 2022, Client Three terminated the attorney-client relationship and directed the respondent to withdraw from her case so that another attorney could appear as her counsel. The respondent did not do so promptly.

[6] The client wrote, "I am not sure what's happening, I'm trying to set a date for the [mandatory] meeting since June and I'm not getting feedback from you."

Instead, despite the termination of the attorney-client relationship, the respondent confirmed receipt of a reminder email from the Probate and Family Court clerk's office regarding the upcoming rescheduled pretrial conference without mentioning the termination. On August 22, 2022, he attended the pretrial conference, failing to inform the court that Client Three had instructed that he withdraw. Following the hearing, the respondent texted Client Three, stating, "[b]ecause you didn't come on to the [Zoom] hearing today they granted the divorce. You are divorced."

The committee concluded that the respondent's failure to appear at the pretrial conference; his failure to appear at or reschedule the mandatory meeting after being informed by his client that she could not attend; and his failure to timely file a notice of withdrawal, violated Mass. R. Prof. C. 1.1 and 1.3. The committee also found that the respondent failed to keep his client reasonably informed about the status of her matter and failed to promptly comply with her reasonable requests for information in violation of rule 1.4 (a) (3) and 1.4 (a) (4).

On August 22, 2022, the respondent told Client Three that he had filed a notice of withdrawal on August 17. The notice, which was dated August 17, 2022, was not docketed until

August 31, 2022; moreover, the metadata[7] from the document showed that he created it no earlier than August 22, 2022. Additionally, the respondent entitled the document "Notice of Withdrawal Norfolk 8/22/22" (emphasis added). Based on the foregoing, the committee concluded that the respondent had knowingly misrepresented the date he filed a notice of withdrawal with the court to his client, thereby violating rules 8.4 (c) and 8.4 (h). Because the respondent signed his certificate of service for the notice of withdrawal "under the penalties of perjury," the committee also found that he made a false certification to the court in violation of rule 3.3 (a) (1) (making false statement of fact or law to tribunal), and to bar counsel in violation of rules 8.1 (a) and 8.1 (b), and 8.4 (c), 8.4 (d), and 8.4 (h).

d. Count four. In mid-November 2022, also during the pendency of bar counsel's investigation into Client One's complaint, Client Four retained the respondent to represent him to obtain parenting time; Client Four's prior pro se complaint to establish paternity had been unsuccessful. The respondent

[7] Metadata "is information generated automatically by the computer system itself during the creation, use, and transmittal of a document that contains information other than the content of the document." 49A Mass. Practice Series, Discovery § 7:13 (2024). Metadata may include, inter alia, "data showing the author of a document, the date of its creation and any revisions thereto, . . . [and] edits to the document." Id.

neither established Client Four's paternity nor confirmed that paternity had already been established. He did not search the court docket for Client Four's filing.

The respondent drafted a complaint for his client, using a standard form and leaving blank an item which required disclosure of information as to the establishment of paternity. As the respondent conceded, his failure to indicate how Client Four's paternity was established reflected a lack of competence and diligence.

The respondent claimed that he mailed the complaint to the Probate and Family Court on December 13, 2022, along with the filing fee; he charged the fee to Client Four. No such complaint was docketed. As with the guardianship papers in Count II supra, the respondent claimed that the court clerk's office failed to docket his filing.

The committee determined that the respondent had not filed the complaint despite misrepresenting to his client -- in the form of a charged $120 "filing fee" -- that he had done so, thereby violating Mass. R. Prof. C. 8.4 (c) and 8.4 (h). Moreover, by failing to file a complaint and to establish his client's paternity (a necessary element of the complaint), the committee concluded that the respondent had failed to competently and diligently represent his client in violation of rules 1.1 and 1.3.

On January 9, 2023, Client Four asked the respondent for an update. The respondent did not provide an update. The next day, the client again asked the respondent for an update. The respondent replied to Client Four the next day, informing Client Four that he had returned from a service for his brother who had recently passed away and asked if he could get back to him the next day. The respondent did not do so. Client Four continued to request updates from the respondent through January; the respondent failed to respond. The committee found that the respondent's failure to keep his client reasonably informed about the status of the matter and promptly comply with his client's reasonable requests for information violated rules 1.4 (a) (3) and (a) (4).

On January 20, 2023, Client Four filed a complaint against the respondent with bar counsel. In response to inquiries from bar counsel regarding the matter, the respondent represented that he had filed a complaint for parenting time with the Probate and Family Court on or about December 13, 2022. He reiterated these false claims during his statement under oath, which the committee determined violated rules 8.1 (a), 8.1 (b), 8.4 (c), 8.4 (d) and 8.4 (h).

e. Procedural history. On June 30, 2023, bar counsel filed a four-count petition for discipline against the respondent. Following a hearing, during which four witnesses

(including the respondent) testified, the committee released its report recommending that the respondent be suspended from the practice of law for two and one-half years. The board voted unanimously to adopt the committee's recommendation and thereafter filed an information and record of proceedings. A hearing was held on August 18, 2024, attended by assistant bar counsel, counsel for the respondent, and the respondent.[8]

2. Discussion. a. Standard of review. We uphold "[t]he subsidiary findings of the hearing committee, as adopted by the board, '. . . if [they are] supported by substantial evidence.'" Matter of Weiss, 474 Mass. 1001, 1001 n.1 (2016), quoting S.J.C. Rule 4:01, § 18 (5), as appearing in 453 Mass. 1315 (2009). See Matter of Abbott, 437 Mass. 384, 391 (2002), and cases cited. "[T]he [] committee's ultimate 'findings and recommendations, as adopted by the board, are entitled to deference, although they are not binding on this court.'" Weiss, supra, quoting Matter of Ellis, 457 Mass. 413, 415 (2010). See Matter of Lupo, 447 Mass. 345, 356 (2006); Matter of Hiss, 368 Mass. 447, 461 (1975). The committee is the sole judge of credibility, Matter of Zankowski, 487 Mass. 140, 144 (2021); its "credibility determinations will not be rejected

[8] At the hearing, the respondent agreed that the conditions on reinstatement proposed by the committee, see § 4 infra, were proper in light of the respondent's conduct, but disagreed as to the length of the recommended suspension.

unless it can be said with certainty that the finding was wholly inconsistent with another implicit finding" (internal quotations omitted). Matter of Haese, 468 Mass. 1002, 1007 (2014).

b. Respondent's arguments. Before the court, the respondent does not challenge any of the committee's factual findings. See Matter of Laroche-St. Fleur, 490 Mass. 1020, 1023 n.9 (2022) (attorney's failure to object to hearing committee report "provides an additional, independent basis for concluding that the alleged misconduct has been established").

Before the committee, the respondent admitted to the charged violations involving lack of competence and diligence alleged in bar counsel's complaint, including those related to his failure to learn the proper court in which to file a petition for guardianship, (Count II, Mass R. Prof. C. 1.1 and 1.3); his failure to appear at a pretrial conference in a divorce matter or alert opposing counsel of his planned nonattendance, (Count III, same); and his failure to properly fill out the required paternity element on a complaint for parenting time (Count IV, same). The board determined that bar counsel proffered substantial and indeed overwhelming evidence related to said misconduct. The committee's findings are supported by substantial evidence. See Matter of Collins, 494

Mass. 1024, 1029 (2024), citing S.J.C. Rule 4:01, § 8 (6).

Also before the committee, the respondent contested several facts relating to his failure to file court documents he was hired or expected to file and claimed to have filed, namely, (1) a petition for appointment of guardianship of a minor (Count II, Mass R. Prof. C. 1.1, 1.3, 1.4 [a] [3], and 1.4 [a] [4]); (2) a notice of withdrawal after being discharged by his client (Count III, same, and rules 8.4 [c], 8.4 [h], and 3.3 [a] [1]), and (3) a complaint for parenting time (Count IV, rules 1.1, 1.3, 8.4 [c], and 8.4 [h]). The committee's resolution of each of these issues is supported by substantial evidence.

The respondent "bears the burden" of demonstrating that the findings of the board are not supported by substantial evidence. Matter of Laroche-St. Fleur, 490 Mass. at 1023 (citation omitted). Before the committee, the respondent proffered no evidence, other than his own testimony, to support his claim that he filed the above documents as represented. See Zankowski, 487 Mass. at 149 (2021) (adverse inference warranted from respondent's "failure to offer materials, readily available to [the attorney], that would presumably support [the attorney's] version of the facts if true"). With respect to the notice of withdrawal in count III, the evidence supports the conclusion that the respondent created the document no earlier

than August 22, 2022, and therefore could not have filed the document five days earlier, as he represented. The committee "simply was not required to credit" the respondent's implausible explanations for why his filings were not registered by the courts' docketing system, Matter of Strauss, 479 Mass. 294, 301 (2018). See Matter of Diviacchi, 475 Mass. 1013, 1018-1019 (2016) (arguments "hinging on" committee's credibility determinations "generally fall outside" proper scope of review).

In sum, there is ample evidence in the record to support the committee's finding that the respondent either did not file the above documents or, specific to the notice of withdrawal, filed it several days after August 17, 2022, the filing date represented on the notice and accompanying certificate of service.[9] See Laroche-St. Fleur, 490 Mass. at 1023. The committee's finding that he falsely stated to bar counsel that he had filed these documents -- thereby violating rules 8.1 (a), 8.1 (b), 8.4 (c), 8.4 (d), and 8.4 (h) -- is supported by the

[9] As the committee observed, the respondent was not required to sign the certificate of service under the penalties of perjury. See Mass. R. Civ. P. 5 (a); Mass. R. Elec. Filing 7 (a). In any event, the court agrees with the committee that the respondent must be held to the standard of a reasonably competent lawyer for his decision to include language of criminal import in his certificate. See HCR ¶ 80 ("[A]s a lawyer, he typed the words, he knew what they meant, and he signed his name"). See, e.g., G. L. c. 268, § 1.

record.[10]

Regarding Client One's case, the respondent offered several affirmative defenses before the committee; each are without merit. The information contained in both his original and edited online response was protected by attorney-client privilege. See Mass. R. Prof. C. 1.6 (a).[11] Contrary to the respondent's argument that he did not disclose Client One's identity in his online posts, an enterprising opposing counsel could have found the respondent's posts disclosing the confidential, privileged information and connected Client One's initials to her matter. Further, the committee's finding that Client One, and not the respondent, terminated the attorney-client relationship is supported. The committee's conclusion that he violated rules 1.9 (c) (2), 1.6 (a), and 8.4 (c), is well supported by the record. Before the court, the respondent contended only that Client One has had multiple lawyers;

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[10] The respondent put forward no evidence to support his claim that he "maintained sufficient communication with" Client Four, Ans. ¶ 41, which is contrary to Client Four's successive inquiries into the status of his matter and the respondent's failure to respond. Thus, as the board determined, bar counsel has proved that the respondent violated rules 1.4 (a) (3) and 1.4 (a) (4). See Zankowski, 487 Mass. at 149.

[11] Mass. R. Prof. C. 1.6 (a) provides, in relevant part, that "'Confidential information' consists of information gained during . . . the representation of a client . . . that is (i) protected by the attorney-client privilege, . . . or (iii) information that the lawyer has agreed to keep confidential."

assuming arguendo that this is true, it does not absolve the respondent of responsibility for his misconduct.

c. Mitigating factors. The hearing committee did not find any factors in mitigation, and the board agreed. The record supports this conclusion. See Matter of Johnson, 23 Mass. Att'y Discipline Rep. 327, 335 (2007), S.C., 452 Mass. 1010 (2008) (lawyer bears burden of proving mitigating factors).

In his answer, the respondent alleged in mitigation that he suffered from the effects of COVID-19 in May 2021 and June 2022; that those effects negatively impacted his ability to practice law at those times; and that he suffered "long COVID" symptoms, which affected his memory and energy levels. Ans. ¶¶ 51-54. Scant evidence in the record supports the respondent's claimed COVID-19 diagnoses, or a diagnosis of "long COVID." More importantly, the committee's determination that the respondent has failed to show that COVID caused his professional misconduct is supported. See Matter of Ablitt, 486 Mass. 1011, 1018 (2021) (requiring causal relationship between claimed mitigating factor and misconduct); Zankowski, 487 Mass. at 152 (no medical testimony submitted to establish causation between attorney's stress and resulting misconduct). Notably, the respondent conceded that, at most, COVID-19 was relevant only to his representation of Client Three; as such, even if it were

supported by the record, the COVID-19 affliction could not explain his similar pattern of misconduct toward Clients Two and Four.[12]

d. Aggravating factors. The committee found that several aggravating factors applied in the respondent's case, including his previous three-month suspension, see Matter of Dawkins, 412 Mass. 90, 96 (1992) (record of past misconduct relevant in determining appropriate discipline even if unrelated to current charges); his lack of candor before the committee, see Matter of Hoicka, 442 Mass. 1004, 1006 (2004) (lack of candor "appropriate for board's consideration in formulating its disciplinary recommendation"); his false representations to bar counsel in the course of its investigation, see Matter of Curry, 450 Mass. 503, 532 (2008) ("[attorney's] lack of candor and his misrepresentations under oath to bar counsel constitute a serious factor in aggravation"); and his violation of numerous disciplinary rules, see Matter of Saab, 406 Mass. 315, 326-327 (1989) (consideration of cumulative effect of several violations of professional rules proper for fixing sanction). The board affirmed the committee's findings, which are well supported.

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[12] The respondent proffered two additional mitigating factors -- that he is prepared to undergo an audit of his practice and that he has performed a significant amount of pro bono legal work on behalf of low-income litigants -- neither of which are recognized factors in mitigation. See Matter of Zak, 476 Mass. 1034, 1040 (2017).

e. Sanction. The respondent repeatedly neglected various client matters; failed to keep those clients reasonably informed about the status of their matters; and made misrepresentations to them and to bar counsel in order to conceal his neglect. In its report, the committee established that a suspension of one-year-and-one-day is the appropriate "floor" in cases when, as here, an attorney has neglected multiple client matters. See Matter of Brennan, 37 Mass. Att'y Disc. R. 75 (2021) (one-year-and-one-day suspension where attorney neglected cases of three clients and made intentional misrepresentations to client and to bar counsel that she had filed motion when she had not done so); Matter of Hoffman, 35 Mass. Att'y Disc. R. 276 (2019) (suspension of one year and one day where attorney neglected three unrelated matters and failed to keep her clients apprised of status of their cases); Matter of Kleinfeld, 23 Mass. Att'y Disc. R. 358 (2007) (suspension of one year and one day where attorney neglected two unrelated matters and failed to respond to client's requests for information and files); Matter of Scannell, 21 Mass. Att'y Disc. R. 580 (2005) (suspension of one year and one day where attorney neglected three matters).

The committee recommended that the respondent's "pattern of deceit and neglect" toward his clients warrants a suspension of two and one-half years. Bar counsel points to Matter of Abbott as the closest factual analogue. 437 Mass. at 384. In that

matter, the full court upheld a suspension of two and one-half years for an attorney's failure to diligently pursue post-conviction relief for a client, thereby causing that client's direct appeal to be dismissed. Id. at 389, 395. Moreover -- after the client had written to bar counsel but before formal proceedings had commenced -- the attorney intentionally misrepresented the status of his client's case to bar counsel; forged his partner's signature on firm stationary; and fabricated evidence by presenting an English-language false document to his Spanish-speaking client for his signature, all in an elaborate attempt to mislead bar counsel. Id. at 388-390. The attorney had previously been admonished for his failure to diligently pursue a separate matter. Id. at 385 n.2.

Having reviewed the cases cited by the committee, bar counsel, and the respondent, I agree that the respondent's conduct merits a two-and-one-half-year suspension. The misconduct in this case exceeded mere neglect of multiple matters.

The respondent's neglect of Clients Two, Three, and Four's matters and abdication of his responsibility to keep them informed as to the status of their matters -- conduct which, as noted supra, typically incurs a suspension of one year and a day -- does not stand alone. Here, the respondent's neglect of

these clients' matters is compounded by, inter alia, his repeat misrepresentations to his clients, to bar counsel and to the committee, see, e.g., Matter of Kaplan, 31 Mass. Att'y Disc. R. 353, 355-356 (2015) (stipulation to two-year suspension after attorney failed to effectuate service of client's complaint and misled client to believe case still active, compounded by attorney's misuse of client funds sans deprivation and practice of law while under administrative suspension), as well as his separate and distinct course of misconduct in Count I, namely, his disclosure of privileged information without Client One's consent in a public forum.[13] See Matter of Smith, 35 Mass. Att'y Disc. R. 554, 565-567 (2019) (public reprimand for social media post by attorney revealing information about client's divorce, which involved child custody issues). Further, the misconduct at issue in Counts II through IV occurred while he was being investigated for the errant postings. As noted by bar counsel:

[13] A suspension of two-years is the usual and presumptive sanction where an attorney makes false statements under oath. See Matter of Shaw, 427 Mass. 764, 768-769 (1998). However, the court agrees with the committee that while the respondent's misrepresentation in his certificate was made "under oath," the misdating was procedural in nature and therefore does not by itself warrant the two-year sanction that violations of rule 3.3 (a) (1) normally incur. See Matter of Macero, 27 Mass. Att'y Disc. R. 554, 563-565 (2011) (one-year suspension appropriate where attorney used backdated check to pay appellate filing fee and misrepresentation did not involve facts central to underlying litigation).

> "That the respondent continued to engage in dishonest and deceitful conduct in his subsequent representations of Client 2, Client 3, and Client 4 while knowing that he was being investigated by Bar Counsel [for his representation of Client 1] and disciplinary proceedings had commenced is all the more alarming."

See Matter of Kerlinsky, 428 Mass. 656, 665 (1999) ("That the [attorney] continued to engage in the unethical behavior at issue in this case during the pendency of . . . earlier disciplinary proceedings warrants more severe discipline").

Moreover, the committee specifically commented:

> "We are confronted here with a 'pattern of neglect and deceit' by a lawyer who was supposed to be helping his clients navigate through divorce, custody, and / or guardianship issues -- clearly stressful and emotional periods in their lives. As set forth above, the respondent had a habit and practice of over-promising and under-delivering to his clients. This alone is dangerous to the public and harmful to the public's perception of lawyers and the legal profession. However, the respondent compounded his misconduct because, when his lack of competence and diligence led to legal failures, he intentionally misrepresented to his clients the status of their cases to avoid the consequences of his own inaction. As we consider the appropriate sanction here, we must consider the cumulative effect of multiple violations, which can warrant a harsher sanction than if the violations were evaluated separately and simply added up."

Finally, the respondent has previously been sanctioned, albeit for conduct dissimilar to the conduct at issue here.[14] But see Dawkins, 412 Mass. at 96.

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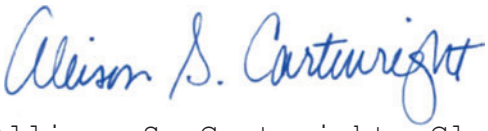
[14] The respondent was previously suspended for negligently misusing settlement funds and for failing to promptly disburse his client's share of settlement funds. See Matter of Johnson, 34 Mass. Att'y Disc. R. 214 (2018).

The court agrees with bar counsel that Abbott provides the closest analogue to the respondent's case. Admittingly, the attorney in Abbott engaged in misconduct that is absent here, namely, forgery, and taking advantage of an incarcerated client to involve them in a cover up of the attorney's behavior. 437 Mass. at 388-390. However, the respondent, for his part, engaged in serious misconduct not found in Abbott, including his behavior with Client One, as well as his repeated neglect of multiple matters during the pendency of bar counsel's investigation into Count One. See Hoicka, 442 Mass. at 1006; Curry, 450 Mass. at 532; Kaplan, 31 Mass. Att'y Disc. R. at 355-356.

This court must "decide [each case] on its own merits," affording "every offending attorney . . . the disposition most appropriate in the circumstances," Matter of Foster, 492 Mass. at 746, quoting Matter of Murray, 455 Mass. 872, 883 (2010), guided by the precept that "[t]he appropriate level of discipline is that which is necessary to deter other attorneys and to protect the public." Matter of Zak, 476 Mass. 1034, 1038 (2017), quoting Curry, supra at 530. See, e.g., Matter of Foley, 439 Mass. 324, 333 (2003) (sanctions must not be "markedly disparate from judgments in comparable cases" [citation omitted]).

3. Conclusion. Based on the foregoing, the court concludes that a term suspension of two and one-half (2.5) years is warranted in the respondent's case, reinstatement conditioned on (i) an audit of his practice by the Law Office Management Assistance Program; (ii) execution of a mentoring agreement; and (iii) an evaluation by Lawyers Concerned for Lawyers.[15]

By the Court (Wendlandt, J.),



Allison S. Cartwright, Clerk

Dated: August 25, 2025

[15] The terms of the conditions are set forth in full in an order that will issue with this memorandum. See Order of Term Suspension, BD-2025-028 (Wendlandt, J.) (entered August 25, 2025).