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

BAR COUNSEL, Petitioner, v. Peter J. Parlow, Respondent	)	Public Reprimand No. 2023-1

ORDER OF PUBLIC REPRIMAND

This matter came before the Board on a Petition for Discipline and the report of the Hearing Committee. On January 9, 2023, the Board voted to impose a public reprimand. It is ORDERED and ADJUDGED that Peter J. Parlow be and he is publicly reprimanded. A Hearing Report of the charges giving rise to the reprimand is attached to this order.

Whereupon, pursuant to Supreme Judicial Court Rule 4:01, Section 8(5), and the Rules of the Board of Bar Overseers, Section 3.56, it is ORDERED AND ADJUDGED that Peter J. Parlow, be and hereby is PUBLICLY REPRIMANDED.

BY: /s/ David B. Krieger, M.D.
, Member
BOARD OF BAR OVERSEERS

DATED: January 24 2023

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

BAR COUNSEL,

Petitioner

vs.

PETER J. PARLOW, ESQUIRE,

Respondent

B.B.O. File No. C2-20-00264646

HEARING REPORT

On June 28, 2021, bar counsel filed a petition for discipline against the respondent, Peter J. Parlow, Esquire.

The petition charged the respondent with violation of Mass. R. Prof. C. 4.2, a rule prohibiting, absent consent, contact by an attorney with a person represented by counsel. The respondent filed an answer and stipulation in which he agreed to the rule violation and, together with bar counsel, proposed a joint sanction recommendation to the Board of Bar Overseers. Based on its review of the papers, the Board voted preliminarily, on July 12, 2021, and finally, on October 12, 2021, to reject the stipulation.

Bar counsel amended the petition for discipline on February 14, 2022, adding a few further facts. The respondent filed an answer on March 14, 2022, which included extensive discussion of the proceedings before the Board, as well as exhibits and Orders from the Board proceedings. We allowed bar counsel's motion to strike the Board-related material, and the respondent filed an amended answer on May 19, 2022, omitting the description of the Board proceedings and the exhibits and Orders filed therein.

Our hearing was held on August 9, 2022 and August 10, 2022. Twenty-two exhibits were admitted. Including the respondent, five witnesses testified: Gina Del Rio Gazzo, Esq.; George Panas, Esq.; Rachel Shute, Esq.; and Robert Normandin, Esq. On October 6, 2022 and October 7, 2022, the respondent and bar counsel, respectively, filed their proposed findings and conclusions.

Findings and Conclusions[1]

Findings of Fact

1. The respondent, Peter J. Parlow, Esq., was admitted to the Massachusetts Bar on June 20, 1997. Ans. ¶ 2; see Tr. 1:169 (Respondent). He was admitted to the Florida Bar in June 1997, and to the Federal Bar in 1998. Tr. 1:170 (Respondent).

2. The respondent began his legal career as an Attorney Network Liaison for Sears, from August 1997 until April 1998. Ex. 18 (118). From there, he worked with a five-attorney Boston law firm until December 1998, when he became self-employed as a solo practitioner, handling civil and criminal cases. Ex. 18 (117). He practiced with a partner from January 2006 until February 2008, and was again self-employed, by the Law Office of Peter J. Parlow in Lowell, Massachusetts, from March 2008 through the present. Ex. 18 (117).

3. Before us, the respondent testified that he has been practicing criminal defense for a little less than twenty-four years. Tr. 1:170 (Respondent). He became certified as a criminal bar

[1] The transcript shall be referred to as "Tr. __: __"; the matters admitted in the answer shall be referred to as "Ans. ¶_"; and the hearing exhibits shall be referred to as "Ex. _." We have considered all of the evidence, but we have not attempted to identify all evidence supporting our findings where the evidence is cumulative. We credit the testimony cited in support of our findings to the extent of the findings, and we do not credit contradictory testimony. In some instances, we have specifically indicated testimony that we do not credit.

advocate in 1999, and is certified in both the District and Superior Courts. Tr. 1:170, 211 (Respondent).

4. Mid-March 2020 marked the inception of the Covid-19 pandemic in Massachusetts. See Tr. 1:221-222 (Respondent). The events at issue here began in late March 2020.

5. On March 23, 2020, in line with the then-current Covid-19 protocols, the respondent got a text message from a Woburn District Court clerk that he was going to be appointed to represent someone in custody. Tr. 1:222 (Respondent).

6. The respondent was emailed a copy of the complaint, the police report, and the Board of Probation/Court activity record. Id. Due to Covid-19 restrictions, the respondent was unable to get much information about the alleged crime from his client, relying instead on the police report. Tr. 1:223 (Respondent).[2]

7. The presiding judge of the Woburn District Court (Hon. David Frank) assigned the respondent to represent Juan Lopez, and another bar advocate, George Panas, to represent co-defendant Charles Robinson. Ans. ¶¶ 5, 6; Tr. 1:68-69 (Panas); Tr. 1:170-171 (Respondent). A telephonic arraignment followed.[3] Ans. ¶ 3; Ex. 1 (007); Tr. 1:31-32 (Del Rio Gazzo); Tr. 1:66 (Panas). Lopez and Robinson were arraigned on firearm and other charges that stemmed from a motor vehicle accident and subsequent manhunt. Ex. 13 (57-58). The charges against both included carrying a loaded firearm without a license and illegal possession of a firearm without a firearms identification card. Ex. 1 (001, 005); Tr. 1:33 (Del Rio Gazzo); Tr. 1:68 (Panas).

[2] We credit the respondent's testimony that before the Covid-19 pandemic, arraignments of in-custody defendants were conducted in person, and the attorneys had the opportunity to interview their clients beforehand in the privacy of the courthouse basement cells. See Tr. 1:218-221 (Respondent).

[3] There was not yet, in March 2020, the ability to conduct hearings via Zoom. See Tr. 1:67 (Panas).

8. The respondent was aware that Panas had been assigned to represent Robinson. Tr. 1:171 (Respondent). The respondent has known Panas for approximately 20 years. Tr. 1:214 (Respondent).

9. Assistant District Attorney Gina Del Rio Gazzo of the Middlesex District Attorney's Office ("DA's Office") was the prosecutor assigned to the case. Ans. ¶ 4; Tr. 1:32-33 (Del Rio Gazzo).

10. Bail for Lopez, the respondent's client, was set at $7,000. Tr. 1:171 (Respondent). This was higher than Robinson's bail of $2,000 for three reasons: Lopez had a Connecticut conviction, was on probation as a sex offender, and resided outside of Massachusetts. Ex. 1 (003); Tr. 1:225-226 (Respondent).

11. Following the arraignment, Robinson made bail and was released from jail. Tr. 1:34 (Del Rio Gazzo); Tr. 1:69 (Panas); Tr. 1:172 (Respondent)

12. Lopez did not make bail and remained in custody. Tr. 1:34 (Del Rio Gazzo); Tr. 1:172 (Respondent).

The Preparation and Filing of Robinson's Affidavit

13. On April 9, 2020, the respondent received a telephone call that appeared, based on the caller ID, to be coming from Paul Santos, a name the respondent did not recognize. Tr. 1:173; Tr. 2:9 (Respondent). After the respondent answered, the caller identified himself as Charles Robinson, co-defendant of Juan Lopez. Ans. ¶ 10; Tr. 1:172-173.

14. Robinson stated that he wanted to come to Massachusetts and file a statement with the Court, indicating that Lopez had never had possession of the firearm, which was Robinson's, that Lopez was innocent of the charges and should not be in jail, and that Robinson was solely responsible for the gun. Tr. 1:174, Tr. 2:7-8 (Respondent).

15. Robinson spoke non-stop in a torrent of words; there was not a break in his speech where the respondent could interrupt. Tr. 2:7-8 (Respondent).

16. The respondent advised Robinson that the courts in Massachusetts were closed due to Covid-19, and that in any event they would not accept a statement directly from the respondent or directly from Robinson because, as the respondent proceeded to confirm, Robinson was still represented by Panas and had not spoken to Panas about making a statement. Tr. 1:174-175, 177; Tr. 2:10-11 (Respondent). The respondent told Robinson that Panas would probably advise against signing the type of statement Robinson envisioned. Tr. 1:177; 2:11 (Respondent).

17. The call lasted at most two or three minutes. Tr. 1:177; 2:11-12 (Respondent).

18. We credit that the respondent had done nothing to solicit Robinson's statement, and that he believed that what Robinson told him constituted potentially exculpatory evidence as to his client Lopez. Tr. 2:20-21, 108 (Respondent).[4]

19. On April 13, 2020, Robinson called the respondent a second time. Ans. ¶ 14.

20. The respondent was not in his office at the time of the second telephone call, but retrieved the following day, April 14, a voicemail message from Robinson. Tr. 2:24-25 (Respondent). The message was:

> Hi, this is Charles Robinson, co-defendant of Juan Lopez. I spoke to my public defender and he advises me not to do it, but I still want to do it. So, if you could draw up the paperwork and I'll give you a fax number tomorrow that you could send it to me. Alright, my phone number is **********, so give me a call. Thank you.

[4] The respondent testified further that he believed that this evidence corroborated what was in the police report, to the effect that Robinson owned the firearm, and Robinson showed the firearm to a third party. Tr. 2:20-21 (Respondent). We have not seen the police report, but Panas, the only other witness to testify about the police report, did not deny that his client may have stated in it that the gun was his; Panas, whose testimony is discussed infra, claimed he could not remember what Robinson had said. Tr. 1:126-127 (Panas).

Ex. 11, ¶ 5 (025); Tr. 2:26 (Respondent).

21. The respondent did not call Robinson back. He did not want to speak further with Robinson because, as he told us, he knew he was not supposed to do so; Robinson had an attorney. Tr. 1:182 (Respondent).

22. On April 16, 2020, Lopez's girlfriend, Vivian Rosario, called the respondent. Ex. 2 (010); Tr. 1:182; Tr. 2:28 (Respondent). The respondent had spoken to Rosario "a couple of times" before. Tr. 2:28 (Respondent). She asked if the respondent had drafted an affidavit for Robinson, and he told her he had not. Tr. 2:29 (Respondent). She wanted the respondent to do so to assist Lopez in his pursuit for release, and she provided the respondent with Robinson's contact information, including a fax number. Tr. 2:29-30 (Respondent); Ex. 2 (010).

23. The respondent proceeded to draft an affidavit for Robinson's signature under the pains and penalties of perjury, stating in pertinent part: Robinson was the registered owner of the black Ruger 380 handgun recovered by the police on Friday, March 20, 2020; Robinson's handgun was never in the possession, custody or control of Lopez, either before the motor vehicle accident or after the accident; and Robinson had possession of the handgun at all times until he discarded it immediately prior to his arrest. Ex. 4, ¶¶ 2,3 (012).

24. The final substantive paragraph read:

> My decision to make this statement is not the result of force or threats. I am not under any duress nor am I being coerced or threatened by any party. I am not under the influence of any drug, medication, liquor or other substance that would impair my ability to fully understand my decision. I have made this statement freely and voluntarily.

Ex. 4, ¶ 4 (012).

25. We credit that the respondent based ¶¶ 1-3 of the affidavit on what Robinson had told him and on items in the police report, and that ¶ 4 had standard language that the respondent

put in all his affidavits. Tr. 2:33-34 (Respondent). The respondent never discussed with Robinson any of the ¶ 4 representations. See Tr. 2:36 (Respondent).

26. Before drafting and sending the affidavit, the respondent did not discuss with Panas obtaining consent either to speak with Robinson or to submit an affidavit for him. Tr. 1:185-186 (Respondent).[5] At no point did the respondent have Panas's consent to communicate with Robinson about the firearm case and/or Robinson's submission of an affidavit that would take sole responsibility for the alleged crime and thereby exonerate Lopez. Ans. ¶ 21.

27. On April 16, 2020, the respondent faxed the unsigned affidavit to the number Rosario had given him, along with a cover note instructing Robinson to have his signature notarized "if at all possible," and to return the signed affidavit to the respondent via U.S. mail, adding: "[t]ime is of the essence." Ex. 3 (11); Tr. 1:186; Tr. 2:35 (Respondent)

28. On or about April 17, 2020, the respondent received by fax a signed copy of the affidavit along with a faxed copy of a driver's license that was hard to read. See Ans. ¶ 24; Tr. 1:188; Tr. 2:39 (Respondent); Exs. 4. He took no action regarding use of the affidavit at the time because the affidavit was not notarized, and therefore was "basically useless without good I.D." Tr. 2:39, 42-43 (Respondent). The respondent was also concerned that this might be a ruse, and that the person communicating with him might not be Robinson but rather someone else working with his client. Tr. 2:50 (Respondent).

29. On or about April 22, 2020, the respondent received, via U.S. mail, Robinson's signed affidavit and a clear copy of Robinson's Connecticut driver's license. Tr. 1:189-190; Tr. 2:39, 43 (Respondent); Ex. 5.

[5] He does appear to have spoken with his supervisor, Robert Normandin, about the call, including that during it, he had directed Robinson to speak to his attorney. See discussion infra at ¶¶ 30-33 and Tr. 2:172 (Normandin) (during the first of "a few" conversations, the respondent told Normandin he had directed Robinson to speak to his attorney).

30. After reviewing the affidavit and I.D., on or about April 22, 2020, the respondent called Robert Normandin, a supervising attorney for the Middlesex County Bar Advocate program whom the respondent had known for twenty-three years, and from whom he had sought advice. Tr. 2:39-40, 45-46 (Respondent).

31. The respondent testified and wrote that he gave Normandin a brief outline of the situation, including that he had received an affidavit from his client's co-defendant, taking responsibility for the firearm; that his client could not make bail; and that the respondent wanted to use the affidavit to bolster his argument for non-presumptive bail relief. Tr. 2:47 (Respondent); Ex. 11, ¶ 10 (025).[6]

32. Normandin's testimony about these matters differed significantly from the respondent's, and we generally credit Normandin. He remembered "a few different conversations" with the respondent about the matter, but did not recall the respondent telling him that he had prepared an affidavit for Robinson. Tr. 2:171-172, 173-174 (Normandin). His memory was that he and the respondent had discussed how the respondent might use exculpatory information he had received from Robinson; that they "kicked around" some different thoughts on its use under the Rules of Evidence; and that they discussed whether the respondent could withdraw from representing Lopez to be a witness as to Robinson's statements. Tr. 2:187-188 (Normandin).

33. Normandin did not ever tell the respondent to use the affidavit. Tr. 2:188-189 (Normandin). Rather, he may have urged the respondent that if he had information that would help his client, he should use it, testifying before us that "[i]f I said those words, it was [as to] the

[6] Non-presumptive bail was the term for people held on serious charges or those whose bail had been revoked because of a violation of a pretrial condition. This term is in contrast to presumptive release, where there was no history of violent crime or the charge was a misdemeanor. Tr. 1:236-237 (Respondent).

information that he had . . . because I think the information that he had was very exculpatory for his client." Tr. 2:174-175 (Normandin) (emphasis added).

34. On April 28, 2020, the respondent e-mailed ADA Del Rio Gazzo and asked her to call him. Ans. ¶ 27; Ex. 6. When they spoke later that day, the respondent told her that he had obtained an affidavit from Robinson in which Robinson accepted responsibility for the firearm. The respondent asked her to review the affidavit and consider reducing Lopez's bail. Ans. ¶ 28; Tr. 1:35 (Del Rio Gazzo). As an experienced criminal attorney, Parlow know that the Robinson affidavit was likely to persuade Del Rio Gazzo to agree to a significant bail reduction, a motivating factor in obtaining such an affidavit.

35. Del Rio Gazzo was surprised; she knew Panas represented Robinson, and she had not heard anything from Panas about this. Tr. 1:36 (Del Rio Gazzo). The respondent offered to send her the affidavit and then did so. Tr. 1:36-37 (Del Rio Gazzo): Ex. 8.

36. After reviewing the affidavit, Del Rio Gazzo agreed to a motion to lower Lopez's bail from $7,000 to $500. Tr. 2:55-56 (Respondent); Tr. 1:39 (Del Rio Gazzo). The respondent drafted a joint motion for non-presumptive release with the bail lowered to $500, and sent it to Del Rio Gazzo for her electronic signature. She returned it to the respondent for filing. Tr. 2:56 (Respondent).

37. The respondent forwarded the signed motion to the email address for "Covid 19 motions to release," and received confirmation that it had been received and was scheduled for hearing the following day, April 29, 2020. Tr. 2:56-57 (Respondent).

38. At no point did the respondent send a copy of the affidavit to Panas or otherwise make Panas aware that he had sent it to the DA's Office. Ans. ¶ 31, Tr. 1:73 (Panas); Tr. 1:192 (Respondent).

39. Instead, ADA Del Rio Gazzo reached out to Panas, speaking to him and ultimately sending him the Robinson affidavit. Tr. 1:38 (Del Rio Gazzo); Tr. 1:71 (Panas); Ex. 9.

40. Panas had not previously known about the affidavit. Tr. 1:72 (Panas). He was "surprised" and "a little upset." Id. In a conversation later that day, he asked Del Rio Gazzo where and how she had gotten the affidavit, and whether she had spoken to the respondent. Tr. 1:56 (Del Rio Gazzo).

41. Panas contacted Normandin, who was also his supervisor, reporting to him that the respondent had an affidavit signed by Panas's client, and that Panas "was very upset by it." Tr. 1:74 (Panas); Tr. 2:176-177 (Normandin). Panas did not deny the affidavit's accuracy, and did not suggest to Normandin that the respondent had coerced his client. Tr. 2:177 (Normandin).

42. Normandin contacted the respondent, and told him not to use the affidavit. The respondent replied that it had already been filed. Tr. 2:59 (Respondent); Tr. 2:178 (Normandin). When Normandin suggested the respondent not go through with the bail reduction hearing, the respondent told him it was already scheduled and the Commonwealth had agreed to lower the bail to $500. Tr. 2:59-60 (Respondent).

43. On April 29, 2020, the Court ordered Lopez's release "upon failure of Commonwealth to establish that such release would result in unreasonable danger to the community or that defendant's release presented a high risk of flight." Ex. 1 (007) (second 4/29/20 entry).

Post-Affidavit Activities

44. On or about May 5, 2020, Panas sent a complaint to Sallie Vallely ("Vallely") in her role as supervisor of the Middlesex County Bar Advocate Program, regarding the respondent's ex parte contact with Robinson. Ans. ¶ 33; Tr. 1:73-74 (Panas).

45. On May 11, 2020, Panas filed an emergency motion in Woburn District Court seeking to preclude the respondent from having any further unauthorized communications with Robinson. Ans. ¶ 34; Tr. 1:74-75 (Panas). The respondent was made aware of the remote hearing on the emergency motion, but did not attend it. Tr. 1:53, 58 (Del Rio Gazzo); Tr. 1:75-76 (Panas); 1:193-194; 2:60-61 (Respondent). In response to the Court's inquiry during the hearing as to where the respondent was and why he was not present, Del Rio Gazzo called him "to let him know the court was looking for him." Tr. 1:53 (Del Rio Gazzo). He answered the phone call and told Del Rio Gazzo he would not be present. Id.

46. We credit that the respondent had spoken with Normandin before the hearing about whether or not to attend. Tr. 2:61 (Respondent). Normandin asked if he had been subpoenaed or summonsed and, upon learning that he had not, stated that "I wouldn't go if you're [sic] not required to." Tr. 1:62 (Respondent).

47. In the circumstances, we find nothing untoward, and certainly no misconduct, in the respondent's failure to attend the hearing.

48. The Court allowed the emergency motion, writing: "all counsel involved with these matters are ORDERED to comply with the provisions of Mass. R. Prof. C. 4.2," and setting out the rule's text.

49. In mid-May 2020, the respondent received the audio recordings of thirty-eight jailhouse telephone calls between Lopez and Robinson. Ex. 17; Tr. 2:69-71 (Respondent). The respondent listened to these calls, some of which reflected that Robinson was trying to help Lopez raise bail money; that Robinson admitted repeatedly that he alone had had possession of the firearm; that Lopez had not had possession of the gun; and that Robinson wanted to help

Lopez by signing a statement to this effect. Id.; see also Respondent's Brief, Proposed Findings of Fact and Proposed Rulings of Law (Respondent's PFCs), pp. 14-20.[7]

50. On or about May 18, 2020, Vallely forwarded Panas's complaint to the respondent. Ans. ¶ 37. On or about June 18, 2020, the respondent sent Vallely via fax a letter dated June 17, 2020 explaining the circumstances related to Panas's complaint. Ans. ¶ 38. He explained that he had been surprised by Robinson's April 9 call; that he directed Robinson to speak with Panas about making a statement and that he believed Panas would not think it in Robinson's best interests; that on April 13, Robinson had left a voice mail message, which he set out verbatim; that the respondent prepared and sent an affidavit to a fax number provided to him by Vivian Rosario, his client's girlfriend; that after he received the signed affidavit in the mail, he spoke with Normandin and explained the situation; and that he had thereafter received jail house calls between Lopez and Robinson in which Robinson repeatedly made incriminating statements beneficial to Lopez. Ex. 10 (020-021).

51. He concluded that "[i]t was an error on my part to send Mr. Robinson the affidavit without consulting Attorney Panas. The unsolicited phone call of April 9, 2020 by Mr. Robinson was unavoidable and I directed him to consult his attorney for guidance." Ex. 10 (021).

52. The respondent again admitted his misconduct in response to a July 2, 2020 letter from bar counsel seeking information about his contact with Robinson, this time writing that "[i]t was an error on my part to send the unsigned affidavit to the fax number provided to me by my client's girlfriend without consulting Attorney Panas." Ex. 11 (023, 025).

[7] Notably, in one of those "jailhouse" calls on April 11, 2020, Lopez informed Robinson that Parlow was going to send him papers. This was prior to the second call (voicemail message) Robinson made to the respondent, and is potentially contradictory to the respondent's testimony which, as presented, was intended to suggest that he did not offer to prepare an affidavit until April 16, 2020, when Lopez's girlfriend, Vivian Rosario, called the respondent. Ex. 2 (010); Tr. 1:182; Tr. 2:28 (Respondent).

53. On May 17, 2021, Panas filed a Motion to Suppress "all statements made by [Robinson] to the police," citing Miranda v. Arizona, the Fifth, Sixth and Fourteenth Amendments to the U.S. Constitution, and Article 12 of the Massachusetts Declaration of Rights. Ex. 1 (004) ((May 17, 2021 entry); Ex. 14.[8]

54. Panas included an Affidavit of Robinson in support of the Motion to Suppress. Ex. 15. In the Affidavit, Robinson claimed, among other things, that he and the respondent had had a conversation "that if I signed this Affidavit provided to me, I would be able to get my friend, Juan Lopez out of jail," and that Robinson "was told" that Lopez's bail would be reduced if Robinson signed (¶ 3); that Robinson's statements, if any, were not voluntary and were not made with the consultation of his attorney, and that Robinson, at the time of signing, had been under the influence of marijuana, which he smokes on a daily basis (¶ 4); that Robinson was not read his Miranda rights (¶ 5); that Robinson was not advised of his rights to refuse to make the statement, and that the conversation with the respondent was in violation of Rule 4.2 of the Rules of Professional Conduct. (¶ 6).

55. In Panas's Memorandum in Support of Motion to Suppress Statements, he claimed, among other things, that Robinson, a chronic marijuana smoker who had been evaluated for competency, "was subject to coercion, believing he was doing the right thing. Co-Defendant's Counsel would be expected to be on his side." Ex. 16 (115). Neither the Motion nor Memorandum in Support assert that the respondent coerced Robinson into submitting the affidavit, nor was any evidence presented which could reasonably lead to such a conclusion.

[8] Panas explained the "police" reference by stating he had never before filed a Motion to Suppress involving an attorney taking a statement from his client, and so tried to convert the usual Motion to Suppress to fit these circumstances. Tr. 1:80-81 (Panas).

56. The evidentiary hearing on the Motion to Suppress was held on October 18, 2021. During the proceeding, the respondent appeared but, concerned about the possibility of being criminally charged with intimidating a witness, and on the advice of counsel, asserted his Fifth Amendment privilege not to incriminate himself and refused to testify. Ans. ¶ 43; Tr. 1:85 (Panas); Tr. 1:201-202; Tr. 2:85-86 (Respondent)

57. Without the respondent's testimony, the Commonwealth, now represented by ADA Shute, could not meaningfully oppose the motion to suppress. Tr. 1:151-152 (Shute). Accordingly, the Court took no action on the motion and it was reserved. Justice Frank instructed that "if any circumstances changed it could be essentially requested to be reheard so that evidence could be submitted on the motion." Tr. 1:152-153 (Shute).

58. On August 16, 2021, the respondent filed a motion to withdraw in Lopez's matter, citing conflicts of interests in the case that required him to withdraw. Ans. ¶ 46.

59. On September 23, 2021, Judge David Frank allowed the respondent's motion to withdraw. Ans. ¶ 47.

60. In his March 3, 2021 Statement under Oath to bar counsel, the respondent stated that he had exhibited a "lapse in judgment" in sending Robinson the fax, and that if he could do it over again, he would not have sent the affidavit to Robinson but, instead, would have sent it to Panas with an explanation. Ex. 13 (100-101,106).

Conclusions of Law

61. Bar counsel charged that by communicating with Robinson about the firearms case while knowing that Panas represented Robinson, without obtaining Panas's consent or otherwise being authorized to communicate with Robinson, the respondent violated Mass. R. Prof. C. 4.2.

62. As indicated above, the respondent has repeatedly admitted this violation, including in ¶ 49 of his answer in this matter, and we find that bar counsel has proved it.

Matters in Mitigation and Aggravation

Mitigation

63. The respondent argues in mitigation that he was under great stress due to the unique and unprecedented demands of the Covid-19 pandemic. See generally Respondent's PFCs, ¶¶ 145, 147.

64. The respondent testified credibly that he received daily bulletins from the Committee for Public Counsel Services (CPCS) listing rates of infections among prisoners and staff at Department of Corrections facilities, and strongly urging practitioners to review the specifics of all clients in custody and to try, if at all possible, to gain their release. Tr. 1:230-233 (Respondent). Normandin corroborated this, describing CPCS as "very forcefully pushing the attorneys to file motions for release . . . and then communicate the results to their supervising attorney . . . ." Tr. 2:169-170 (Normandin).

65. The respondent had at least half a dozen clients at the time, and was advised to go over their health risks and query each about conditions in the jails. Tr. 1:232-233 (Respondent). He filed motions for release for all of them. Tr. 1:234 (Respondent). This involved reviewing scholarly articles and treatises by epidemiologists on Covid-19. Id. Each motion took half a day to draft. Tr. 1:235 (Respondent).

66. No vaccines were available until 2021, and we credit the respondent's testimony that it was a very scary time. Tr. 1:239-240 (Respondent).

67. The respondent spent a lot of time rescheduling and continuing cases; he was not going to court, and was not preparing for hearings or meeting with clients. Tr. 1:242-243 (Respondent).

68. We credit that the respondent cared deeply for his clients and wanted them released from jail if at all possible. However, we find that none of this is enough to mitigate the respondent's misconduct. While we credit that there was much confusion and uncertainty in March and April of 2020, the respondent has not proved that it was pandemic-related stress that caused his misconduct. The absence of causation is fatal. See Matter of Ablitt, 486 Mass. 1011, 1018, 37 Mass. Att'y Disc. R. ___, ___ (2021) (rejecting mitigation claim where there were no medical records or evidence that medical conditions and stress caused or contributed to misconduct).

69. The respondent has also cited various medical conditions—high blood pressure, high cholesterol, diabetes and a 2016 spinal fusion—in support of his claim of mitigation. See generally Ex. 19. We do not agree that he has established any causal connection between the diverse medical issues he has reported and his misconduct. The absence of causation is fatal. Ablitt, supra.

70. The respondent cites his duty of zealous representation as mitigating, claiming he was caught in an "ethical dilemma" because of Robinson's unsolicited contact and exculpatory disclosure. Respondent's PFCs, ¶¶ 149, 150.

71. We do not agree that this is mitigating. The duty to represent a client zealously is tempered by the reminder to do so "within the bounds of the law." Mass. R. Prof. C. 1.3. More compelling, we expect zealous but ethical advocacy. Indeed, there is legal authority to the effect that zealous advocacy is a typical mitigating factor. Admonition 19-18, 35 Mass. Att'y Disc. R. 715, 723 (2019). Cf. Matter of Crossen, 450 Mass. 533, 563, 24 Mass. Att'y Disc. R. 122, 160 (2008) ("`[a]n attorney's ethical duty to advance the interest of his client is limited by an equally solemn duty to comply with the law and standards of professional conduct'") (citation omitted); Matter of Neitlich, 413 Mass. 416, 423, 8 Mass. Att'y Disc. R. 167, 175 (1992) (client's interest

in zealous representation must yield to lawyer's duty "to uphold the integrity of [the system of justice] by being truthful to the court and opposing counsel.").

72. As a factual matter, we do not agree that there was any real tension between or among the respondent's legal and professional obligations. Given that Robinson's admissions were potentially exculpatory towards his client, his only challenge was in how to use this information. Normandin's testimony shows that he and the respondent discussed various ways to do this, none of which included preparing an affidavit for Robinson's signature without notice to Panas. We would add to the list of viable options: disclosing the situation to Panas; seeking guidance from the Court; trying to get the jailhouse phone calls as soon as the respondent learned of Robinson's admissions in them; and withdrawing from representing Lopez so as to be able to offer testimony about Robinson's admissions (an option the respondent seemed disinclined to adopt given his concern that his income was decreasing during the pandemic). Tr. 2:107. We reject the respondent's argument that he was hamstrung by competing obligations, and we strongly disagree, if in fact the respondent is making this argument, that the respondent's only option was to violate a disciplinary rule.

73. To the extent that the respondent is arguing that he relied on Normandin's advice, for the reasons set out in ¶ 61 of Bar Counsel's Proposed Findings of Fact, Rulings of Law and Recommendation for Discipline (Bar Counsel's PFCs), we do not agree that this claim is supported factually. In any event "[r]eliance on the advice of counsel is not a defense to a charge of unethical conduct." Matter of Murray, 455 Mass. 872, 884, 26 Mass. Att'y Disc. R. 406, 420 (2010).

74. The respondent cites his lack of prior discipline and cooperation with bar counsel; these are not mitigating. Matter of Greene, 476 Mass. 1006, 1010, 32 Mass. Att'y Disc. R. 254, 259 (2016).

75. A lack of selfish motive is not mitigating. Matter of Bulger, 29 Mass. Att'y Disc. R. 65, 68 (2013).

76. While the presence of harm may be aggravating, see discussion infra where we conclude that there *was* harm, a lack of harm is not mitigating. Matter of Alter, 389 Mass. 153, 157, 3 Mass. Att'y Disc. R. 3, 8 (1983); Matter of Goodman, 22 Mass. Att'y Disc. R. 357, 365-366 (2006).

77. We were not convinced that the respondent's workload increased significantly due to Covid-19. While he testified convincingly that he felt pressure from CPCS to seek bail for all six of his incarcerated clients, and that this was time-consuming, he also testified that there were no trials or hearings to prepare for. Therefore, we reject as a factual matter that his workload was overwhelming. And while we believe that he suffered financially due to Covid-19, he could not have known, in April 2020, that this would be the case. Regardless, the pressures of practice, and related financial concerns are not, without far more than was shown here, anything more than typical mitigating factors. Matter of Dragon, 440 Mass. 1023, 1024, 19 Mass. Att'y Disc. R. 121, 124 (2003); Matter of Alter, supra, 389 Mass. at 157, 3 Mass. Att'y Disc. R. at 7.

Aggravation

78. Bar counsel is correct that our case law treats experience as an aggravating factor. Matter of Moran, 479 Mass. 1016, 1022, 34 Mass. Att'y Disc. R. 376, 387 (2018); Matter of Luongo, 416 Mass. 308, 311-312, 9 Mass. Att'y Disc. R. 199, 203 (1993). The respondent is an experienced attorney. We agree that this is a factor in aggravation.

79. Bar counsel argues that Robinson was vulnerable, another factor in aggravation. Bar Counsel's PFCs, ¶ 51. Although our conclusion on this point was a close call, on balance we reject this argument. While Robinson was a criminal defendant, he was not incarcerated, and he had counsel. We are aware that Robinson had an evaluation to assess his competence to stand

trial, but was found to be competent (Ex. 1 (003-004, 3/9/21 and 4/07/21 entries). Further, Panas claimed in an affidavit that Robinson smoked marijuana daily and was under its influence when he signed the affidavit. Ex. 15. However, there was no evidence presented that the respondent was aware of this purported marijuana use or susceptibility. Moreover, the jailhouse conversations between Robinson and Lopez, reprinted at Respondent's PFCs, ¶¶ 96-103, reflect what appears to be Robinson's genuine concern about not allowing his friend Lopez to "go down for a gun that he had no possession of," and Robinson's rational understanding that his admissions could mean increased jail time for him. Respondent's PFCs, ¶¶96, 98, 103 (67, 68, 71).

80. We conclude that we do not have anything sufficiently specific or compelling to convince us that Robinson was vulnerable, as that term has been used in our case law. See, e.g., Matter of Greene, 477 Mass. 1019, 1022, 33 Mass. Att'y Disc. R. 163, 167 (2017) (finding vulnerable unsophisticated third-party homeowners in precarious financial situations); Matter of Lupo, 447 Mass. 345, 354, 22 Mass. Att'y Disc. R. 513, 528 (2006) (elderly, unsophisticated clients); Matter of Font, 30 Mass. Att'y Disc. R. 155, 156 (2014) (vulnerable client distressed by son's death). Cf. In re Chan, 271 F. Supp. 2d 539, 544 (S.D.N.Y. 2003) (censure for criminal attorney who spoke with client's co-defendant at client's insistence and without notifying co-defendant's counsel; in describing "salutary purposes" of applying the no-contact rule to counsel for criminal co-defendants, Court notes that "while *some* criminal defendants may possess a level of sophistication about what is and what is not in their best interest, we see no reason to assume that *all* criminal defendants are aware of the risks involved in speaking with a co-defendant's lawyer, or in giving statements to parties who do not represent them and who may have interests that conflict with theirs."). (emphasis in original).

81. We find that there was harm as the result of the respondent's conduct. The integrity of the legal system and the administration of justice suffered; additional legal proceedings were necessary, among them the motion and hearing regarding contact with witnesses (see Ex. 22); the motion to suppress Robinson's affidavit; the respondent's motion to withdraw, and the appointment of new counsel for Lopez. Ex. 1 (003-004) (Robinson docket), (008-009) (Lopez docket).[9] Cf. Matter of Goodman, supra, 22 Mass. Atty Disc. R. at 366 (misconduct "constitutes harm to the profession in the dishonor it brings to all of us in the eyes of the public.").

82. We also find there was harm to Robinson. Were he to testify at trial in a way inconsistent with his statement, it could be used to impeach him. And while we are not in a position to decide whether his statement would be admissible at a trial at which he did not testify, it may well be. Cf. Commonwealth v. Donovan, 58 Mass. App. Ct. 631, 638-639, rev. den. 440 Mass. 1102 (2003) (post-Miranda statements inconsistent with defense admissible despite defendant's failure to testify at trial). We recognize that the force of any inconsistent testimony by Robinson may be significantly blunted by the jailhouse phone calls. See Respondent's PFCs, pp. 35-36. Nonetheless, it is impossible not to conclude that it is at least potentially harmful to a criminal defendant to have a sworn admission of guilt on the record.

83. We agree with bar counsel that the respondent did not display true remorse. While we recognize that he admitted the rule violation promptly and repeatedly, the regrets he described to us did not concern Robinson, but instead focused on the impact of the misconduct on the respondent himself and his own career—the embarrassment and blow to his reputation as

[9] Although it is not on the docket sheet, Panas also indicated an intent to withdraw, based on his concern that he might be called as a witness in the case. Tr. 1:86-87 (Panas). If this in fact occurred and if new counsel had to be appointed for Robinson, this underscores our conclusion.

the result of public disciplinary proceedings; the disclosures he has had to make to his malpractice carrier, CPCS and the Bar Advocate Program; and the "huge amount of time that this has taken out of my personal life and my professional life." Tr. 2:100-101 (Respondent). Lack of remorse is a factor in aggravation. Matter of Corbett, 478 Mass. 1004, 1006, 33 Mass. Att'y Disc. R. 112, 115 (2017); Matter of Crossen, supra, 450 Mass. at 580, 24 Mass. Att'y Disc. R. at 180 (citing in aggravation lack of concern for effect on victim of misconduct).

84. Finally, we find that the respondent was not entirely candid with us about his misconduct. He knew, after the first conversation with Robinson on April 9, 2020, that Robinson had exculpatory information that could potentially help his client. Transcripts of recorded jailhouse phone calls between Lopez and Robinson that the respondent submitted to us for consideration reflect that as early as April 11, 2020 – *before* Robinson's April 13 voice mail message – the respondent and Lopez had discussed the respondent's sending Robinson papers. Respondent's PFCs, ¶ 96 (Lopez tells Robinson on recorded call: "My lawyer said that he's gonna send you the papers."). Because of this, we are hard-pressed to understand, and do not credit, the respondent's testimony that, as to the second call/voice mail message, he was not sure that it was in fact Charles Robinson or that, when he received the signed affidavit back, he hesitated to use it because "this might be a ruse." Tr. 2:25-27, 50 (Respondent).

85. Along the same lines, the respondent described his misconduct repeatedly, in his Statement under Oath, as a "lapse in judgment." (Ex. 13 (100, 101)). To the extent that the respondent tried to convince us he was caught off guard by Robinson's second call/voice mail message, or that his misconduct was isolated, we do not credit this. Rather, we find it more likely that the respondent and his client agreed before April 13 that the respondent would send Robinson an affidavit. This was part of a plan, not a fleeting or momentary slip.

86. While we are troubled by the respondent's failure to be entirely accurate and forthcoming about the timeline of events, he admitted, repeatedly, the essence of his misconduct. Therefore, we do not find that he intended to deceive us. Cf. Matter of Zankowski, 487 Mass. 140, 153, 37 Mass. Att'y Disc. R. __, __ (2021) (attorney is entitled to defend against allegations of misconduct, but hearing committee may consider in aggravation any lack of candor it finds); Matter of Hoicka, 442 Mass. 1004, 1006, 20 Mass. Att'y Disc. R. 239, 243 (2004) (hearing committee decides whether testimony is deliberately false or confused or mistaken).

Recommended Disposition

Bar counsel recommends "at least a public reprimand." Bar Counsel's PFCs, pp. 19, 21. The respondent recommends an admonition. We recommend a public reprimand.

We have reviewed the cases described by the respondent. In general, the admonition cases he cites and those we have found involved more discrete and limited misconduct than what was proved here. E.g., Matter of an Attorney, 489 Mass. 1018, 38 Mass. Att'y Disc. R. __ (2022) (admonition, after disciplinary hearing, for failure to act with diligence in role of guardian, co-guardian and trustee, in violation of rules 1.1, 1.2(a), and 1.15(e), aggravated by experience, multiple rule violations, and the lawyer's failure to disclose that he was withholding funds to pay himself for services that had not been billed); Admonition 22-06, 38 Mass. Att'y Disc. R. __ (2022) (admonition, after disciplinary hearing, for violation of rules 1.1 and 1.3; lawyer prepared and submitted to Court a sloppy and inaccurate memorandum that included factually inaccurate statements; no actual or potential harm to the client; misconduct aggravated by experience); Admonition 20-28, 36 Mass. Att'y Disc. R. 533 (2020) (lawyer sent letter to opposing parties and counsel, in violation of rule 4.2; although told not to do so again, he did so); Admonition 19-12, 35 Mass. Att'y Disc. R. 704 (2019) (admonition and CLE for single instance of hitting "reply all" to correspondence that included two individuals the respondent knew were represented and

their counsel, in violation of rule 4.2; lawyer had been warned in 2014 about communicating with represented parties without authorization); Admonition 01-36, 17 Mass. Att'y Disc. R. 724 (2001) (represented employee telephoned respondent lawyer and said he wanted to resolve the case without his attorney; lawyer spoke with him and urged him to settle, citing criminal complaint he had filed on his client's behalf; lawyer believed employee wanted to settle and had effectively discharged attorney; conduct violated rules 4.2 and 3.4(h)).[10]

Our discussion above reflects our awareness that an admonition can redress a range of misconduct, from the isolated and discrete to the repeated or intentional, and that a dismissal can follow even misconduct causing harm. Nevertheless, we think that in the circumstances, a public reprimand is the most fitting sanction. We reach this conclusion based on our analysis of the cases imposing public reprimands. E.g., Matter of Kent, 21 Mass. Att'y Disc. R. 366 (2005) (public reprimand, by stipulation, for lawyer who met twice with represented elderly woman in nursing home at the suggestion of her relative; lawyer for elderly woman told Kent not to meet with her, but Kent relied on representations that she was unhappy with her lawyer and his own belief that she was unrepresented in connection with the transaction he proposed to undertake with her, in violation of rules 4.2 and 4.3); In re Chan, supra, 271 F.Supp. 2d 544 (censure for criminal lawyer whose client insisted he speak with represented co-defendant without contacting his counsel; counsel learned of misconduct when Chan listed client on his witness list, in violation of rule prohibiting communication with represented party without consent of party's

[10] Cf. Admonition 19-18, 35 Mass. Att'y Disc. R. 715, 725 (2019) (admonition for defense attorney's intentional violation of Court order not to ask a particular question, in violation of rules 3.4(c) and 8.4(d); while lawyer had "sufficient time to recognize that he should not ask the question . . . his error was an isolated misstep in the middle of a trial with no time to self-correct."); Bar Counsel v. Jane Jones, Esq., 29 Mass. Att'y Disc. R. 778, 788-789 (2013) (dismissal, after disciplinary hearing, where immigration client was arrested and detained due to lawyer's twenty-two day lapse in attention; Board notes that lawyer "generally acted with competence, diligence, and perspicacity in handling [client's] immigration matter," and characterizes misconduct as "an isolated instance of neglect.").

lawyer); US v. Santiago-Lugo, 162 F.R.D. 11, 13 (D. PR 1995) (attorneys who interviewed and got statements from several co-defendants, in violation of rule 4.2, sanctioned by having work-product suppressed and by censure, Court noting that "[z]ealous representation, as required by the Sixth Amendment, is not equivalent to professional misconduct . . . ."); Matter of Alacantra, 144 N.J. 257, 267, 268 (1995) (public reprimand for lawyer who spoke to two former co-defendants turned adverse-party witnesses without their attorneys' permission, in violation of rule 4.2 and other disciplinary rules; Court had never addressed appropriate discipline under rule 4.2, but warned that future violations will incur greater discipline; "in attempting to protect his client's interest, [respondent lawyer] crossed over the line from vigorous defense advocacy and came perilously close to bringing about a perversion of justice"); Matter of Mahoney, 437 N.E.2d 49 (IN 82) (public reprimand by agreement for lawyer who, despite being denied permission by counsel to speak with co-defendant, did so anyway, procured statement, and used it to impeach co-defendant when he testified against Mahoney's client, in violation of rule prohibiting communication with represented person and rule sanctioning conduct prejudicial to administration of justice). Cf. People v. DeLoach, 944 P.2d 522 (CO 1997) (stipulation to thirty-day suspension for criminal defense attorney who visited client's co-defendant in jail seven times without knowledge or consent of his counsel, in violation of rules 1.7(a), 4.2 and 8.4(d)).

To the extent that bar counsel, by arguing for "at least a public reprimand," is urging us to recommend a suspension, we strongly disagree that this would be appropriate. The only suspension case we have found in Massachusetts, for somewhat similar misconduct, is Matter of Marshard, 34 Mass. Att'y Disc. R. 283 (2018). Marshard was an assistant district attorney who met with a represented witness without the consent of his lawyer. The Hearing Committee recommended a public reprimand for her violation of rules 4.2 and 8.4(d), but the Board disagreed. Its recommendation of a one-month suspension, with reinstatement conditioned on the

successful completion of a legal ethics course approved by bar counsel, was based on two factors: Marshard's abuse of prosecutorial power, and the fact that she made misrepresentations to a judge. Id. at 291. The facts reflect that Marshard met the witness – who seemed agitated, did not understand the conversation and asked to meet with his lawyer—to discuss with him testifying in a case she was then prosecuting, in exchange for which she promised that he would not be charged. Id. at 293. When later asked by the judge if the witness's attorney had been at the meeting, she lied and denied that he had been appointed at the time, an assertion the appointed attorney immediately corrected. Id.

Although it found significant aggravation, including experience, a lack of understanding of her ethical obligations and a lack of candor at the disciplinary hearing which included "outright falsehoods," the Hearing Committee recommended a public reprimand. Id. at 295-296. As noted, the Board's disagreement with the sanction centered on Marshard's attempts to mislead a judge through "multiple misrepresentations," a violation which, if charged and proved, would likely have resulted in a suspension of at least a year. Id. at 297-298.

Marshard's misconduct was far worse than the respondent's. Although we have not found a case precisely on point, we conclude that the respondent's misconduct is more in line with the public reprimand cases we have summarized above. Accordingly, we recommend that Peter J. Parlow receive a public reprimand for his misconduct.

Respectfully submitted,
By the Hearing Committee,

/s/ Steven J. Bolotin
Steven J. Bolotin, Esq., Chair

Dated: November 22, 2022

/s/ Regina Au
Regina Au, Member

/s/ Karol Sierra-Yanez
Karol Sierra-Yanez, Esq., Member