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

BAR COUNSEL, Petitioner, v. Jeffrey M. Rosin, Esq., Respondent	)	Public Reprimand No. 2023-12

ORDER OF PUBLIC REPRIMAND

This matter came before the Board on a Petition for Discipline and a Stipulation of the Parties waiving hearing and requesting that the matter be resolved by the imposition of a public reprimand. On October 10, 2023, the Board voted to accept the stipulation of the parties and their joint recommendation. It is ORDERED and ADJUDGED that Jeffrey M. Rosin, be and he, is publicly reprimanded. A Board Memorandum of Decision of the charges giving rise to the reprimand is attached to this order.

Whereupon, pursuant to Supreme Judicial Court Rule 4:01, Section 8(3), and the Rules of the Board of Bar Overseers, Section 3.56, it is ORDERED AND ADJUDGED that Jeffrey M. Rosin, be and hereby is PUBLICLY REPRIMANDED.

BY: Ernest L. Sarason, Jr.
, Member
BOARD OF BAR OVERSEERS

DATED: November 6, 2023

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

BAR COUNSEL,

Petitioner,

vs.

JEFFREY M. ROSIN, ESQ.,

Respondent

MEMORANDUM OF BOARD DECISION

During his client's deposition, which took place remotely, the respondent repeatedly coached his witness on answering questions. The respondent and his client were seated in the same conference room, both wearing masks over the objection of the lawyer who took the deposition from another location. During the fifth hour the deposition, opposing counsel overheard the respondent provide an answer to the client, which she repeated. Confronted by opposing counsel at the time, the respondent denied that he had fed an answer to his client. When opposing counsel subsequently reviewed the videotape of the deposition, he noticed about fifty instances when he could hear the respondent surreptitiously provide his client with answers. Most of the answers were "yes" or "no" or "I don't recall." The client repeated the answers whispered by the respondent.

Opposing counsel filed a motion for sanctions in the United States District Court for the District of Massachusetts, where the case was pending. At a hearing, the respondent acknowledged coaching his client and blamed his conduct on frustration with opposing counsel's examination, which he described as unnecessarily intrusive into sensitive topics with limited relevance to the case. In addition, he was concerned about his client's well-

being, since she suffered from both mental and physical health challenges and had been anxious about the deposition.[1]

The federal judge presiding over the case (Talwani, J.) granted the sanctions motion in part and denied it in part. She noted that the respondent had acknowledged that his conduct was unacceptable, and he took responsibility for becoming too emotionally invested in the case. Judge Talwani noted that the respondent had taken advantage of the remote proceeding and his interruptions were not a momentary and isolated incident or a lapse in judgment. Among other penalties, she disqualified the respondent from further participation in the litigation. She denied the opposing party's motion for more extreme sanctions, such as dismissal of the respondent's client's case or imposing an adverse inference on the client's testimony, noting that the misconduct was solely that of the respondent, not his client. In addition, Judge Talwani referred the matter to the "presiding judge" of the district court (Sorokin, J.) for further proceedings.[2] The respondent paid the legal fees of opposing counsel in connection with the sanctions motion, approximately $22,000. He and his firm gave up their fee, which approximated $65,000, and he spent additional uncompensated time bringing on substitute counsel.

After a hearing, Judge Sorokin concluded that the respondent had violated Rule 3.4(c) of the Massachusetts Rules of Professional Conduct (knowingly disobey an obligation under the rules of a tribunal, except for an open refusal based on an assertion that no valid obligation exists) which applies to actions in the district of Massachusetts pursuant to its

[1] Bar counsel described opposing counsel's conduct as "bordering on uncivil." The respondent's concerns for his client were justified. She had to be hospitalized after the deposition.

[2] Pursuant to the federal court's local rules, the judge in the underlying matter, in this case Judge Talwani, conducts an initial screening of the alleged misconduct for possible referral to the District of Massachusetts disciplinary process. Once the matter is referred, it is assigned to a "Presiding Judge," in this case Judge Sorokin, who conducts a *de novo* review of the matter, determines whether discipline will be imposed by the court, and decides whether the matter will be further referred to other state or federal disciplinary authorities.

Local Rule 83.6.1(d). Specifically, the judge concluded that the respondent had violated Rule 30(d) of the Federal Rules of Civil Procedure, which permits sanctions against a lawyer who "impedes, delays, or frustrates the fair examination of [a] deponent." In addition, he concluded that the conduct violated Mass. R. Prof. C. 8.4(h) (forbidding "other conduct that adversely reflects on his or her fitness to practice law").

Other than referring the respondent to Lawyers Concerned for Lawyers (solely for the purpose of learning to "manage emotions and judgment in the face of adversity"), Judge Sorokin took no further action.[3] He concluded that the respondent had "suffered several consequences for his misconduct." In addition to those noted herein, the judge took note that the case had received widespread publicity, which Judge Sorokin assumed had a deleterious impact on the respondent's professional standing and his personal well-being.

Bar counsel filed a Petition for Discipline, which charged the respondent with violations of Mass. R. Prof. C. 3.4(c), 8.4(d) (lawyer shall not engaged in conduct prejudicial to the administration of justice) and 8.4(h). The parties filed a Stipulation pursuant to which the respondent admitted the rules violations. They jointly have recommended a public reprimand.

This case is unprecedented. There is no prior disciplinary case in Massachusetts based solely on a lawyer coaching a witness during a deposition.[4] Cases involving discovery violations generally have resulted in public reprimands. Matter of Sweet, 38 Mass. Att'y Disc. 511 (2022) (public reprimand where respondent failed to respond to discovery requests

[3] He did not refer the respondent to bar counsel, who learned of the matter through media reports.

[4] The American Bar Association recently opined on witness coaching. In Formal Opinion No. 508 (August 5, 2023), the ABA's Standing Committee on Ethics and Professional Responsibility set forth general standards of conduct for witness preparation at depositions or court proceedings. As part of the opinion, the committee added that, "Overtly attempting to manipulate" testimony-in-progress would likely violate Rule 8.4(d) as conduct prejudicial to the administration of justice. While not binding on us, we find the opinions of the ABA committee useful as guidance for our deliberations.

even after motion to compel was granted, in violation of Rules 3.4(c), 8.4(d) and 8.4(h)); Matter of Reisman, 29 Mass. Att'y Disc. 556 (2013) (public reprimand where respondent advised client he could scrub discoverable information from laptop, in violation of Rules 1.1, 1.4 and 3.4(a); Matter of Baghdady, 25 Mass. Att'y Disc. 26 (2009) (public reprimand for failure to correct false deposition testimony by witness and false notarization of interrogatories, in violation of Rules 1.2, 8.4(c), and 8.4(d)); Matter of Diamond, 12 Mass. Att'y Disc. R. 85 (1996) (public reprimand where respondent repeatedly failed to present client for a scheduled deposition, and disobeyed court order to appear with an interpreter, in violation of predecessors to rules 3.4(c) and 8.4(d)).

Bar counsel has brought to our attention two cases from other states where lawyers were suspended for witness coaching, although both involved aggravating factors. In Florida Bar v. James, 329 So. 3d 109 (Fla. 2021), a respondent was suspended ninety-one days for texting instructions to a witness during a telephone deposition, in violation of the Florida equivalents to Rules 3.4(a) and 8.4(d). That case is distinguishable because the respondent also made deceptive statements to a judge in an attempt to deny his misconduct, and he refused to acknowledge the wrongful nature of his actions. In Arizona, a disciplinary judge approved a stipulation to a sixty-day suspension where a lawyer used an electronic chat program to coach a witness. Matter of Claridge, PDJ 2021-9088 (Ariz. Disp. Com. 2021). That case is also distinguishable because the conduct occurred at trial and was intended to deceive a tribunal, and because the lawyer initially refused to acknowledge to the judge that his conduct was wrongful. *See also* In re Ryan, Case No. 14-0-06405 (Cal. 2018) (ninety-day suspension for attorney who passed notes to client during deposition and submitted falsified version of note to judge in subsequent sanctions hearing).

In sum, case law instructs that the sanction for the respondent's misconduct should be a public reprimand or a suspension of some length. Based on the unique facts of the case, we

will impose a public reprimand, acceding to the parties' stipulation. Among the factors are the respondent's immediate and candid acknowledgement of his misconduct, his remorse, his motivation to protect a vulnerable client, and the abusive and uncivil nature of opposing counsel's questions. We also recognize that the misconduct was not premeditated but arose in the moment as an emotional (albeit inappropriate) aspiration to protect his client. We emphasize these circumstances to alert the bar that future cases of deposition misconduct, and all forms of discovery abuse, may not be viewed as indulgently as this case.

Dated: October 10, 2023

BOARD OF BAR OVERSEERS

Frank E. Hill, III

Frank E. Hill, III
Secretary