

**IN RE: MATTER OF DAVID GLENN BAKER
BBO NO. 634889**

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

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| _____ |) | |
| BAR COUNSEL, |) | |
| |) | |
| Petitioner, |) | |
| |) | B.B.O. File No. C1-20-264659 |
| v. |) | B.B.O. File No. C1-21-269180 |
| |) | B.B.O. File No. C1-22-272396 |
| DAVID GLENN BAKER, ESQ., |) | |
| |) | |
| Respondent. |) | |
| _____ |) | |

MEMORANDUM OF BOARD DECISION

For misconduct in two bankruptcy cases and a Probate Court matter, a hearing committee recommends that the respondent’s license be suspended for three years. We agree.

FINDINGS OF FACT

We adopt in full the hearing committee’s factual findings, as they are supported by the evidence. B.B.O. Rules, § 3.53. The disciplinary case concerns three underlying matters, discussed below.

First Matter: Hoover Bankruptcy

In 2014, the respondent, David Glenn Baker, was retained by John Hoover III to represent him in a chapter 11 bankruptcy proceeding. On March 15, 2014, Baker filed a voluntary chapter 11 petition on behalf of his client, d/b/a Halloween Costume World. On the asserted basis that the debtor was improperly using cash collateral without court authorization, the United States Bankruptcy Trustee (“the Trustee”) moved to convert the bankruptcy from chapter 11 to chapter 7. Baker filed an objection to the motion on April 8, 2014. The dispute

centered on the legal nature of a lien placed on the debtor's property by the Massachusetts Department of Revenue. The Trustee argued that the debtor should have informed the bankruptcy court and obtained court permission for use of cash collateral to pay the lien. In his Objection to the Motion to Convert, Baker argued that the relevant statute, 11 U.S.C. § 363(a), limited "improper use" of cash collateral to satisfaction of consensual liens, and that the DOR lien was a statutory, not a consensual, lien. In addition to the contretemps over the DOR payments, the respondent filed a Motion for Sanctions against Bank of America, which held a mortgage on the debtor's home and sought to foreclose. The bank had sent a letter to Hoover, postponing the foreclosure sale. Citing three cases, Baker argued that the act of postponing the sale willfully violated the automatic stay. (Hearing Committee Report ("HCR"), ¶ 12). The motion for sanctions was denied.

After issuing an Order to Show Cause, on August 16, 2014 the bankruptcy court judge sanctioned Baker for both arguments: that his client had not violated 11 U.S.C. Section 363(a) when he allowed cash collateral to be used to pay DOR liens and that Bank of America had violated the automatic stay. With regard to the automatic stay motion, the judge noted that Baker's cases, "stand for the exact opposite of what he claims they stand for." (HCR ¶ 19). On the cash collateral issue, the judge found that Baker had misquoted the statutory definition of cash collateral by "omitting most of the words in the definition." (HCR ¶ 20).¹ Calling Baker's argument "absurd," the judge wrote that he had "crossed the line separating good faith legal argument from the flagrantly improper and hence Rule 9011-violating kind by quoting out of

¹ The judge ruled that both arguments violated Fed. R. Bank. R. 9011(b)(2), which provides in pertinent part that, "By presenting to the court a petition, pleading, written motion or other paper, an attorney ... is certifying that to the best of the person's knowledge, information and belief, formed after an inquiry reasonable under the circumstances ... the claims, defenses, and other legal contentions there are warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law."

context part of a statute because quoting the statute in its entirety would have disproven his premise.” (HCR ¶ 21). In addition, the court noted that Baker had been sanctioned (including monetary fines) on three prior occasions in bankruptcy court.

Rather than issue a monetary sanction, the judge ordered Baker to attend a one-semester, three-credit class in legal ethics or professional responsibility within thirteen months of the order. Appeals by Baker to the district court and the United States Court of Appeals for the First Circuit were unsuccessful, the higher court describing Baker’s arguments as a “flat out misstatement.” (HCR ¶ 28). After enrolling in a legal ethics class at New England Law Boston, he failed to complete the course. Finding that, “Mr. Baker has without any reasonable justification failed to comply with my order dated August 6, 2014,” on January 31, 2018, the judge imposed a sanction of \$10,000, which would be forgiven if he actually completed the course. Rather than return to class, Baker paid \$10,000, which the hearing committee observed was not an alternative sanction, but a penalty for failure to attend. (Bar counsel did not charge the respondent with a failure to comply with this secondary sanctions order).

Second Matter: Buscone Bankruptcy

Around May 4, 2019, Mary Buscone hired Baker to represent her in an adversary proceeding filed against her in bankruptcy court by a creditor, Ann Botelho. During the course of the litigation, Botelho served discovery on Buscone. Disputes ensued, the result of which was that the bankruptcy judge granted Botelho’s motion to compel discovery. Because Baker had failed to timely file responses to the discovery requests, the court deemed that any objections had been waived. The judge ordered Baker personally to pay a \$500 fee to a stenographer who had appeared for a deposition that Buscone had skipped. Following further motion practice, Botelho filed a second motion to compel and for sanctions, this time in the amount of \$10,920. In the

time since the initial discovery and sanctions order, Baker’s client had failed to provide the documents she was ordered to produce. In a colloquy with the judge (quoted at page 18 of the Hearing Committee Report), Baker tried to elide the question whether he had served a written response to the request for production of documents by deflecting and evading a clear answer. Finally, he admitted that he had not done so. (HCR ¶ 66). Finding that Baker was responsible for the failures by his client, the court ordered him to pay sanctions in the amount of \$6,807.60 as well as Botelho’s expenses in connection with the discovery motion (\$2,356). With significance for the present matter, the bankruptcy court’s order recited that the respondent had provided no credible argument for the failure to comply and that Botelho had been and was continuing to be prejudiced by the failure of Buscone and Baker to “follow even the most basic requirements of the discovery rules” (HCR ¶ 68) and had “obfuscated” the issues when called upon to answer for his conduct (HCR ¶ 69). As a consequence of the discovery abuse, Baker’s client was defaulted, exempting from discharge her debt to Botelho in the amount of \$91,673.45.

Baker appealed the sanctions order against him and the default judgment against his client. Ultimately, the Bankruptcy Appellate Panel and the United States Court of Appeals for the First Circuit affirmed the decisions of the bankruptcy judge. In a judgment entered on February 22, 2023, the First Circuit noted that, “[w]hat began as a missed deposition quickly snowballed into a pattern of discovery abuses ... and an overall unwillingness to ... follow the rules of discovery.” (HCR ¶ 80).

Third Matter: Sonya and Zaina Leak

The third matter involved the respondent’s representation of Sonya Leak and her daughter, Zaina Leak. Priscilla Graham, Sonya’s Leak’s mother (Zaina Leak’s grandmother), died intestate in 2011. Sonya and her sister, Jewel Swift, were appointed as personal

representatives of the Graham estate, whose only asset was a condominium in Dorchester. Sonya and Zaina lived in the condominium after Graham's death, and Sonya made the monthly mortgage payments. In 2015, when Sonya became unable to pay the mortgage, the lender foreclosed, resulting in sale proceeds higher than the amount of the debt.

In 2018, the condominium's new owner commenced an eviction case against Sonya and Zaina. Seeking to prevent the eviction, Zaina filed for protection under chapter 7 of the United States Bankruptcy Code. Although the filing should have imposed an automatic stay on all proceedings, the sheriff evicted Sonya and Zaina and their belongings were sent to a storage locker. Subsequent to the eviction, the bankruptcy court dismissed Zaina's petition due to filing errors. Zaina filed a motion to vacate the dismissal. Soon thereafter, she hired the respondent. Due to Zaina's or Baker's failure to file documents as ordered by the court, the case remained dismissed.

On February 2, 2019, Baker filed on Zaina's behalf a petition under chapter 13 of the United States Bankruptcy Code. He filed a document captioned "Disclosure of Compensation of Attorney for Debtor." The document recited that Baker would accept \$3,500 in legal fees, as well as "additional amounts as the court may allow." The \$3,500 fee covered services such as representation in adversary proceedings and other contested bankruptcy matters.

Baker filed a second bankruptcy case for Zaina, and Sonya paid him approximately \$1,150 in legal fees and expenses on Zaina's behalf, a fact that he did not disclose to the court. In response to a question on the Disclosure Form about "sources of attorney compensation," Baker checked "N/A." Baker did not obtain a written waiver from Zaina with respect to her mother paying her legal fees.

On Zaina's behalf, Baker filed an adversary proceeding against Sonya's lender, the new owner of the condominium, and the sheriff who evicted them. Not only did he name Zaina as a plaintiff, he named Sonya as well and alleged wrongful foreclosure, violation of Mass. G.L. c. 239, § 4 (governing evictions), and violation of the automatic stay. After the court dismissed Sonya's claims for lack of jurisdiction, Zaina settled with the defendants for \$40,000. Of the total, \$10,000 was allocated to Baker as a legal fee, even though this amount exceeded the amount on the Disclosure Form and even though Zaina and Baker had not signed a retainer agreement in this amount.

On March 13, 2019, Sonya's lender filed an interpleader action in Superior Court for instructions on disbursing the excess foreclosure proceeds (approximately \$69,000). Despite not having a retainer agreement with Sonya, Baker filed an appearance and an answer and counterclaim on her behalf, which the court dismissed. The court ruled that the Graham estate was entitled to \$34,735.40 of the excess sales proceeds. Baker received a check in that amount from the lender's lawyer, but he made no meaningful effort to inform Sonya and her sister Jewel Swift of this fact. The check became stale.

Apparently on his own behalf, on May 12, 2021, Baker filed an interpleader action in the Graham estate in Probate Court. He sought attorneys' fees in the amount of \$4,060 from Sonya's share of the excess proceeds for his work in the Superior Court and Housing Court matters (the latter arising out of the eviction). He suggested that, from the \$34,735.40 he was holding, he would pay Jewel \$17,367.70, himself a fee of \$4,060, and Sonya the balance of \$13,307.70. Although he served Sonya and Jewel by email, there is no proof that he served the lawyer who was representing them. Starting on May 11, 2022, he filed a series of Probate Court pleadings in which he identified himself as Sonya's attorney or as the estate fiduciary. At that

time, he did not represent Sonya in the Probate Court or any matter. His last engagement on her behalf ended in January 2021 (HCR ¶ 131). After Sonya and Jewel settled their Probate Court matters, Baker withdrew.

PROCEDURAL HISTORY

Bar counsel filed a three-count Petition for Discipline. Count One alleged misconduct in connection with the Hoover bankruptcy, Count Two the Buscone bankruptcy, and Count Three the Leak and Swift matters. Bar counsel filed a motion to preclude Baker from contesting the facts in Count One on the basis that they had been established in the Bankruptcy Court. The board chair allowed the Motion for Issue Preclusion. As a result of the decision, the facts in paragraphs 5-25 of the Amended Petition for Discipline were established.

After two days of testimony, the hearing committee found that bar counsel had met his burden to prove the facts alleged in the Petition.

On Count One, the committee concluded that bar counsel had proven that Baker had filed a frivolous claim in his motion for sanctions in the Hoover bankruptcy, thereby violating Rule 3.1 of the Massachusetts Rules of Professional Conduct. It also concluded that he misrepresented applicable law to the bankruptcy judge in both his Objection to the Motion to Convert and his Motion for Sanctions, rejecting as not credible his contention that he had advanced the arguments in good faith. The misrepresentation of the law (citing cases for the incorrect proposition and excising key language from a quoted statute) violated Mass. R. Prof. C. 3.3(a)(1). The committee concluded that Baker failed to obey the ensuing sanctions order in contravention of Mass. R. Prof. C. 3.4(c). Baker admitted that same conduct violated Mass. R. Prof. C. 8.4(d) (conduct prejudicial to the administration of justice), and the hearing committee

concluded that the misconduct in the Hoover matter adversely reflected on Baker's fitness to practice law (Mass. R. Prof. C. 8.4(h)).

On Count Two, the hearing committee concluded that Baker's knowingly false statement to the bankruptcy court about compliance with discovery violated Mass. R. Prof. C. 3.3(a)(1). The same behavior violated Mass. R. Prof. C. 3.4(c) and (d) in that Baker failed to comply with a legally proper discovery request and a court order. It rejected his argument that the requests were abusive and excessive as impertinent. As on Count One, the conduct also violated Rule 8.4(d) and (h) according to the hearing committee.

Turning to Count Three, the committee concluded that Baker had failed to take meaningful steps to distribute the excess foreclosure proceeds to Sonya Leak in violation of Mass. R. Prof. C. 1.3 (lack of reasonable diligence) and 1.15(c) (promptly notify and distribute trust funds in which client or third party has an interest). According to the committee, Baker also violated Rule 1.5(b)(1) by not providing his client a written retainer agreement and Rule 1.7(b) (concurrent conflict of interest) when he failed to obtain Zaina's consent to Sonya paying her legal bills (although the committee characterized the violation as "technical" since the interests of mother and daughter were "more or less congruent"). (HCR ¶ 147). Lastly, the committee concluded that Baker violated Mass. R. Prof. C. 3.3(a)(1) as well as 8.4(d) and (h) when he intentionally misrepresented himself to the Probate Court as Sonya's attorney and the estate's fiduciary.

According to the hearing committee, several charges in Count Three were not proven. These included an allegation that Baker failed to consult with his client Sonya about the status of her case (Mass. R. Prof. C. 1.4(a)) and that he had charged an excessive fee in violation of Mass.

R. Prof. C. 1.5(a) when he apparently charged Sonya for work that he had agree to do on a pro bono basis.

Similarly, the committee rejected an argument by bar counsel that Baker violated Mass. R. Prof. C. 1.8(f) (accepting compensation from a non-client) because it had not been charged in the Petition for Discipline. Along the same lines, because bar counsel had not charged that Baker's unauthorized representation of Sonya in order to obtain an unlawful fee violated Mass. R. Prof. C. 1.5(a), 3.3(a)(1) and 1.16(a)(3) (duty to withdraw from engagement after discharge), the hearing committee declined to find violations of those rules as to that specific misconduct (although as discussed above, the committee found other facts supporting the Rule 3.3(a)(1) charge).

The respondent raised several facts in mitigation, all of which the hearing committee rejected. The committee noted that a favorable reputation – as claimed by Baker – is not considered a special mitigating factor under our case law. Although Baker argued that he suffered from health problems, he introduced no evidence of such. The committee also rejected the argument that the respondent had been “punished sufficiently” (HCR ¶ 164) as a misconception of bar discipline. Lastly, the committee rejected Baker's argument that the asserted delay in charging misconduct for the events in Count One should be considered in mitigation, noting that delay may mitigate a sanction in limited cases, but only where it causes prejudice to the respondent.

There were several aggravating factors: Baker's experience as a lawyer; the violation of multiple rules of professional conduct; prior discipline; lack of insight into his own misconduct (including a propensity to blame others); lack of candor toward the committee; harm caused by his misconduct; and greed (with regard to the Leak matter in Count Three).

Based on all of the above, the hearing committee has recommended a license suspension of three years.

The respondent has appealed. Bar counsel has not. We will discuss Baker's arguments later in this opinion. Briefly summarized, he principally challenges the hearing committee's factual findings particularly with respect to his state of mind, arguing that the committee selectively relied on some facts while ignoring others. He also blames his counsel (who withdrew prior to the trial) and bar counsel for failing to provide medical records, which he contends would have supported his argument in mitigation and would have explained the failure to complete the court-ordered ethics class. Also as to mitigation, Baker asks us to consider the alleged delay in bringing the charges in Count One. He asks us to dismiss the petition or, in the alternative, impose a public recommend.

LEGAL CONCLUSIONS

I. The Hearing Committee's Legal Conclusions Concerning the Respondent's Rules Violations Are Supported By The Evidence

In his appeal brief and at oral argument, Baker challenges the finding that he made intentional misstatements of fact and law in the Bankruptcy Court and the Probate Court. The argument is unpersuasive. As set forth in the hearing committee report, the evidence was substantial that the misrepresentations were knowing and intentional, not the result of innocent "mistakes" as Baker argues on appeal.

As to Count One, he takes issue with the finding that he knowingly misrepresented case law to the bankruptcy judge. The fact of his knowledge was established by an order of issue preclusion by the board chair. Independently, we have reviewed the documents in the Hoover case. We agree with the bankruptcy judge that Baker's arguments were brazen attempts to

mislead the court, for example by placing language from case law in quotation marks,² when in fact the language was not a quotation but a “paraphrase,” and by citing cases for the exact opposite proposition for which they stood. The bankruptcy judge’s sanctions order was affirmed on appeal by both the federal district court and the United States Court of Appeals for the First Circuit.

Also established was the fact that Baker failed to attend the ethics class mandated by the judge. On appeal, he argues that he complied with the order because, instead of attending the class, he paid a \$10,000 fine. The argument misconstrues the nature of the underlying order. The fine was not an alternative to attending the class; rather it was a penalty for truancy. There is no dispute that Baker failed to attend the class.

Accordingly, we adopt the hearing committee’s legal conclusion that Baker violated Mass. R. Prof. C. 3.3(a)(1) by knowingly making false statements of law to the bankruptcy judge.³ We further adopt the conclusion that he violated Mass. R. Prof. C. 3.4(c) when he failed to attend the ethics class.⁴ Baker does not explicitly challenge the legal conclusions that his conduct violated Mass. R. Prof. C. 8.4(d) and (h), but we infer he would do so based on his disputes about the other findings and conclusions. For the same reasons, we adopt the hearing committee’s decision on Rule 8.4.

Similarly, the evidence supported the findings on Counts Two and Three, which were not the subject of the issue preclusion order. On Count Two, the committee had ample evidence that

² With admirable restraint and understatement, the judge observed, “My understanding of the concept of paraphrasing is that you don’t put the language in quotation marks.” (Hearing Exhibit 6, Bates Number 90, Transcript of Hearing on July 8, 2014, page 14, lines 18-19).

³ In addition to relying on the court’s finding of knowing misrepresentation, the hearing committee based its finding on its assessment of the respondent’s credibility. (HCR para. 42). We will not touch this finding. B.B.O. Rules Section 3.53; Matter of Balliro, 453 Mass. 75, 83-84 (2009).

⁴ Even if Baker’s assertion were correct and he satisfied his obligation by paying a \$10,000 fine, there is sufficient evidence of frivolous arguments on Count One and myriad misconduct on the other counts to support the hearing committee’s legal conclusions. In other words, the point about the ethics class is immaterial.

Baker refused in bad faith and by advancing frivolous arguments to comply with the bankruptcy judge's discovery orders. (HCR ¶ 84-86). On appeal, he argues that the discovery requests at issue were abusive. The argument misses the mark. Absent an order by a judge that his client need not comply, she was required to do so. Moreover, even if the requests were improper (an issue on which we do not and need not opine), the nature of the requests does not change the reality that Baker's arguments were frivolous. As on Count One, the committee's findings amply supported the legal conclusion that he violated Mass. R. Prof. C. 3.3(a)(1) as well as Mass. R. Prof. C. 3.4(c) and (d) by failing in bad faith to comply with court orders and discovery requests.

The record from the bankruptcy court reveals a pattern of discovery abuse ... persistent failures to produce documents and information, necessitating needless motion practice. Despite a court order that all discovery objections had been waived, Baker continued to object to requests. His written answers were unresponsive and evasive.⁵ Despite a court order that he serve a written response to a document request and produce documents, he produced nothing. He and his client failed for months to respond to straightforward discovery and then obfuscated

⁵ Here is just one example, taken from Botelho's Motion for Sanctions (Hearing Exhibit 20, Bates Number 175):

Interrogatory No. 8: "Identify the employers, including all insurance companies who provided you, or any company of which you were a principal, an IRS Form 1099(s), and medical providers who provided you a W-2(s) during the years beginning January 1, 2011 to the present."

Answer to Number 8: "I have previously submitted my tax returns to you. I never received payments from insurance companies. My job was always thru an agency that paid me directly and sent a 1099. These have been submitted with my tax returns. I do not have records that date back to 2011 nor do /feel they apply in this matter and the IRS does not require me to keep records going back that far."

Botelho's Argument: "Regarding Defendant's Response to Interrogatory # 8, the Defendant testified in her long-suspended deposition at page 14, lines 2 through 17 that she was then working (in March of this year, 2020) for 2 employers: one that was "paying her a salary", and another who was providing her a 1099. And the Defendant confirmed that second "employer" was the only one providing her a 1099. So, her answer that she has only received 1099s is not accurate.² Additionally, she fails to identify any employer including the "agency" referenced in her answer; but simply states she has not received payments from insurance companies. (See Deposition Pages 12-14, attached hereto as Exhibit A.) The point of this interrogatory is to rebut a defense the Defendant has raised and to show a lack of credibility. She continues to avoid or brush off. Lastly, she appears to interpose an objection based on relevance. That is an improper objection in discovery, and Attorney Baker was instructed all objections were waived. As a professional, he should not have allowed these type responses."

the issues when called to task. As a result, the court imposed sanctions on Baker (not his client) in the amount of \$6,807.60 and entered a judgment against the client.⁶ What is clear from the record in the bankruptcy court is that Baker was playing games with discovery, causing a waste of time and money.⁷ His gamesmanship was not without consequences for his client. As a result of the rampant discovery abuse, the bankruptcy court (affirmed ultimately by the Court of Appeals), entered a default judgment against Buscone, exempting from discharge her debt to Botelho in the amount of \$91,673.34. While we do not know if Buscone had strong defenses to

⁶ Affirming the judgment, the Bankruptcy Appellate Panel recognized that imposing a default judgment for discovery abuse is an extreme sanction. It felt justified in doing so in light of Baker's excessive misconduct. (Hearing Exhibit 28, Bates Numbers 355-359). The panel observed that, "[D]isobedience of court orders, in and of itself, constitutes extreme misconduct ... Buscone's multiple discovery infractions 'in the face of pointed warnings and the absence of any compelling explanation', standing alone, are enough to support the bankruptcy court's imposition of default judgment as a sanction." (*Id.*, at 358 (citations omitted)).

⁷ This colloquy, which was quoted by the Hearing Committee (HCR ¶66, *quoting* Hearing Exhibit 21, Bates Numbers 201-203), encapsulates Baker's dismissive attitude about his obligations as an officer of the court:

THE COURT: Mr. Baker, did you file a Rule 34 response by October 20th to RF, Requests for Production 10 through 14? And I, I warn you, Mr. Baker, to be very, very careful now with your response.

MR. BAKER: My response is that I believe that we did. I believe that -- and our responses are, are set forth in the motion and I -- as I said before, I have --

THE COURT: Forget about the motion. Forget about the motion. I don't want to hear about the motion. So I, if I order you right now to produce to me a copy of your Rule 34 written response, you're going to be able to do that? If I order you right now to e-mail that to my FJB e-mail address, you're going to be able to accomplish that, is that correct?

MR. BAKER: Yes. It will have the wrong numbers, but yes.

THE COURT: What do you mean "the wrong numbers"?

MR. BAKER: It - because -- because it had -- hold on. Hold on just one second. (Pause) Okay. In the answers, in the answers that we provided -- they are No. 8 --

THE COURT: The answers to what? The response, the written response to the RFP, right? That's what we're talking about, not answers to interrogatories. And I know you understand what I'm saying.

MR. BAKER: Yes, I do. Yes, yes, yes. And I'm looking in my file. (Pause) I apparently -- not document productions.

THE COURT: Mr. Baker?

MR. BAKER: Yes.

THE COURT: I believe that you, I believe you have made misrepresentations to me today, all right? I have a record of this. All right. I'm going to -- I don't need to hear any more. This is not appropriate behavior. I asked you very clearly about whether you filed a written response under Rule 34. You know what that is. You told me that you did. Now you tell me you didn't. This is very concerning to me.

MR. BAKER: And to me as well.

THE COURT: This is inappropriate behavior. All right. I'm going to give you one last chance. Did you or did you not -- and tell me the truth -- file a, serve a Rule 34 compliant written response 18 pursuant to my order with respect to Requests for Production 10 through 14? Yes or no.

MR. BAKER: No. My mistake. No, your Honor.

the debt, she was precluded from presenting them due to Baker's misconduct. Even the loss of a weak claim constitutes harm under our jurisprudence. Matter of Long, 24 Mass. Att'y Disc. R. 435, 444-445 (2008).

On Count Three, the hearing committee found that Baker misrepresented to the Probate Court that he was Sonya Leak's lawyer and an estate fiduciary. Neither statement, which was signed under the pains and penalties of perjury, was true; the misrepresentations, in the words of the committee, were "brazen." (HCR ¶ 158). Once again, the factual findings support the legal conclusion that Baker violated Rules 3.3(a)(a), 8.4(d), and 8.4(h). In addition to those charges, bar counsel alleged – and the committee found – that Baker delayed sending to Sonya Leak and Jewel Swift approximately \$35,000 in excess foreclosure funds that were due to them. The delay violated Mass. R. Prof. C. 1.3 and 1.15(c). We find no merit in Baker's appellate argument that the delay was justified because he was awaiting instructions from the Probate Court. The flaw in this argument is that he did nothing with the check and allowed it to become stale. In addition, there is no evidence contrary to the finding that Baker violated Mass. R. Prof. C. 1.5(a) by failing to provide his client a document describing the engagement.

In sum, we adopt the hearing committee's conclusions that the respondent violated multiple Rules of Professional Conduct. We reject Baker's argument that the evidence did not support the legal conclusions.

II. The Hearing Committee Correctly Rejected The Respondent's Mitigation Defense

We need spend little time addressing Baker's argument that his medical condition should have been considered in mitigation and as an excuse for failing to attend the ethics course ordered by the bankruptcy judge. Where a severe medical condition causes misconduct, we have

recommended (and the SJC has agreed), that the condition may mitigate the sanction. *See, e.g., Matter of Dodd*, 21 Mass. Att’y Disc. R. 196, 209 (2005).

The problem in this case is that Baker provided no information or documents to substantiate his argument. It is a respondent’s burden to prove mitigation by a preponderance of the evidence. B.B.O. Rules, § 3.28; *Matter of Kydd*, 38 Mass. Att’y Disc. R. 250, 260 (2022); *Matter of Haese*, 468 Mass. 1002, 1008, 30 Mass. Att’y Disc. R. 196 (2014). As a result of Baker’s lack of evidence, the hearing committee had no basis to consider his medical condition. His attempts to blame others – his lawyer (who withdrew before the hearing) and bar counsel – are frivolous. In particular, bar counsel has no obligation to produce a respondent’s own records for him.

III. Count One Is Not Barred By “Laches” And Any “Delay” Is Not Mitigating

Baker argues on appeal that the sanction should be mitigated due to the delay in the proceedings. The argument pertains only to Count One, the events of which started in 2014. It would not mitigate the sanction for Counts Two and Three, which are based on events in 2019 and 2020. As with the alleged medical condition discussed above, delay may be considered as a factor in mitigation. The respondent bears the burden of proving both significant delay and consequential prejudice. *Matter of Grossman*, 448 Mass. 151, 152, 23 Mass. Att’y Disc. R. 242, 244 (2007).

The events of Count One took place between 2014-2018. Although we are not privy as to when bar counsel opened his investigation (bar counsel’s investigation is confidential), the Petition for Discipline was filed in 2022. Giving the benefit of the doubt to Baker, this was approximately eight years after the sanctions order (although again, we do not know when the matter was first brought to bar counsel’s attention or by whom). Eight years is not an

insignificant interval, assuming bar counsel were aware of the sanctions order at the time it entered. In cases involving court orders, bar counsel may commence his investigation and (if appropriate) file a Petition for Discipline but request a stay pending resolution of the underlying litigation. Doing so avoids potential prejudice if witnesses become unavailable.

The fundamental problem with Baker's laches argument is that he has demonstrated no prejudice from the asserted "delay." He points to no witnesses who became unavailable. He directs us to no problems from faulty memory. He identifies no documents that got lost in the interim. Accordingly, we agree with the hearing committee that the alleged delay is not a mitigating factor.

IV. The Hearing Committee Correctly Considered Multiple Aggravating Factors

We discern no challenge by Baker to the hearing committee's consideration of aggravating factors. Nevertheless, our review of a committee report is plenary, and we have independently reviewed the committee's conclusions. We agree with all of them: the respondent's extensive experience as a lawyer; the multiplicity of rules violations; prior discipline; lack of insight; lack of candor; greed; and harm.

As did the hearing committee, we are particularly bothered by Baker's proclivity to blame others ... bankruptcy judges; opposing counsel; his former lawyer in the disciplinary matter; and bar counsel. Whether described as lack of candor or lack of insight, the leitmotif of the respondent's defense is that he is innocent and irreproachable and that the blame should be placed on others. It is unclear whether this lack of responsibility is the respondent's go-to litigation strategy or (more logically) an implicit refusal to examine his own conduct and take responsibility. We have opined that respondents are entitled to defend their conduct, and we will not automatically hold against an unsuccessful respondent the fact that he or she advanced a

defense that we found unpersuasive. However, this is not simply a case of an unsuccessful theory of defense. There is a through-line running from the underlying matters through the oral argument before us. In every instance, the respondent pointed the finger at others and steadfastly refused to accept responsibility.

RECOMMENDED DISPOSITION

“The primary purpose of the disciplinary rules and accompanying proceedings is to protect the public and maintain its confidence in the integrity of the bar and the fairness and impartiality of our legal system.” Matter of Foster et al., 492 Mass. 724, 746; 39 Mass. Att’y Disc. R. ____ (2023). “The appropriate level of discipline is that which is necessary to deter other attorneys and to protect the public.” Matter of Curry, 450 Mass. 503, 520-521, 24 Mass. Att’y Disc. R. 188, 223 (2008). As we do in every matter, we endeavor to recommend a sanction that is not markedly disparate from similar situations, giving due deference to the individual circumstances of each case and respondent. Matter of Foley, 439 Mass. 324, 333, 19 Mass. Att’y Disc. R. 141 (2003); Matter of the Discipline of an Attorney, 392 Mass. 827 (1984). Our primary focus is “the effect upon, and perception of, the public and the bar.” Matter of Finnerty, 418 Mass. 821 829, 10 Mass. Att’y Disc. R. 86, 95 (1994) *citing* Matter of the Discipline of an Attorney, *supra*.

With these principles in mind, we agree with and adopt the hearing committee’s recommendation of a three-year license suspension. We arrive at this conclusion by examining each of the discrete violations of the rules.

We start with the worst of the offenses: the numerous false statements of fact and law, in violation of Mass. R. Prof. C. 3.3(a)(1) as well as 8.4(c), 8.4(d) and 8.4(h). The presumptive sanction for intentional fabrications to a court is a one-year suspension. If the false statement is

made under oath, the presumptive suspension increases to two years. Matter of Diviacchi, 475 Mass. 1013, 1020-1021, 32 Mass. Att’y Disc. R. 268, 280-281 (2016); Matter of Macero, 27 Mass. Att’y Disc. R. 554 (2011); Matter of Neitlich, 413 Mass. 416, 8 Mass. Att’y Disc. R. 167 (1992). In addition to the multiple misstatements of law on Counts One and Two,⁸ Baker lied under oath to the Probate Court (Count Three). Specifically, he misrepresented on a form filed in court that he represented Sonya Leak and that he was an estate fiduciary. Both fabrications are particularly egregious

Honesty is of utmost importance to the bar, the public, and the administration of justice. The system would collapse if courts could not rely on the statements of lawyers. As the Supreme Judicial Court has observed, “As an officer of the court, an attorney is a ‘key component of a system of justice,’ ... and is bound to uphold the integrity of that system by being truthful to the court and opposing counsel.” Matter of Neitlich, *supra*, 413 Mass. at 423, 8 Mass. Att’y Disc. R. at 175.

Baker’s misstatements were not aberrant. They were not one-time events. He spoke and wrote numerous lies in three separate matters. And his lying ways went back years before the events in this case. As the bankruptcy judge noted when imposing sanctions in the Hoover bankruptcy, Baker had been sanctioned on three prior occasions in that court by different judges. Under the circumstances, we would recommend nothing less than the presumptive sanction of two years.

Moving on, we have adopted the hearing committee’s conclusion that Baker violated Mass. R. Prof. C. 3.4(c) by knowingly disobeying court orders and Mass. R. Prof. C. 3.4(d) by

⁸ The hearing committee recognized that most cases under Rule 3.3(a)(1) involve false statements of fact, not misrepresentations of the law (HCR page 45). As comment [4] to the rule notes, there is no practical distinction between factual and legal misstatements.

failing to make a good faith effort to respond to discovery. Sanctions for violations of Rule 3.4(c) vary from a public reprimand, Matter of Campbell, 24 Mass. Att’y Disc. R. 86 (2008) (public reprimand with mitigation), to license suspensions exceeding one year. Matter of Grayer, 483 Mass. 1013, 35 Mass. Att’y Disc. R. 231, 236 (2019) (one year and one day suspension for varied misconduct including violation of court order, aggravated by prior discipline); Matter of McGuirk, 29 Mass. Att’y Disc. R. 449 (2013) (one year plus one day suspension for filing to make court-ordered accountings). As with honesty before a tribunal, respect for, and obedience of, court orders is a pillar of our judicial system. And as with Baker’s numerous lies, his violations of court orders were not isolated incidents. As described in Count Two, they were apparently part of his litigation modus operandi. Reading the motions and hearing transcripts, one senses the frustration of the judge and opposing counsel in what should have been a straightforward case. Baker’s dismissive attitude increased costs and prolonged the matter.

We also have adopted the hearing committee’s conclusion that the respondent violated Mass. R. Prof. C. 3.1 for filing frivolous pleadings. Standing alone, this violation would likely warrant an admonition. Admonition 02-11, 18 Mass. Att’y Disc. R. 629 (2002). However, as in this case, violations of Rule 3.1 rarely take place in isolation. When combined with other misconduct, the standard license suspension ranges from 18 months to two years. Matter of Kaplan, BBO File No. 2024-020 (May 28, 2024) (Dewar, J) (18-month suspension for violations of Rules 3.1, 3.3(a)(1), 3.4(c), 8.4(c), 8.4(d) and 8.4(h)); Matter of Belanger, 37 Mass. Att’y Disc. R. 25 (2021) (two-year suspension for violations of Rules 3.1, 3.4(c), 8.2, 8.4(c), 8.4(d) and 8.4(h)).

The other rules violations ordinarily would result in public reprimands or admonitions. This does not diminish their gravity. Isolated conflicts of interest would warrant a public

reprimand. Matter of Carnahan, 449 Mass. 1003, 1005, 23 Mass. Att’y Disc. R. 56, 60 (2007) (public reprimand for conflict of interest that did not involve self-dealing or substantial injury). If there is no harm, we typically have imposed admonitions for conflicts of interest.⁹ Delays in disbursing funds in violation of Rule 1.15(c) would result in an admonition if unaccompanied by other misconduct. Admonition Number 22-18, 38 Mass. Att’y Disc. R. 641). We generally impose an admonition for an unadorned failure to provide a client with a writing that sets forth the terms of engagement. Admonition Number 20-02, 36 Mass. Att’y Disc. R. 487 (2020).

We next consider the several aggravating factors. They are particularly salient here. As we discussed, Baker has refused to recognize and acknowledge his misconduct. He demonstrates not a scintilla of insight or self-reflection. He has been untruthful with the hearing committee and at oral argument before the board. Not only has he been disciplined previously, the record demonstrates three instances of lying to a court where discipline did not result. The lack of discipline in those situations does not diminish our concern.

Based on the presumed sanctions for each series of wrongdoing as well as the aggravating factors, we agree with and adopt the hearing committee’s recommendation to the Supreme Judicial Court to suspend respondent Baker’s law license for three years. We consider this recommendation on the lighter side of what would be justified by the facts of the case in light of the numerous rules violations and the repeated nature of the misconduct.

⁹ Bar counsel charged that Baker’s acceptance of a fee payment from Sonya Leak on behalf of Zaina Leak violated Mass. R. Prof. C. 1.7(b) in that Zaina did not consent in writing to having Sonya pay. In a similar case under Mass. R. Prof. C. 1.8(f) (lawyer shall not accept payment from third party absent informed consent and other requirements), we imposed an admonition on a lawyer who accepted payment from an insurance company to represent clients with benefits claims. Admonition Number 04-44, 20 Mass. Att’y Disc. R. 743 (2004).

CONCLUSION

For all of the foregoing reasons, an Information shall be filed in the County Court recommending that the respondent, David Glenn Baker, be suspended from the practice of law for three years.

THE BOARD OF BAR OVERSEERS

By: /s/ Frank E. Hill, A.A.A.
Frank Hill
Secretary

Date: October 15, 2024