

IN RE: MATTER EDWARD J. COLLINS
BBO No. 092240

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

BAR COUNSEL,

Petitioner,

vs.

EDWARD J. COLLINS, ESQ.,

Respondent.

C2-20-265993

MEMORANDUM OF BOARD DECISION

For the respondent's serial neglect and frivolous litigation in a single, protracted matter, a hearing committee has recommended a suspension of his law license for 18 months. The underlying matter involved a dispute between the respondent's client and her step-children, who evicted her from her home after the death of her husband. After failing to file an appeal brief in the original case and the entry of a final judgment against his client, the respondent engaged in a multi-front attack on the judgment in state and federal courts, repeating the same arguments that he was precluded from making. He continued to litigate on behalf of his erstwhile client even after she terminated him. The committee concluded that the respondent violated Rules 1.1, 1.4, 3.1, 3.4(c), 1.16, and 8.4(d) and (h). He also violated Rule 1.5 due to the absence of a written fee agreement with the client. The salient facts were established by the board chair's allowance of bar counsel's Motion for Issue Preclusion. The committee found several aggravating factors and none in mitigation. In their entirety, we adopt the hearing committee's findings, conclusions, and recommendation.

Factual and Procedural Background

We adopt the hearing committee's factual findings in their entirety. They are supported by the evidence.

Teodora Caraker married Edward Caraker in 1981. Both had been married previously, and both had children from their prior marriages. Edward owned a home at 18 Parmenter Road in Wayland. The property became their primary residence when they married. In 1984, Edward deeded the property to himself and his four adult daughters as joint tenants with the right of survivorship. According to the hearing committee's findings of fact (which we adopt), Teodora Caraker was not aware of the transfer until after her husband's death on August 31, 2014.

There apparently was no love lost between Teodora Caraker and her late husband's four daughters. At the end of his life, Edward was hospitalized and then discharged to the care of one of his daughters, with no notice to his wife. Teodora was not told of her husband's death until about one week after he died and after the funeral. At the same time as she learned this news, she was ordered to vacate the home she had lived in with Edward for three decades. The hearing committee found that the daughters harassed Teodora physically and tried to intimidate her.

In the midst of this trauma, Teodora turned to the respondent, who lived on her street in Wayland. The respondent had been a member of the Massachusetts bar since 1974 and the federal courts in Massachusetts since 1975. Teodora saw the respondent as her "white knight." The respondent agreed to represent Teodora, but did not provide a written fee agreement. According to the hearing committee's findings, the respondent advised Teodora that he would charge her one-third of any recovery above the value of her interest in the home.

We set forth below (more or less chronologically) the key events in the multi-faceted litigation that led to this disciplinary case:

State Court Litigation

- In December 2014 (about four months after Edward's death), the daughters served Teodora with a Notice to Quit.
- In March 2015, the daughters filed a summary process action in Framingham District Court.
- Representing Teodora, the respondent answered the summary process action by asserting several affirmative defenses, including challenging the validity of the transfer of the home from Edward to himself and his daughters; asserting his client's asserted homestead rights under Mass. G.L. c. 188, §§ 4, 7, 10 and 13; and arguing that as surviving spouse Teodora had the right to "recapture real estate wrongfully conveyed to others." Mass. G. L. c. 191, § 15. Based on the foregoing, he argued that the Framingham District Court had "no subject matter jurisdiction" to evict a "surviving spouse."
- On June 2, 2015, a bench trial took place in Framingham District Court.
- On or about June 10, 2015, the court issued a judgment in favor of the daughters and against Teodora. The respondent maintained that the judgment was "void" due to the lack of subject matter jurisdiction.
- The respondent filed a timely appeal of the judgment in the Appellate Division of the District Court.
- On June 1, 2015, the day before the bench trial in Framingham, the respondent filed a separate action in the Middlesex County Probate and Family Court on behalf of his client against the daughters. Among other things, the Probate Court

Complaint sought a declaration that Teodora had an ownership interest in the house, pursuant to the same arguments made in Framingham District Court.

- On December 18, 2015, the Probate Court judge granted the daughters' motion for Judgment on the Pleadings and dismissed Teodora's complaint. The judge rejected the respondent's arguments that the real estate was part of the probate estate and held that the property "Would not appear to be subject to an election pursuant to G.L. c. 191, § 15."
- The respondent filed a timely Notice of Appeal from the Probate Court judgment in the Appeals Court.
- The Caraker daughters filed litigation of their own. On June 17, 2016 (after dismissal of the Probate Court action against them), they filed a case in Middlesex Superior Court seeking use and occupancy payments from Teodora for the period after their father's death. The respondent did not file an answer, and a default order entered on July 19, 2016.
- On August 12, 2016, a default judgment entered. Pursuant to the Superior Court judgment, Teodora was required to pay for her use and occupancy of the property following Edward's death.
- On July 28, 2016, the Appellate Division affirmed the judgment of the Framingham District Court.
- On August 11, 2016, the respondent appealed the decision of the Appellate Division to the Massachusetts Appeals Court.
- On September 8, 2018, the respondent filed a Notice of Appeal of the Superior Court default judgment.

- On December 14, 2016, the Appeals Court consolidated the three appeals – from the Framingham District Court, the Middlesex Probate and Family Court, and the Middlesex Court.
- Despite an extension of time, the respondent failed to file a brief in the Appeals Court. On February 27, 2017, all of the appeals were dismissed by the Appeals Court for lack of prosecution. The respondent did not inform his client of his neglect or the dismissal of her appeals. As result of the dismissal, the three state court judgments became final.
- On or about March 22, 2017, the Framingham District Court issued an execution of its judgment for possession of the Caraker property. In early April 2017 Teodora received an eviction notice. At about this time, the respondent contacted a bankruptcy lawyer, who agreed to file a bankruptcy petition on behalf of Teodora. The respondent believed that a bankruptcy petition would stop the eviction.

Bankruptcy Litigation

- On April 5, 2017, bankruptcy counsel filed a chapter 7 case in the United States Bankruptcy Court for the District of Massachusetts. Pursuant to 11 U.S.C. § 362, the filing automatically stayed the eviction and prevented the daughters from enforcing the Framingham court’s execution.
- On April 11, 2017, the daughters filed a motion in Bankruptcy Court for a lifting of the automatic stay. The motion was allowed on June 1, 2017, allowing the eviction to proceed.

- On June 13, 2017, the respondent filed his appearance on behalf of Teodora in the Bankruptcy Court.
- On June 15, 2017, the respondent appealed to the United States District Court for the District of Massachusetts the decision of the Bankruptcy Court to lift the automatic stay.¹ He also filed in the Bankruptcy Court a Motion for Clarification of its order lifting the stay, complaining that the court had not written findings or conclusions in support of its order that lifted the automatic stay. On June 16, 2017, the bankruptcy judge denied the Motion for Clarification and advised the respondent to file a motion pursuant to Bankruptcy Rule 8007 if he wanted to seek a stay pending appeal of the order. The respondent did not file the motion suggested by the Bankruptcy Court.
- On June 20, 2017, Teodora was evicted.

Further Litigation Post-Eviction

- On July 1, 2017, Teodora's bankruptcy counsel (under the direction of the respondent) filed an Objection to Proofs of Claim, asserting that Teodora was a tenant in common with the daughters. In response, on August 15, 2017, the daughters filed a motion for sanctions, complaining that Teodora's assertion of ownership in the home was frivolous in light of the decisions of the state courts and the eviction that had occurred earlier in the summer.
- On August 8, 2017, the daughters filed a motion in federal district court to dismiss Teodora's appeal of the order that lifted the stay, since it was moot on account of

¹ The federal procedural rules provide two alternative avenues for appealing a decision of a bankruptcy judge. A party may file an appeal in the United States District Court for the jurisdiction where the bankruptcy judge sits. Alternatively, an appeal may be pursued with the Bankruptcy Appellate Panel. The respondent chose the first option, appealing directly to federal court.

the eviction. The respondent did not file a response to that motion. Instead, he filed an appellate brief in the federal court, arguing the failure of the bankruptcy judge to make findings of fact or conclusions of law. He did not address the mootness issue raised by the daughters in the motion to dismiss the appeal.

- Back in state court, in August 2017 the daughters filed a Small Claims action to recover the costs associated with the eviction. They also filed an action in Middlesex Superior Court to quiet title. In response, the respondent asserted defenses as to Teodora's purported ownership interests that already had been decided against his client.
- On November 14, 2017, the federal court judge dismissed Teodora's appeal from the Bankruptcy Court, noting that Teodora had not moved for a stay pending appeal and that, "the state summary process action and its authorized eviction having been completed, this Court does not have the authority to restore the appellant to the property. Because no meaningful relief can be granted to the appellant, this appeal is moot." (HCR, fn. 5).
- On December 14, 2017, the respondent appealed the district court's decision to the United States Court of Appeals for the First Circuit. After missing the briefing deadline and then filing a late and non-conforming brief, the respondent eventually filed a brief on May 21, 2018.
- On January 29, 2020, the First Circuit Court of Appeals affirmed the judgment of the district court, concluding that Teodora's challenge was moot. Further, the court concluded that the respondent should be sanctioned for filing a frivolous appeal.

- On February 12, 2020, the daughters filed their affidavit of fees and costs in the First Circuit. Without consulting Teodora, the respondent filed a brief in opposition to the affidavit, once again arguing the rejected claim of ownership in the property and ignoring the principal issue, mootness.²
- On August 21, 2020, the First Circuit ordered the respondent personally to pay the daughters approximately \$31,000 in sanctions (a reduction of their claim of approximately \$44,000).³
- Meanwhile, in Bankruptcy Court, on December 6, 2017, the respondent filed a brief in opposition to the daughters' proofs of claim, asserting among other things that his client's ownership interest in the property derived from her rights under the spousal elective share statute and that she had rights under the "Homestead Act." During oral argument on the proofs of claim and in response to the court's question about the applicability of the Rooker-Feldman doctrine,⁴ the respondent argued the absence of a final judgment and the alleged voidness of the deed to the daughters and Edward. He also asserted his client's rights under the Homestead Act and the spousal elective share statute, even though he had made the same arguments in state court.
- On April 4, 2018, the Bankruptcy Court overruled Teodora's Objections to the daughters' Proofs of Claim.
- The respondent did not file an appeal from the April 4, 2018 decision.

² As will be explained later, by the time he filed the brief in opposition to the fee petition in the First Circuit, the respondent had been terminated as Teodora's lawyer.

³ The respondent admitted at the bar discipline hearing that he has not paid the sanctions and has no intention of doing so. (HCR ¶ 91). He is under a contempt order by the federal appeals court for failing to pay.

⁴ Rooker v. Fidelity Trust Co, 263 U.S. 413 (1923); District of Columbia Court of Appeals v. Feldman, 460 U.S. 462 (1983) (federal courts have no jurisdiction where there is a final state court judgment).

- On May 24, 2018, the Bankruptcy Court ruled in favor of the daughters on their motion for sanctions against the respondent, concluding that he had violated Bankruptcy Rule 9011, which prohibits making arguments not warranted by existing law. Although the judge did not award a monetary sanction, he enjoined the respondent from filing further pleadings that attempted to argue that his client had any rights in the property by virtue of her spousal elective share or any other basis. The respondent did not appeal the order, nor did he inform his client about it.⁵
- While being sanctioned by the Bankruptcy Court, the respondent continued to litigate in Superior Court. As discussed earlier, the daughters had secured a default judgment against Teodora when the respondent failed to answer the first Superior Court complaint, which sought use and occupancy payments from her after her husband's death. When Teodora failed to pay the judgment, the daughters filed a Complaint for Contempt.
- On January 23, 2018, the respondent filed an Answer and Counterclaim to the Complaint for Contempt. Included in his Superior Court filing was a motion to vacate the default and default judgment entered against his client in August 2016. In his pleading, the respondent made the identical, previously-rejected arguments about his client's rights in the property. After dismissal of the counterclaims, the Superior Court judge invited the daughters to file a request for their legal fees.

⁵ As mentioned above, another lawyer was involved as bankruptcy counsel on behalf of Teodora. The judge did not award sanctions against the other attorney, finding that he was a "mere conduit" for frivolous theories developed by the respondent.

- In June 2018, the respondent's services on behalf of Teodora were terminated. This was accomplished by Attorney Eric Feldman, a Florida lawyer who is Teodora's son-in-law and who had followed the litigation on behalf of his mother-in-law. A new bankruptcy lawyer, Herbert Weinberg, filed his Notice of Appearance in Bankruptcy Court. At the time, Feldman was not aware of any pending state court actions; he was focused only on the bankruptcy matter. Subsequently, on October 7, 2019, Weinberg entered his appearance in Superior Court. Despite being fired, the respondent continued to represent Teodora in the Small Claims case referred to earlier.
- After being terminated, the respondent filed an unauthorized Notice of Appeal from the Superior Court's denial of the motion to vacate the default and default judgment. At the same time, the daughters filed a motion in Superior Court for attorneys' fees and costs in the approximate amount of \$14,000. The respondent did not file a brief in opposition to the motion.
- On August 10, 2018 the Superior Court judge allowed the motion for fees and costs.
- On November 29, 2018, the Superior Court issued summary judgment in favor of the daughters, holding that Teodora was in contempt for failing to pay use and occupancy payments for the time she lived in the house after the death of Edward.
- On January 2, 2019, the daughters filed a motion for fees and costs associated with the contempt proceeding. The respondent did not file a brief in opposition.
- On January 5, 2019, the respondent sent an email to his former client, advising her to file a claim to protect her homestead claim as the surviving spouse (the

same claim that had been rejected in earlier litigation). The email did not mention the contempt judgment against her or the pending motion for fees.

- On April 5, 2019, the Superior Court awarded the daughters legal fees of approximately \$44,000 and costs of approximately \$1,700.
- On May 1, 2019, the respondent wrote a letter to Teodora complaining that she had “disappeared” and urging her to “get gutsy, not craven,” since the law was “unambiguously on [her] side.” (HCR ¶ 72).
- On or about May 6, 2019, despite being terminated as her lawyer, the respondent filed a Notice of Appeal of the contempt judgment on behalf of Teodora even though she had not authorized him to do so.
- On May 24, 2019, Teodora sent a signed letter to the respondent in which she unambiguously terminated his services in all matters, directed him to not file anything further on her behalf and to withdraw his appearance in all courts.

Bar Discipline Proceedings

- Bar counsel filed a Petition for Discipline against the respondent on February 14, 2022. The petition charged violations of the following Massachusetts Rules of Professional Conduct: Rule 1.5(c) (contingent fee agreement must be in writing and signed by client and attorney); Rule 1.1 (competence); Rule 1.2(a) (seek client’s lawful objectives); Rule 1.3 (act with reasonable diligence and promptness); Rule 1.4 (keep client reasonably informed about status of matter); Rule 1.16 (withdraw from representation if discharged); Rule 3.1 (do not bring, or continue or defend a proceeding unless there is a non-frivolous basis to do so); Rule 3.4(c) (knowingly disobeying rules of tribunal); Rule 8.4(d) (conduct

prejudicial to the administration of justice); and Rule 8.4(h) (other conduct that reflects adversely on fitness to practice law).

- On August 12, 2022, the board chair allowed bar counsel's Motion for Issue Preclusion with respect to the judgments against the respondent in Bankruptcy Court and the United States Court of Appeals for the First Circuit (both of which sanctioned the respondent for filing frivolous pleadings, motions and briefs).⁶ The board chair also denied the respondent's Motion for Judgment on the Pleadings, in which the respondent repeated the legal arguments rejected by the state courts concerning Teodora's alleged ownership rights under the spousal share statute and the Homestead Act.
- After the hearing, bar counsel filed his Proposed Findings of Fact and Conclusions of Law. The respondent filed nothing. He did not respond to inquiries from the hearing committee, which issued its report without the benefit of the respondent's proposals. The committee found that bar counsel had proved all of the alleged rules violations and, in light of several aggravating factors and none in mitigation, recommended a license suspension of 18 months.
- On February 21, 2023, the respondent filed an appeal of the Hearing Committee Report. Bar counsel has filed a brief in opposition to the appeal.

⁶ The board chair ruled that the respondent was precluded from relitigating issues that he had lost in state court; that the state court decisions against him were final; that his assertion of the state law arguments in the Bankruptcy Court was not warranted by existing law and was in violation of Bankruptcy Rule 9011(b); that the respondent had pursued a frivolous appeal in the First Circuit, warranting sanctions; and that he had disobeyed the First Circuit's order to pay sanctions and had been held in contempt.

Legal Conclusions

The violations fall generally into two categories: neglect and frivolous litigation. We adopt the hearing committee's conclusions of law and agree with its determination that the respondent violated the rules charged in the Petition for Discipline. The committee's legal conclusions stand on a solid factual foundation.⁷

With regard to the first set of violations, the original act of neglect and incompetence occurred when the respondent failed to file an answer on behalf of Teodora in Middlesex Superior Court in the case where the daughters sought use and occupancy payments. A default judgment issued against the respondent's client.

Compounding the error, the respondent failed to file a brief in the Massachusetts Appeals Court, causing the dismissal of the consolidated appeals from the Framingham District Court/Appellate Division, the Middlesex Superior Court, and the Middlesex Probate and Family Court. As a result, the appeals were dismissed and the judgments against the respondent's client became final and binding. The judgments established the validity of the daughters' claims and precluded further litigation of the primary defense the respondent had asserted: that his client had a property interest in the home under the Homestead Act or through her spousal elective share pursuant to Mass. G.L. c. 191, § 15. The dismissal of the appeals also precluded further

⁷ The material facts were largely established under principles of collateral estoppel based on the board chair's allowance of bar counsel's Motion for Issue Preclusion. Although he does not explicitly argue on appeal that the decision was in error, at page 4 of his brief the respondent suggests that the decision deprived him of due process. We reject the argument. The Supreme Judicial Court has approved the application of collateral estoppel in bar discipline cases. Bar Counsel v. Board of Bar Overseers, 420 Mass. 6, 10, 11, 11 Mass. Att'y Disc. R. 291 (1995). This is particularly true in matters such as this, where multiple courts in assorted jurisdictions already have heard and rejected the respondent's assertions.

argument that the Framingham District Court's judgment of eviction was void due to lack of subject matter jurisdiction. Whatever the merits of Teodora's position, she lost the right to have her case reviewed.

From the original derelictions in state court, the cascade of harms followed. Issue preclusion and federalism prevented review by the federal courts of the client's arguments.

The neglect extended to Bankruptcy Court. The daughters successfully moved for relief from the automatic stay, and it was lifted. The daughters were permitted to proceed with the eviction. Despite appealing the bankruptcy decision to the federal district court, the respondent failed to seek a stay of the eviction pending appeal. When the daughters moved to dismiss the appeal due to mootness (because the eviction had already occurred), the respondent's brief failed to address the only relevant issue (mootness), instead repeating the same arguments he had unsuccessfully made in state court about his client's supposed rights in the property. As with the state court appeals, regardless of the likelihood of success, the client lost the opportunity to assert her rights.

We will discuss in more detail below the respondent's frivolous litigation activity, the second tranche of rules violations. At this point, we note that attempting to resuscitate arguments that had been conclusively rejected demonstrates a lack of competence. Such arguments include the recurring contention that Teodora enjoyed rights to the property under the Homestead Act as well as spousal elective share rights under chapter 191 and that the Framingham District Court lacked subject matter jurisdiction to issue a judgment of eviction. Multiple state courts had rejected the arguments. The respondent's incompetence led to the loss of appellate rights. The judgments were final and binding. It was manifestly incompetent for the respondent to continue to argue these points ... both because other courts had previously ruled

against them and because the Rooker-Feldman doctrine precluded their assertion in federal court. They also became obviously moot after Teodora was evicted. Yet, the respondent continued to press the same arguments in court after court (both state and federal). He advanced the arguments even when they were irrelevant to the specific issue in front of him.⁸

Based on the respondent's misconduct, the hearing committee correctly concluded that he violated Mass. R. Prof. C. 1.1, 1.2(a) and 1.3. Regardless of its merits, the loss of a claim causes harm. Matter of Shaughnessy, 19 Mass. Att'y Disc. R. 410, 416, fn. 3 (2003).

In addition to incompetence and neglect, the hearing committee correctly concluded that the respondent failed to communicate with his client in violation of Rule 1.4 and he failed to withdraw from the engagement after being fired in violation of Rule 1.16. Matter of Nealon, 35 Mass. Att'y Disc. R. 478, 482 (2019) (failure to withdraw upon termination violates Rule 1.16). The failure to withdraw from the engagement is particularly egregious. Despite being informed by his client and Attorney Feldman that he had been terminated, the respondent continued to file papers on her behalf, at great risk to her rights and well-being. He did so in state court and in the First Circuit Court of Appeals. Indeed, the First Circuit issued sanctions against the respondent based on his frivolous pleadings in that court. In addition to running afoul of Rule 1.16, the respondent violated Rule 3.4(c) in that he knowingly violated a court order in failing to file an affidavit in Small Claims Court that he still represented his client. Matter of Belanger, 37 Mass. Att'y Disc. R. __ (2021) (violations of Rule 3.4(c) and 8.4(d) for knowingly disobeying court orders). At the time he was ordered to do so, he had been fired.

⁸ Even more concerning, the respondent persisted in the same arguments in his defense to the bar discipline case. His appeal to the board (both in his papers and at oral argument), focused exclusively on his contention that the eviction judgment was "void" for "lack of subject matter jurisdiction." At no point has he argued that his conduct would not merit discipline under the Rules of Professional Conduct or our case law. The respondent's failure to recognize this obvious distinction calls into question his general understanding and competence.

Turning to the second category of misconduct, there is no doubt that the respondent abused the court system through myriad frivolous litigations, in violation of Rules 3.1, 8.4(d) and 8.4(h). The misconduct is narrated above and need not be repeated *ad nauseum*. We do not disparage the respondent's zealous advocacy on behalf of a client whom he viewed (rightly or not) as the victim of her step-daughters' cruelty and mistreatment. However, the line between zealous advocacy and irresponsibility is not difficult to draw. Once the Massachusetts Appeals Court dismissed the consolidated appeals, the opportunity to argue that the Framingham District Court judgment was "void" for "want of subject matter jurisdiction" was over and done. It was finished. This was true not just for the federal Bankruptcy Court, Federal District Court and U.S. Court of Appeals, but the further litigation in Superior Court concerning Teodora's contempt and the daughters' petitions for legal fees and costs. Continuing to advance arguments that were clearly barred by issue preclusion is frivolous and abusive.

The respondent's frivolous activity resulted in sanctions from the Bankruptcy Court (non-monetary), the United States Court of Appeals for the First Circuit (approximately \$31,000, which the respondent has refused to pay), and the Superior Court (\$14,000 plus \$44,000 in fees and \$1,700 in costs for the contempt action). During the sanctions hearing in Bankruptcy Court, the respondent continued to insist that the issues he had argued in state court were still valid and germane. As the hearing committee quoted in its report, the bankruptcy judge advised him: "That's not the way it works ... Even if those state courts were dead wrong, it went to a final judgment at the Appeals Court. That's binding on me. ... That's just as good as a full determination on the merits." (HCR, ¶ 45). Despite the reminder of a basic legal principle, the respondent did not heed the advice.

We agree with the hearing committee and adopt its conclusion that the respondent violated Rules 3.1, 3.4(c), 8.4(d), and 8.4(h). See Matter of Grayer, 483 Mass. 1013, 35 Mass. Att’y Disc. R. 231, 236 (2019); Matter of Kersey, 432 Mass. 1020, 16 Mass. Att’y Disc. 238 (2000); Matter of Mahoney, 37 Mass. Att’y Disc. R. 417 (2021); Matter of Johansen, 31 Mass. Att’y Disc. R. 347 (2015). Unwilling to “take no for an answer,” he abused the court system through a pattern of neglect, incompetence, and obstreperousness.

Lastly, we agree with the committee that the respondent violated Rule 1.5(c), which requires a written and signed engagement agreement in all matters involving a contingent fee. The hearing committee found (based on his testimony at the hearing) that the respondent told his client he would represent her in exchange for a payment equal to one-third the amount in her favor that exceeded her interest in the home. The oral arrangement was never reduced to writing. Rule 1.5(c) requires a writing in that situation.

Matters in Mitigation and Aggravation

The respondent offered no facts in mitigation. We agree with the hearing committee’s conclusion that there were none.

We agree with the hearing committee on its findings in aggravation: the respondent’s experience as a lawyer; the multiplicity of violations; the harm caused by the misconduct⁹; the respondent’s history of prior discipline; and the respondent’s lack of insight into what he did wrong.

⁹ Multiple parties suffered harm: Teodora due to the contempt findings against her and the loss of her case (regardless of its merits); the daughters, who incurred the time and expense of litigating against frivolous and negligently-presented arguments; and the court system.

We disagree only with the committee’s conclusion that the respondent’s “refusal to participate in the disciplinary process is a factor in aggravation.” (HCR ¶ 141). The conclusion is based solely on the failure by the respondent to file proposed findings of fact and conclusions of law after the evidence was submitted. While we certainly do not condone the failure to file, the respondent otherwise was an active and vigorous participant in the case. A respondent’s “refusal to participate in the disciplinary process” should be reserved for those cases where a lawyer ignores the process in whole or substantial part.

Recommendation

We must recommend a sanction consistent with similar cases, taking into account the individual aspects of each matter. Matter of the Discipline of an Attorney, 392 Mass. 827, 837 (1984).

The typical sanction for filing frivolous claims or defenses is a suspension of one year and one day. Matter of Cohen, 435 Mass. 7, 17 Mass. Att’y Disc. R. 129 (2001); Matter of Corona-Perez, 34 Mass. Att’y Disc. R. 63 (2018); Matter of Kim, 32 Mass. Att’y Disc. R. 297 (2016); Matter of Kurker, 18 Mass. Att’y Disc. R. 353 (2002); Matter of Belanger, 37 Mass. Att’y Disc. R. 2021 (two years).

Serial neglect causing harm or a risk of harm requires a term suspension of some length. Matter of Kane, 13 Mass. Att’y Disc. R. 321, 328 (1997). Our cases range from suspensions of six months, Matter of Bernard, 25 Mass. Att’y Disc. R. 65 (2009), to one year and one day for unadorned, repeated neglect. Matter of Scannell, 21 Mass. Att’y Disc. R. 580 (2005). The Bernard matter was aggravated by prior discipline, experience, and harm to the client. The Scannell case involved offsetting mitigation and aggravation.

When neglect combines with violations of Rules 3.1 and 8.4, the license suspension must be longer than one year and one day. A shorter suspension would fail to account for the severity of the combined misconduct.

We agree with the hearing committee's recommendation of a suspension of the respondent's law license for eighteen months. A suspension of that length is consistent with the sanctions described in the prior paragraphs. It is on the longer end of the scale, which is appropriate in light of the exhaustive and exhausting nature of the misconduct. Like the hearing committee, we recommend that, whatever sanction the Court imposes, the respondent be required to petition for reinstatement pursuant to S.J.C. Rule 4:01, § 18.

Conclusion

An Information shall be filed in the County Court recommending that the Supreme Judicial Court suspend the respondent's law license for eighteen months.

BOARD OF BAR OVERSEERS

By: Frank E. Hill, III
Frank E. Hill, III

Dated: May 8, 2023