

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPREME JUDICIAL COURT
FOR SUFFOLK COUNTY
DOCKET No. BD-2025-009

IN RE: GARRETT J. BRADLEY

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 adopted the principal finding of the hearing committee that the respondent, Garrett J. Bradley, acted negligently when, after only a cursory review of a declaration and a schedule attached thereto, he signed the declaration prepared by his law firm partners based on a template created by a separate law firm, which acted as lead counsel in a class action in Federal District Court. The respondent did not conduct a reasonable inquiry to determine the veracity of the information he was signing despite knowing that the declaration, which he averred as "true and correct," would be relied upon by the District Court judge in determining the reasonableness of his firm's application for a fee award following a class action settlement. See Arkansas Teacher Retirement Sys. v. State St.

Bank & Trust Co., 512 F. Supp. 3d 196, 209–210 (D. Mass. 2020) (ATRS).

The hearing committee found, and the board adopted the finding, that despite his oath, the respondent did not read the declaration in its entirety until shortly before the District Court judge held a hearing in the wake of a newspaper article questioning the veracity of, and highlighting apparent inconsistencies in, the respondent's declaration as well as those filed by other plaintiffs' firms in the class action. Thus, the hearing committee found, and the board adopted the finding, that the respondent did not know that the declaration and attached schedule contained materially false and misleading statements.

Due, in part, to the respondent's negligence, the District Court judge relied on the erroneous information provided by the respondent and other plaintiffs' counsel in determining to make an original fee award of approximately \$75 million to plaintiffs' class action counsel. See ATRS, 512 F. Supp. 3d at 210. A comprehensive investigation ensued in the wake of the discovery of the false and misleading information in the firms' submissions to the District Court judge; the investigation culminated in a report by a special master appointed by the judge to investigate all fee application issues. The judge

adopted the special master's report in an order, id. at 270, citing Fed. R. Civ. P. 53 (f), and determined that the original fee award was inflated relative to fee awards in comparable class action settlements. The judge thereafter reduced the fee award to \$60 million, id. at 259, allocating specifically reduced amounts to certain plaintiffs' firms, including the respondent's firm, in view of, inter alia, the firms' respective material misrepresentations to the judge. As it pertains to the respondent, the judge referred the matter to the board for whatever action it deemed appropriate.¹

Following an investigation, the Office of Bar Counsel charged that the respondent intentionally had presented false and misleading information to the District Court judge knowing that the judge would rely on the misrepresentations to assess the reasonableness of the fee award to plaintiffs' counsel. A hearing was held before the committee, during which bar counsel offered the respondent as the sole witness. The board adopted the finding of the hearing committee that bar counsel had failed to show the respondent's conduct was other than negligent. This negligent conduct, the board determined, violated Massachusetts

¹ See Code of Judicial Conduct for U.S. Judges, Canon 3(B)(6) (Mar. 2019) (federal judge compelled to "take appropriate action upon receipt of reliable information indicating the likelihood . . . that a lawyer violated applicable rules of professional conduct").

Rules of Professional Conduct 1.3 (diligence); Rule 3.3 (d) (candor toward tribunal); Rule 3.4 (c) (knowingly disobeying one's obligations under rules of tribunal); Rule 8.4 (d) (conduct prejudicial to administration of justice); and Rule 8.4 (h) (conduct adversely reflecting on lawyer's fitness to practice law).

Relying principally on Matter of Serpa, 30 Mass. Att'y Disc. R. 358 (2014) -- a bar discipline matter in which an experienced defense attorney was found to have recklessly submitted a false affidavit in opposition to his former client's motion for a new criminal trial, which the motion judge denied on the basis of the attorney's sworn representations, and was suspended from the practice of law for sixty days -- the board has recommended that the respondent's negligent conduct result in a term suspension of six-months-and-one-day, and that, whatever the length of suspension, he be required to take and pass the Multistate Professional Responsibility Examination (MPRE). The respondent contests only the board's recommended sanction, arguing that it is markedly disparate in view of the finding that his conduct was negligent and not intentionally or recklessly misleading; he contends that, in view of that finding, a public reprimand best comports with our case law. See Matter of Foster, 492 Mass. 724, 752-753 (2023) (absent

aggravating factors, public reprimand warranted for negligent conduct).

A hearing was held before this court on March 20, 2025, attended by the respondent, his counsel, and assistant bar counsel. Upon consideration of the record and the arguments before the court, it is ordered that the respondent's license to practice law be, and the same hereby is, suspended for a period of thirty (30) days and that, as a condition of reinstatement to the professional bar, he be required to take and pass the MPRE.²

I. Disciplinary violations. The following facts were found by the committee. The committee's "ultimate findings and recommendations, as adopted by the board, are entitled to deference, although they are not binding on this court." — Matter of Weiss, 474 Mass. 1001, 1001 n.1 (2016), quoting Matter of Ellis, 457 Mass. 413, 415 (2010). I summarize the findings relevant to each rule violation, reserving certain facts for later discussion, and conclude that the respondent's negligent conduct violated multiple rules of professional conduct.

² The respondent has represented to this court that he is enrolled to take the exam in late-March 2025. The court observes that the minimum "passing" scaled score for this jurisdiction is '85.' See National Conference of Bar Examiners, "Massachusetts," <https://www.ncbex.org/jurisdictions/MA> (last accessed Mar. 25, 2025).

The respondent was admitted to the Bar of the Commonwealth in 1995.³ He became managing partner of his firm in August 2015.

a. Thornton declaration. Following an approximately \$300 million settlement in a class action against State Street Bank in July 2016, securities class action plaintiffs' counsel, comprised of several firms, filed an application for a \$75 million fee award to be divided among the several firms representing the class. A New York firm, Labaton Sucharow LLP, had served as lead counsel for the class action, and the respondent's firm, Thornton Law Firm LLP, had served as local counsel.

In preparation for the filing of the fee award, lead counsel distributed a form declaration and schedule to be used by plaintiffs' counsel, including the respondent's firm. The template provided space for each firm to set forth the information needed to conduct the lodestar crosscheck method -- that is, the number hours of work performed by attorneys on the class action matter, as well as the attorneys' reasonable hourly rates. See In re Thirteen Appeals Arising out of the San Juan

³ The respondent is also admitted to the United States District Court for the District of Massachusetts, the First Circuit Court of Appeals, the State of New York, the United States District Court for the Eastern District of New York, and the United States District Court for the Southern District of New York.

Dupont Plaza Hotel Fire Litig., 56 F.3d 295, 305 (1st Cir. 1995). This information would then be used by the judge to determine whether the requested fee award would be reasonable based on the lodestar multiplier. See ATRS, 512 F. Supp. 3d at 209-210.

The respondent, who had recently assumed the position of managing partner of Thornton, was presented with a declaration and attached schedule, known as "Exhibit A," for his signature. The respondent was not involved in the drafting of the declaration or its constitutive documents and, in fact, saw them for the first time when they were given to him for signing. The information in the declaration and schedule had been entered by two of the respondent's law partners, who had worked on the ATRS class action litigation.

The declaration contained four pages. The case caption comprised the first page. The second and third pages contained certain declarations pursuant to 28 U.S.C. § 1746, in which the respondent averred, inter alia, that:

"The schedule attached here as Exhibit A is a summary indicating the amount of time spent by each attorney and professional support staff-member of my firm who was involved in the prosecution of the Class Actions, and the lodestar calculation based on my firm's current billing rates. . . . The schedule was prepared from contemporaneous daily time records regularly prepared and maintained by my firm, which are available at the request of the Court.

. . .

"The hourly rates for the attorneys and professional support staff in my firm included in Exhibit A are the same as my firm's regular rates charged for their services, which have been accepted in other complex class actions" (emphases added).

Thornton Declaration ¶¶ 3,4. The fourth and final page was the signature page, which was blank except for the following: "I declare under penalty of perjury that the foregoing is true and correct. Executed on September 14, 2016."

Exhibit A listed information ostensibly necessary for the lodestar calculation, namely, the names of respondent's firm's lawyers and paralegals who worked on the case, the number of hours each worked, and the nominal hourly rate for each attorney or paralegal. On November 2, 2016, relying in part on the information provided by the respondent, the District Court judge approved the joint fee application of all plaintiffs' attorneys in the amount of \$75 million.

The respondent did not read the entire declaration or the schedule prior to signing it. Rather, the respondent read page two of the declaration, looked at page three -- which contained ¶¶ 3 and 4 -- long enough to discern that it consisted of what he considered to be "boilerplate," and signed page four.

In signing the declaration, the respondent relied on the representations inserted into the template for the declaration and Exhibit A by his partners; he did nothing in addition to

confirm independently whether the representations made in the documents were accurate. The respondent understood at the time of signing that information contained in the declaration would be used by the District Court judge for purposes of the lodestar crosscheck method in determining the reasonableness of the requested fee award.

The declaration and schedule contained materially false and misleading information. First, ¶ 4 of the declaration stated that the hourly rates for attorneys and support staff listed in Exhibit A were "the same as my firm's regular rates charged for their services, which have been accepted in other complex class actions." While it was true that the rates listed had been accepted in other class action settlements, Thornton handled only contingent fee litigation and had not charged a client an hourly rate. Thus, the basis for the rates represented were not the regular hourly rates attorneys and staff at the firm customarily charged paying clients for their services.⁴ See Declaration ¶ 3 (representing that lodestar calculation "based on [Thornton's] current billing rates" [emphasis added]).

⁴ The committee majority stated, "a reasonable reviewer of the body of the declaration would have understood there was some basis for identifying an hourly rate, and that basis was work for which some clients paid on an hourly basis. There were no such clients." HCR ¶ 40 n.14.

Second, the representation that twenty-three staff attorneys were Thornton employees who had regular hourly billing rates of \$425 per hour was misleading. The staff attorneys were not employed by the respondent's firm; rather, they were employed by (or contracted with) lead counsel or fellow plaintiffs' counsel, Lief Cabraser. Through a cost-sharing arrangement, however, Thornton reimbursed lead counsel and Lief a percentage of the staff attorneys' salaries. Nevertheless, Exhibit A listed all hours worked for these lawyers, not just the hours the respondent's firm had reimbursed.⁵

Seventeen of the twenty-three staff attorneys listed by the respondent were also listed by lead counsel and six by Lief on their respective fee petitions. This double counting increased significantly the requested attorneys' fee award. ATRS, 512 F. Supp 3d at 243. In a letter to the District Court judge, lead counsel stated that nineteen of the staff attorneys should have been included only in the respondent's firm's declaration, while most of the hours of the remaining four should have been assigned to Lief.

⁵ To the respondent's knowledge, the staff attorneys did not work for the respondent's firm; they had never performed work on any of the firm's other cases; they had never been to the firm's offices; and the firm had never billed any clients \$425 per hour for services performed by these (or any other) attorneys.

Third, Exhibit A also listed the respondent's brother, attorney Michael Bradley, as a firm employee with a regular hourly rate of \$500 per hour. This representation was false on several fronts. Michael Bradley was not employed by the firm. The listed \$500 per hour rate was set in a 2013 discussion between Michael and the respondent; Michael's practice focused primarily on court-appointed criminal defense work,⁶ and a single private client recently had hired him at a rate of \$450 per hour. The record is unclear as to who proposed a rate of \$500 per hour to work on a contract basis on the class action; nevertheless, Michael had never charged a client \$500 per hour.

1. Committee findings -- Thornton declaration. On May 20, 2024, the committee issued written findings. The committee found the respondent credible when he testified that he did not read his declaration in full prior to signing it and instead relied entirely on his partners' work product.⁷ For that reason, the committee concluded that bar counsel had failed to show that the respondent's statements were either knowingly or recklessly false; rather, his misrepresentations to the District Court

⁶ As a bar advocate in the Quincy District Court, Michael Bradley's hourly rate was capped at \$53.

⁷ Although the respondent testified that he relied on those who prepared the declaration to ensure its accuracy, he acknowledged that, as the signer of the document and his firm's managing partner, "the buck stops with me[,] [i]t's my mistake." HCR ¶ 29, citing Tr. 86.

judge were negligent. Despite some evidence in the record that might have supported an inference that the respondent had knowledge of wrongdoing,⁸ the committee, having had the opportunity to assess the respondent's credibility firsthand, declined to arrive at a different conclusion. The board adopted the committee's findings. Having reviewed the record, this court does the same. See S.J.C. Rule 4:01 § 8 (5) (a); Matter of Haese, 468 Mass. 1002, 1007 (2014) (credibility determinations of committee "will not be rejected unless [they are] wholly inconsistent with another implicit finding").

i. Thornton declaration -- rule violations. The committee concluded that the respondent's negligent conduct violated Mass. R. Prof. C. 1.3, 3.3 (d), 3.4 (c), 8.4 (d) and (h). The board

⁸ In dissent, the public member of the committee -- pointing to the tension between the respondent's sworn declaration that the document was "true and correct" and his testimony denying that he read the document in its entirety -- found that the respondent had read the entire declaration prior to signing. Alternatively, the public member found that the respondent's failure to read the document fully, if credited, constituted willful blindness. See Matter of Zimmerman, 17 Mass. Att'y Disc. R. 633, 646 (2001) (lawyer "cannot avoid 'knowing' a fact by purposefully refusing to look"). The dissent's proposed findings were not adopted by the hearing committee; and having considered the evidence relied on by the dissent in support of its findings, the committee concluded that the respondent acted (at most) negligently. The committee's finding being supported by the record, this court is bound by them. See S.J.C. Rule 4:01 § 8 (5) (a).

affirmed and the court, for the reasons stated infra, concurs with the board.

To begin, the respondent's failure to verify whether the information in the declaration was accurate violated Mass. R. Prof. C. 1.3, 426 Mass. 1313 (1998), which provides that "[a] lawyer shall act with reasonable diligence . . . in representing a client." See Matter of Fitzgerald, 35 Mass. Att'y Disc. R. 137, 146-147 (2019) (lawyer deliberately certifying that he followed applicable court rules when he had not done so violated rules 1.1, 1.3, 3.4 [c], and 8.4 [d]).

The respondent also violated his duty of candor under Mass. R. Prof. C. 3.3 (d),⁹ when, despite the largely non-adversarial nature of the fee award application proceedings,¹⁰ he failed to inform the District Court judge of all material facts known to him that would enable the judge to calculate the lodestar, such as the method by which the respondent and Michael Bradley settled on the latter's \$500 hourly rate or the existence of the

⁹ Massachusetts Rule of Professional Conduct 3.3 (d), 471 Mass. 1416 (2015), provides that, "[i]n an ex parte proceeding, a lawyer shall inform the tribunal of all material facts known to the lawyer that will enable the tribunal to make an informed decision, whether or not the facts are adverse."

¹⁰ See Mass. R. Prof. C. 3.3, comment [14A] (citing "present[ment]" of joint petition for approval of class action fee award as example of when proceeding "loses its adversarial character" and becomes ex parte).

cost-sharing arraignment between the respondent's firm and the other plaintiffs' firms. See e.g., Matter of Lipton, 20 Mass. Att'y Disc. R. 336 (2004) (failure to disclose pertinent information known to attorney at ex parte proceeding violated rule 3.3 [d]).

Next, by failing to read (much less verify) the contents of his declaration before signing and filing it, the respondent violated Fed. R. Civ. P. 11 (b), which requires that an attorney "make a reasonable inquiry to assure that all [motions] and papers filed with the court are factually well-grounded." Mariani v. Doctors Assoc., Inc., 983 F.2d 5, 7 (1st Cir. 1993). Here, the respondent made no inquiry at all, choosing to rely entirely on his partners' unreviewed work product.¹¹ His failure to comply with Fed. R. Civ. P. 11 (b), in turn violated Mass. R. Prof. C. 3.4 (c), 426 Mass. 1389 (1998), which prohibits an attorney from "knowingly disobeying an obligation under the rules of a tribunal." See Matter of Colins, 494 Mass. 1024, 1026-1028 (2024) (failure to comply with rules of various

¹¹ As the body of the declaration contained just two pages of text -- and entitlement to millions of dollars of class funds rested on the representations made in the document -- the committee's finding that the respondent's failure to read the declaration in full and inquire into the contents of attached Exhibit A was, under the circumstances, objectively unreasonable is well supported. See CQ Int'l Co., Inc. v. Rochem Int'l USA, 659 F.3d 53, 62 (1st Cir. 2011).

federal courts violated rule 3.4 [c]); Matter of Fitzgerald, supra.

Additionally, the respondent's filing of a false declaration also violated Mass. R. Prof. C. 8.4 (d) and 8.4 (h).¹² An attorney's failure to read relevant portions of a declaration carefully can amount to conduct prejudicial to the administration of justice. See Matter of Serpa, 30 Mass. Att'y Disc. R. at 372-373 (inadvertently filing false affidavit in court violated rule 8.4 [d]). Certifying in error that one has complied with the rules of the tribunal similarly can be prejudicial to the administration of justice. See Matter of Fitzgerald, 35 Mass. Att'y Disc. R. at 146-147. Considering the resources exhausted by the Federal District Court to remediate this matter -- i.e., four additional years of fact finding and motion practice as well as the appointment of a special master, see HCR ¶¶ 48-49, 78 -- the committee's finding that the respondent's conduct reflected poorly on his fitness to practice law is well supported. See Mass. R. Prof. C. 8.4 (h), comment

¹² Massachusetts Rule of Professional Conduct 8.4 (d), 426 Mass. 1429 (1998), provides that "[i]t is professional misconduct for a lawyer to . . . (d) engage in conduct that is prejudicial to the administration of justice."

Massachusetts Rule of Professional Conduct 8.4 (h), 471 Mass. 1483 (2015), provides that it is professional misconduct for a lawyer to "engage in any other conduct that adversely reflects on his or her fitness to practice law."

[7] (under paragraph [h], conduct may "adversely reflect[] on a lawyer's fitness to practice law even if the conduct does not constitute a criminal, dishonest, [or] fraudulent" act).

ii. Thornton declaration -- unproven rule violations. The committee also determined that the respondent's conduct did not violate Mass. R. Prof. C. 3.3 (a) (1) or 8.4 (c),¹³ as a violation of those rules requires that the lawyer acted with intent to deceive or, at minimum, reckless disregard for the truth. The committee sits as "sole judge of the credibility of the testimony presented at the hearing." BBO R. § 3.53. Here, the committee credited the respondent's testimony that he did not read the entire declaration, along with Exhibit A, or possess actual knowledge of their contents prior to signing and submitting the declaration. The committee determined that bar counsel did not carry his burden to demonstrate that the respondent made a knowingly false statement of fact to the tribunal or, in the alternative, that he was "willfully blind"

¹³ Massachusetts Rule of Professional Conduct 3.3 (a) (1), 426 Mass. 1383 (1998), provides, in relevant part, that "[a] lawyer shall not knowingly . . . (1) make a false statement of fact or law to a tribunal."

Massachusetts Rule of Professional Conduct 8.4 (c), 426 Mass. 1383 (1998), states that "[i]t is professional misconduct for a lawyer to . . . (c) engage in conduct involving dishonest, fraud, deceit or misrepresentation."

to the truth.¹⁴ Matter of Zimmerman, 17 Mass. Att'y Disc. R. 633, 652 (2001). The board adopted the committee's findings, and the court, having reviewed the record, does so as well. See Matter of Haese, 468 Mass. at 1007.

Because the respondent lacked actual knowledge of the misrepresentations in his declaration when he signed and submitted it, his conduct did not violate Mass. R. Prof. C. 3.3 (a) (1) (lawyer "shall not knowingly . . . make a false statement of fact or law to a tribunal" [emphasis added]). Nor did the respondent's proven conduct violate rule 8.4 (c), which proscribes "conduct involving dishonesty, fraud, deceit, or misrepresentation." The board construed rule 8.4 (c), as inapplicable to negligent conduct, reasoning that "it would be anomalous and confusing to include [negligent conduct] in a rule where three of the four terms unequivocally require a showing of deliberate misconduct." BD 16. The court agrees. See People for the Ethical Treatment of Animals, Inc. v. Department of Agric. Resources, 477 Mass. 280, 287 (2017), quoting 2A N.J. Singer, Sutherland Statutory Construction § 47:16, at 352-353 (7th ed. 2007) (doctrine of noscitur a sociis counsels that

¹⁴ See S.J.C. Rule 4:01, § 22 (1) (upon request by bar counsel for "testimony or the production of evidence at hearing, or upon request . . . for testimony or the production of evidence at any stage of an investigation, witnesses may be summoned by subpoenas issued at the direction of . . . the chair of a hearing committee").

"ordinarily the coupling of words denotes an intention that they should be understood in the same general sense"). See also Banushi v. Dorfman, 438 Mass. 242, 244 (2002), quoting 2A N.J. Singer, Sutherland Statutory Construction § 47:17, at 273-274 (6th ed. 2000) (under related doctrine of ejusdem generis, "[w]here general words follow specific words in a statutory enumeration, the general words are construed to embrace only objects similar in nature to those objects enumerated by the preceding specific words"). See, e.g., Tryon v. Whitmarsh, 42 Mass. 1, 4 (1840) (representation "must be known falsehood in order to be fraudulent").¹⁵

b. Inaction following declaration's submission. Soon after the District Court judge's original fee award, a newspaper alerted plaintiffs' counsel to an error in their fee submissions in advance of an impending article, namely, the double counting

¹⁵ Two board members, while not disputing the committee's finding that the respondent did not read his declaration in full, nonetheless would find his conduct to be "willfully blind." In support, the members point to (i) the respondent's admission that he discussed using a rate of \$425 for the staff attorneys with lawyers at Labaton and Lieff, and (ii) his discussions with Michael Bradley that Michael would be listed as an employee of Thornton at an hourly rate of \$500. See Zimmerman, supra; Model Penal Code § 2.02(7). Accordingly, the dissenters would find a violation of Mass. R. Prof. C. 3.3 (a) (1) and 8.4 (c) and impose a two-year license suspension as the appropriate sanction. Because the hearing committee considered this evidence and nonetheless found, having assessed the respondent's credibility, that he acted at most negligently, the court is bound by the committee's findings in this regard. See note 8, supra.

of staff attorneys. On November 10, 2016, lead counsel sent a letter to the District Court judge on behalf of all plaintiffs' counsel. The letter alerted the judge to an "inadvertent error" in listing the twenty-three staff attorneys on duplicate petitions, which inflated the firms' collective lodestar by more than 9,300 hours and more than \$4 million.¹⁶

The respondent conducted a focused review of Exhibit A, but did not review the declaration itself.¹⁷ Comparing his schedule with those from the other plaintiffs' firms, the respondent noticed the duplication and adopted the position that the other firms should correct their documents. Because he did not review the declaration itself, the respondent did not then disclose to the District Court judge that his firm did not "employ[]" any of the staff attorneys, despite his earlier sworn statement; nor did he or lead counsel's letter correct the misstatement in the declaration that the rates listed were based on the respondent's

¹⁶ As discussed supra, the lead counsel's letter largely absolved the respondent's firm for the double-counting error and, indeed, the committee found that all but four of the twenty-three staff attorneys were correctly listed on Exhibit A of Thornton's declaration. See HCR ¶¶ 36, 57.

¹⁷ See HCR ¶ 41 (respondent "did not in November 2016 review his declaration for other potential errors . . . and accordingly was not at the time aware there were other potential errors"); HCR ¶ 58 (the respondent "did not review the declaration at that time for anything other than to clarify the double counting of [s]taff [a]ttorneys").

"firm's regular rates charged for their services, which have been accepted in other complex class actions."

Additional questions regarding the veracity of plaintiffs' firms' submissions were raised after the newspaper published its article on December 17, 2016.¹⁸ The article questioned whether the hourly rates plaintiffs' counsel attributed to the staff attorneys in their representations to the District Court were comparable to rates the firms typically charged for their services or to rates lawyers in their community charged paying clients for similar services. The article also flagged that Michael Bradley was listed in Exhibit A to the respondent's declaration as having an hourly rate of \$500; as discussed supra, this was the rate the respondent and Michael had agreed to report for services rendered by Michael on the class action. Having read this information in the article shortly after it was published, the respondent did not inform the judge of any inaccuracies in his declaration or attempt to correct them.

The respondent read the declaration in its entirety for the first time in February 2017, just prior to a hearing on March 7, 2017, scheduled by the District Court judge to discuss the revelations. This was the first time the respondent did so. At

¹⁸ Estes, [Critics Hit Law Firms' Bills After Class-Action Lawsuits](#), Boston Globe, Dec. 17, 2016 (last accessed Mar. 10, 2025).

that time, he discovered that statements in his declaration were false and misleading when read together with the information contained in Exhibit A.

At the March 2017 hearing, counsel for respondent's firm stated that the District Court judge's concerns about the representations that had been made in the fee applications were "justifiable." The respondent's firm's counsel and Michael Bradley each informed the court that Michael was not a Thornton employee, and that neither the firm nor Michael had ever billed for his time at a rate of \$500 per hour, as had been represented in the respondent's declaration.

1. Committee findings -- post-reporting inaction. The committee found that the respondent reasonably relied on the letter from lead counsel to correct the misstatements in his own declaration of which he was aware from November 2016, when the newspaper alerted him to the double-counting issue, until February 6, 2017, when the District Court judge scheduled the hearing. The committee reasoned that the letter expressly discussed the Thornton submission; that it identified firms other than Thornton as the source of the errors addressed; and that a separate letter from the respondent would have been redundant. The committee also concluded that the respondent could reasonably wait from February 2017, when the judge

scheduled the hearing and when the respondent read his declaration and Exhibit A in full for the first time, until the hearing on March 7, 2017, to correct the additional misrepresentations in person, which he did.¹⁹ Buttressing these findings is the committee's credibility determination that the respondent did not review his declaration in full prior to February 2017, and thus did not then know of or appreciate the misstatements implied between the language of the declaration and the information presented in Exhibit A, e.g., that the hourly rates for the staff attorneys and Michael Bradley were based on the "regular rates" charged by Thornton for those lawyers' services. See Declaration ¶ 4.

i. Respondent's inaction -- unproven rule violations. The committee concluded that the respondent's inaction from early-November 2016 to March 7, 2017, was reasonable under the circumstances and did not violate the second clause of Mass. R. Prof. C. 3.3 (a) (3).²⁰ The board adopted this conclusion. Lead

¹⁹ See HCR ¶ 59 ("The District Court had scheduled a hearing [on February 6, 2017] to discuss [all issues then known]. Logically, it would be in connection with that hearing, which occurred on March 7, 2017, the respondent would and did provide testimony about all these issues").

²⁰ Massachusetts Rule of Professional Conduct 3.3 (a) (3), second clause, 426 Mass. 1383 (1998), provides in relevant part that, "[i]f a lawyer . . . has offered material evidence and [] comes to know of its falsity, the lawyer shall take reasonable

counsel's letter apprised the judge of the (then) only known error -- double counting -- in the respondent's declaration. The committee's conclusion that the respondent's decision not to correct his declaration during the period spanning early-November 2016 to February 6, 2017, and instead to rely on lead counsel was reasonable is well supported. Moreover, the committee's finding that the respondent reviewed his declaration in full in February 2017, when the judge scheduled a hearing for March 2017, is also supported by the record. See Matter of Haese, 468 Mass. at 1007. Accordingly, the respondent's decision between February 2017 to March 7, 2017, to wait for the hearing to make further disclosures to the judge at the hearing scheduled specifically to address the issues related to the fee award, did not violate the second clause of rule 3.3 (a) (3).²¹

remedial measures, including if necessary, disclosure to the tribunal."

²¹ The court departs with the committee's view, and instead adopts the board's contrary conclusion, that the respondent's failure to make a self-initiated correction to the District Court judge prior to the March 2017 hearing should weigh in favor of finding that he violated Mass. R. Prof. C. 8.4 (h). See HCR ¶ 69; BD 19 ("[W]e do not agree that the failure to correct the material prior to the March 2017 hearing violated [rule 8.4 (h)], since we have concluded that [the respondent] had no such duty").

In any event, the respondent's acknowledged failure to read his declaration in full prior to signature and submission, without more, provided sufficient grounds to find a violation of rule 8.4 (h). See § I (a) (1) (i) supra.

II. Factors relevant to sanction. a. Mitigation. The committee considered, but ultimately rejected, the following purported factors in mitigation: lack of prior discipline, achieving a favorable result for his client, adverse publicity, and payment made to the special master to remediate the case. The board adopted the committee's conclusions as to those factors, and the court agrees. See Matter of Zankowski, 487 Mass. 140, 153 (2021) ("The absence of prior discipline is to be expected"); Matter of Corbett, 478 Mass. 1004, 1004 (2017) ("[G]ood work is to be expected of attorneys; it is not a factor ordinarily considered in mitigation"); Matter of Crossen, 450 Mass. 533, 579 (2008) ("We decline, however, to assign any mitigating weight to [] negative publicity"). See, e.g., Matter of Johnson, 452 Mass. 1010, 1012 (2008) (restitution made after start of investigation into potential misconduct does not merit weight in mitigation).²²

The committee concluded that the respondent's reliance on the fee declaration template sent by lead counsel and prepared by his partners should factor in mitigation. The board

²² The dissenting committee member, based on his view that the respondent had in fact read the entire declaration prior to submission, would have also found in aggravation that the respondent testified falsely at hearing and failed to appreciate the wrongfulness of his conduct. See HCR Dissent at *9-10. In view of the committee's factual findings, however, the dissenting member's conclusions are not supported. See note 8, supra.

disagreed, as does the court. See, e.g., Matter of Hilson, 23 Mass. Att'y Disc. R. 265, 285 (2007) (reliance on advice of counsel not relevant to charge of unethical conduct); Matter of Fulwood, 22 Mass. Att'y Disc. R. 329, 330-331 (2006) (lawyer publicly reprimanded for IOLTA accounting violations by associate to whom lawyer had delegated that responsibility). Rather, the respondent's reliance on others to his detriment is relevant to his state of mind and culpability.

b. Aggravation. The committee and the board considered two factors in aggravation: adverse publicity to the legal profession and the respondent's extensive experience as an attorney. See Matter of Nissenbaum, 34 Mass. Att'y Disc. R. 410, 444-445 (2018), citing Matter of Ryan, 6 Mass. Att'y Disc. R. 275, 277 (1990) ("Relying on decisions in a number of other disciplinary matters, the committee 'recommend[ed] that the notoriety of this case should result in greater -- not lesser -- bar discipline'"); Matter of Luongo, 416 Mass. 308, 311-312 (1993) ("An older, experienced attorney should understand ethical obligations to a greater degree than a neophyte"). These factors find support in the record.

III. Sanction. In coming to an appropriate sanction, "the board's recommendation is entitled to substantial deference." Matter of Zankowski, 487 Mass. at 153, quoting Matter of Tobin,

417 Mass. 81, 88 (1994). The court, however, "decide[s] [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). See, e.g., Matter of Foley, 439 Mass. 324, 333 (2003) (sanctions must not be "markedly disparate from judgments in comparable cases" [citation omitted]). At bottom, "[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 Matter of Curry, 450 Mass. 503, 530 (2008).

The respondent argues that the six-months-and-one-day suspension imposed by the board is inconsistent with Matter of Serpa, 30 Mass. Att'y Disc. R. at 373 (sixty-day suspension for reckless misrepresentation to court in affidavit), and recent decisions, which counsel a public reprimand in instances where a lawyer's misrepresentations were neither knowing nor repeated. Bar counsel urges the court to conclude that Matter of Serpa and Matter of Foster, 492 Mass. at 764-765 (one-year-and-one-day for, among other misconduct, "reckless" misrepresentations to court by assistant attorney general), offer comparable facts for purposes of sanction.

In Serpa, an attorney appointed to represent an indigent client in a criminal matter also received a private payment from the client, in violation of his agreement with the Committee for Public Counsel Services. This was determined to be an illegal fee in violation of Mass. R. Prof. C. 1.5 (a) and 8.4 (c). The attorney later also stated falsely, under oath in an affidavit filed with the court, that he had never received any payment from the client. Relying on counsel's sworn representation, a motion judge in the criminal proceeding denied the client's motion for a new trial. The hearing committee found that the attorney's misrepresentations had been "reckless." For this misconduct, the board recommended a suspension of six months, but a single justice of this court determined that the case lacked culpability warranting a suspension of that length and instead suspended the attorney for sixty days. 30 Mass. Att'y Disc. R. at 372-373.

Here too, the court concludes that this case falls short of warranting the board's recommended sanction of six-months-and-one-day. The hearing committee found that the respondent's misrepresentation, albeit under oath and in the context of an ex parte proceeding, was negligent rather than intentional; nor was it "reckless." Compare Serpa, 30 Mass. Att'y Disc. R. at 373 ("Although not rising to the same level of culpability as an intentional misrepresentation under oath, . . . the respondent's

reckless misrepresentations under oath warrant a" suspension [emphasis added]). Moreover, it was not coupled with a separate incident of misconduct, compared to the illegal fee charged in Serpa.²³

The respondent argues that a suspension of any length would be "markedly disparate" not only from the sanction imposed in Serpa, but also from sanctions imposed in other cases involving discrete negligent misrepresentations. See Matter of Lepore, 21 Mass. Att'y Disc. R. 400, 426-427 (2005) (public reprimand for negligent misrepresentation to Department of Industrial

²³ Bar counsel's reliance on Foster is misplaced. In that matter, an assistant attorney general sent a letter to the court representing that all exculpatory evidence had been disclosed for several pending drug cases and convictions. 492 Mass. at 757. All such evidence had not been disclosed, and thousands of criminal defendants who otherwise would have been eligible for relief remained incarcerated, id. at 752; the attorney's misrepresentation was "reckless." Id. at 764-765. The attorney's license was suspended for one-year-and-one-day. While not excusing the respondent's conduct here, it is not comparable in terms of, inter alia, the respondent's level of culpability, the impact on the administration of justice, the impact on the public trust in the judicial system, or liberty interests of thousands of criminal defendants.

Indeed, of the three government attorneys disciplined in Foster, the respondent's conduct is most similar to that of Attorney Verner (public reprimand), a supervisor, who relied on misrepresentations made to him by subordinate attorneys and who failed to follow up once it became clear something was seriously amiss. 492 Mass. at 726-728. As discussed infra, the respondent's conduct is distinguishable from Verner's in that it involves additional violations of the professional rules, including a declaration under oath in what effectively was an ex parte proceeding.

Accidents and failure to disclose client's receipt of earned income while receiving workers' compensation payments, along with mitigating circumstances); Matter of Ged, 20 Mass. Att'y Disc. R. 159, 160-161 (2004) (public reprimand for negligent misrepresentations in affidavits for attorneys' fees regarding time spent on two cases). See also Matter of Wilson, 17 Mass. Att'y Disc. R. 608, 617, 620. (2001) (attorney made misrepresentations to court, some deliberate and some negligent, and communicated ex parte with judge; single justice imposed public reprimand in lieu of suspension but noted it was "a close question"). Moreover, the respondent notes that the full court has endorsed the principle that "absent aggravating and mitigating factors," suspension is generally warranted for conduct that, "in addition to causing serious or potentially serious injury, involves 'repeated failures to act with reasonable diligence, or . . . a pattern of neglect.'" Matter of Foster, 492 Mass. at 753, quoting Matter of Kane, 13 Mass. Att'y Disc. R. 321, 327-328 (1997).²⁴

As noted above, however, while the respondent's conduct was not determined to be "reckless," there are rule violations and

²⁴ See also Matter of Foster, supra at 752-753, quoting Matter of Kane, supra (public reprimand "generally appropriate where a lawyer has failed to act with reasonable diligence or otherwise has neglected a legal matter and the lawyer's misconduct causes serious injury or potentially serious injury to a client or others").

aggravating factors here that were not present in Serpa or in Foster, as regards the supervising attorney in Foster, see note 23, supra. Unlike in Serpa, the board found in aggravation that the case received significant publicity that brought disrepute to the legal profession.²⁵ Additionally, unlike in Serpa, the misrepresentation in the respondent's case was made during an ex parte proceeding, which triggers a heightened duty of candor to the court. See Mass. R. Prof. C. 3.3 (d).²⁶ Moreover, unlike in Foster, as it pertains to negligent supervision of junior attorneys, the respondent made representations under oath. The court also considers that the District Court expended significant resources unearthing the misrepresentations by plaintiffs' counsel, including the respondent's firm. Considering the foregoing, the court concludes that a suspension of thirty days is warranted.

IV. Disposition. An order of term suspension shall issue suspending the respondent for a term of thirty (30) days,

²⁵ Both the respondent and the attorney in Serpa were found to be "experienced" attorneys in their respective fields for purposes of aggravation.

²⁶ Contrast Matter of Serpa, 30 Mass. Att'y Disc. R. at 364 (former client able to oppose attorney's sworn assertion that he had never paid attorney personally by, inter alia, locating receipt showing he had paid attorney \$400 for legal work).

reinstatement contingent on receiving a passing score on the
MPRE.

By the Court,

/s/ Dalila A. Wendlandt
Associate Justice

Dated: April 1, 2025