DANIEL M. HUTTON

Public Reprimand No: 2015-14

Order (public reprimand) entered by the Board on December 23, 2015. [1]

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[1] Compiled by the Board of Bar Overseers based on the record of proceedings before the board.

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

BAR COUNSEL, Petitioner, v. Daniel M. Hutton, Esq., Respondent	Public Reprimand No. 2015-14

ORDER OF PUBLIC REPRIMAND

This matter came before the Board on a Petition for Discipline and the report of the Hearing Committee. On September 21, 2015, the Board voted to impose a public reprimand. It is ORDERED and ADJUDGED that Daniel M. Hutton, Esq. 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 Daniel M. Hutton, Esq., be and hereby is PUBLICLY REPRIMANDED.

BY: Kelma Roman, Member
BOARD OF BAR OVERSEERS

DATED: 12/23/2015

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

BAR COUNSEL,	:
Petitioner	:
vs.	:
DANIEL M. HUTTON, ESQ. GLEN R. VASA, ESQ.	: :
Respondents	:

HEARING REPORT

On August 22, 2014, bar counsel filed a petition for discipline against the respondents, Daniel M. Hutton and Glen R. Vasa, and against Jay M. Lipis.[1] The petition charges that the respondents impermissibly assisted and allowed Lipis, a suspended attorney, to engage in the practice of law in their firm; that they failed to supervise him or make sure that measures were in place to assure that his conduct complied with their ethical obligations; and that they allowed him to use a false name and to misrepresent himself as an attorney.

Represented by counsel, Hutton filed an answer September 9, 2014. Vasa filed a pro se answer September 11, 2014. He subsequently retained counsel and filed an amended answer and statement of mitigation on December 10, 2014. Bar counsel filed an amended petition March 17, 2015, omitting Lipis. Neither respondent filed an answer responding to the amended petition. Hearings were held on March 19, 2015 and March 24, 2015. Thirty-two exhibits were admitted. Seven witnesses testified: Kathy Bleier, an Allstate claims investigator; Alphonso Capparella, an Allstate claims service leader; William Serwetman, Esq., an attorney who had worked at the

[1] Lipis resolved the charges against him by stipulation.

respondents' law firm; Jay Lipis; respondent Daniel Hutton; Paul Epstein, Esq., the attorney who had represented Lipis at the disciplinary hearing; and assistant bar counsel Linda Bauer, Esq., who had prosecuted Lipis. Respondent Glen Vasa did not testify.

On May 26, 2015 and May 27, 2015, the parties filed their proposed findings and conclusions.

Findings and Conclusions[2]

Background Facts

1. The respondent, Daniel M. Hutton, was admitted to the Massachusetts bar on June 20, 1996. Ans. ¶ 3 (Hutton).

2. The respondent, Glen R. Vasa, was admitted to the Massachusetts bar on December 12, 2003. Ans. ¶ 4 (Vasa).

3. Jay Lipis owned and operated a law practice, the Law Office of Jay M. Lipis, at which he employed Hutton starting in approximately 2002 and Vasa starting in 2004. Ans. ¶ 5 (Hutton); Ans. ¶ 5 (Vasa). The practice focused largely on plaintiffs' personal injury cases. See Ex. 16, p. 9 (Hutton); Ex. 17, p. 11 (Lipis).

4. The firm was highly profitable during many of the years Lipis operated it, bringing in approximately $700,000 in adjusted gross income in 2006. Tr. 2:14 (Lipis).

5. In 2006, Lipis sold his law practice and goodwill to Hutton and Vasa for one million dollars, payable in installments over the course of a period of years. Tr. 2:14 (Lipis); Ex. 32. Although he had other interested buyers, Lipis rejected them in favor of Hutton and Vasa,

[2] The transcripts 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.

who agreed to run the firm as he had. See Ex. 16, p. 12 (Hutton); Ex. 17, p. 17 (Lipis). This was important to Lipis, since Hutton and Vasa were going to be paying him and he was afraid that if they could not make money, he would not get his payment. Tr. 2:52 (Lipis).

6. The parties signed an Agreement to Purchase Assets, dated May 15, 2006, which set out the purchase price, payment schedule and various other mutual obligations, including an agreement by the buyers to maintain the law practice at its current address, and to rent the firm's office space from Lipis. See Tr. 2:15-16 (Lipis); Ex. 32.

7. Included on the list of assets was the right to use the Lipis name for two years. Lipis agreed to consult or assist for "a minimum of six hours per week unpaid or less, if agreed upon by the parties for the first year" and to be of counsel with no obligations for the second year. Ex. 32, Schedule 1(a).[3]

8. As a result of the sale, Hutton and Vasa became equal owners of the firm. Ans. ¶ 7 (Hutton); ¶ 7 (Vasa). At first, the firm was called Lipis, Vasa & Hutton. Tr. 2:110 (Hutton). After the Lipis name was removed, the firm was known as Vasa & Hutton, P.C. ("V&H"). See Ans. ¶ 12 (Hutton).

9. On October 10, 2008, Lipis was suspended from the practice of law for two years, effective November 10, 2008. See Ans. ¶ 8 (Hutton); Ans. ¶ 8 (Vasa); Matter of Lipis, 24 Mass. Att'y Disc. R. 431 (2008). Ex. 1 (VH1).

10. Lipis applied for reinstatement with the Supreme Judicial Court on September 2, 2011. Ex. 2 (VH6). On June 14, 2012, the hearing panel recommended against reinstatement. See Ex. 2 (VH23). The board adopted the hearing panel's recommendation against reinstatement

[3] After the two-year period had lapsed, Vasa wanted to keep Lipis's name on the firm. Tr. 2:110 (Hutton). Lipis was opposed. Id. Hutton called Linda Bauer, assistant bar counsel, who said Lipis's name had to come off since he no longer worked there. Id. See generally Mass. R. Prof. C. 7.5, comment [1] ("it is misleading to use the name of a lawyer not associated with the firm").

on August 13, 2012, and the Supreme Judicial Court denied reinstatement on September 17, 2012. Ex. 4; Ex. 5. Both Vasa and Hutton knew that Lipis's reinstatement bid had been unsuccessful. Ex. 15, p. 38 (Vasa). Lipis was represented at both the disciplinary hearing and the reinstatement by Attorney Paul Epstein. Tr. 2:161 (Epstein).

11. Beginning in 2010, Hutton moved in with Lipis to Lipis's home. See Tr. 2:53 (Lipis); 2:100 (Hutton). They currently share Lipis's split-level home. Tr. 2:54 (Lipis).

12. At all times relevant to the petition, Hutton and Vasa were aware of Lipis's suspension. See Ex. 3 (VH26); Ans. ¶ 10 (Hutton); Ans. ¶ 10 (Vasa).

The V&H Firm, June through October 2012

13. By 2012, Hutton and Vasa were obligated to pay Lipis $6,000 twice a month, plus $2,100 per month in rent, for a total monthly payment of $14,100. Ex. 32, Agreement to Purchase Assets, ¶ 5; Commercial Lease, Section 1; Tr. 2:117 (Hutton).

14. In the summer of 2012, three attorneys worked at V&H: Vasa; Hutton; and William Serwetman. Tr. 2:32-33 (Lipis). Serwetman had been admitted to the Massachusetts bar in 2002, and became employed by V&H in 2007. Tr. 1:173-174 (Serwetman).

15. The firm had other employees in 2012 – a receptionist; an office manager; an off-site paralegal; and a file handler. In addition, Vasa had a personal assistant. Tr. 1:177 (Serwetman).

16. In the summer of 2012, the firm was "going broke" and could not make ends meet. Ex. 16, p. 51 (Hutton). We credit testimony that it was "very, very stressful," that Hutton took only $3,000 in salary in 2012, that there were times when the bills were not paid, that occasionally the phone and lights were shut off, and that the firm was "drowning." Tr. 2:114, 116-117 (Hutton); Tr. 1:208-209 (Serwetman); Ex. 16, p. 51 (Hutton).

17. Vasa was upset about the ongoing obligation to pay Lipis. Tr. 1:210-211 (Serwetman). We credit that Vasa had Serwetman draft a letter to Lipis and gave him a list of items to include. Tr. 1:211-212 (Serwetman). Hutton was not present and was not involved in the drafting. See Tr. 1:212 (Serwetman).

18. The letter, dated July 13, 2012, advised Lipis that Hutton and Vasa were taking the position that they were no longer obligated to make payments to him due to his alleged material omissions of fact during the drafting of the asset purchase agreement including a failure to disclose that he was "subject to bar discipline." Ex. 22. It declared the agreement void, indicated that the parties would accept $300,000 in settlement of their claims, and demanded arbitration.

19. We credit Hutton's testimony that Serwetman wrote the letter at Vasa's direction, without Hutton's knowledge or input. Ex. 16, p. 52 (Hutton). We also find that Hutton disagreed with much that was in the letter. See Ex. 16, pp. 52-53 (Hutton). However, ultimately Lipis, Vasa and Hutton agreed to a modification of the original agreement. Ex. 23.

20. The Modification Agreement, dated July 18, 2012, reduced the balance of the promissory note to $131,000 — a $35,000 discount — and reduced the monthly payments Hutton and Vasa were obligated to make. Tr. 2:24 (Lipis); Ex. 23.

21. We credit that in June or early July 2012, before the Modification Agreement was signed, Lipis raised with Hutton the possibility of coming back to the firm to do some work on a volunteer basis. Tr. 2:25 (Lipis); Tr. 2:101 (Hutton); Ex. 8 (VH35). We credit Lipis's testimony that he was depressed and lonely, and that his therapist suggested he should try to get some structure into his life. Tr. 2:25 (Lipis); Tr. 2:101 (Hutton). Lipis proposed to Hutton that he return to the firm as a volunteer. Tr. 2:101 (Hutton).

22. Both Hutton and Vasa[4] knew Lipis was suspended. Amended Petition for Discipline, ¶ 10; Ans. ¶ 10 (Vasa); Ans. ¶ 10 (Hutton). We credit that Hutton did some research and found a case, Matter of Rome, 10 Mass. Att'y Disc. R. 229 (1994), where, as he understood, the court had left open the issue of whether a suspended attorney could work as a volunteer. Tr. 2:107 (Hutton).[5]

23. In a meeting with Vasa and Attorney Jeff Cohen, the firm's tax lawyer, Hutton brought up the possibility of Lipis coming back to work at V&H as a volunteer. Tr. 2:101-102 (Hutton). We credit that Cohen advised against the plan, citing two concerns: that Lipis might still want to be the boss, causing a power struggle; and that since he was a suspended attorney, even with BBO approval, having him work there would have the appearance of impropriety. Tr. 2:102 (Hutton). We credit that Hutton stated at the meeting that they needed to get BBO clearance specifically for volunteer work. Tr. 2:107 (Hutton).

24. On July 18, 2012, the day the modification agreement was negotiated and signed, Vasa told Serwetman that there had been discussion about the possibility of Lipis coming to the office to act as a settlement consultant and to help settle some cases. Tr. 1:223 (Serwetman). Vasa gave Serwetman specific reasons why it would be good to have Lipis back: he was very good at settling cases, and he could get good value for them. Tr. 1:315-316 (Serwetman).

25. Vasa and Serwetman discussed whether that arrangement would be allowed under the terms of Lipis's suspension. Tr. 1:224 (Serwetman). Serwetman contacted an attorney friend

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[4] Vasa twice argues that since Lipis's suspension was for a term of two years commencing October 10, 2008, his suspension "expired" or was completed as of October 10, 2010. See Vasa's Requests for Findings of Fact, Findings of Law, and Recommendation, ¶¶ 5, 17. The expiration of the period of suspension is relevant to eligibility for reinstatement and to a request to the Court to work as a paralegal, see S.J.C. Rule 4:01, §18(3), but it does not automatically result in reinstatement. Generally, a lawyer suspended for more than a year – even one whose term has run – remains suspended until reinstated by the Court after reinstatement proceedings.

[5] We do not agree that Matter of Rome addressed volunteer lawyers, but we credit Hutton's testimony that he found the case and thought it relevant.

and, in his next conversation with Vasa, mentioned that the friend had seen a recent SJC decision stating that a suspended or disbarred attorney could not act as a mediator. Tr. 1:224-225 (Serwetman). We credit that Serwetman told Vasa that the holding in that case suggested that there might be problems in bringing Lipis back to settle cases. Tr. 1:224-225 (Serwetman).

26. Less than a week after the Modification Agreement was signed, on the morning of Monday, July 23, 2012, Vasa sent Lipis an email asking him when he would be able to start, indicating that Wednesday was convenient for Vasa. Ex. 3 (VH26-27). Vasa did not include Hutton in the email. Id.

27. Lipis responded later that day, writing: "Wednesday is fine, but Dan [Hutton] told me you wanted clearance from the B.B.O. before I begin. Please let me know if that has been accomplished." Ex. 3 (VH26).

28. Shortly afterwards, Vasa wrote: "I was going to go by what you said the BBO represented to Paul [Epstein]. If he already cleared it with them to work in the office, so long as no misrepresentations are made to clients, I'm good with that. If there is a question as to whether it was really cleared with the BBO, then let me know and we'll have to look into it. Otherwise, if your attorney already received permission from the BBO to go ahead with this type of work arrangement, that should be good enough for us." Ex. 3 (VH26).

29. Lipis responded the following day that "[f]or your protection and mine, I want to get permission from [assistant bar counsel] Linda Bauer in writing before I begin," and that his attorney [Paul Epstein] "is calling her today." Ex. 3 (VH25). He promised "[a]fter I hear back from Paul I will contact you right away. If necessary, I'll file a motion with the SJC and get permission that way." Id. Vasa agreed with that proposal. Id.

30. Hutton left for Europe on August 1, 2012, having learned in early July that his father, who lived in Germany, was seriously ill. Tr. 2:103-104 (Hutton).

31. We credit Lipis's testimony that after Hutton left, Vasa told Lipis that with Hutton gone, there was no one to settle cases. Tr. 2:30 (Lipis). We credit that Vasa told Lipis that if he was going to start, "now's the time." Id. We find that Vasa deliberately had Lipis begin work at V&H while Hutton was gone and without Hutton's knowledge or approval. Tr. 2:103 (Hutton).

32. Lipis testified that before he began work, he spoke to Paul Epstein who told him that according to Bauer, he could not do paralegal work without permission from the SJC. Tr. 2:29 (Lipis). We do not credit that Epstein spoke to Bauer before Lipis began work. See Tr. 2:29-30 (Lipis). Instead, we credit Bauer's testimony that Epstein called her on September 5, 2012, substantially *after* Lipis had begun work. Tr. 2:181-182 (Bauer). Our credibility decision stands on its own, but we note that both Epstein and Bauer made notes of the conversation, and both versions reflect Lipis's decision not to contest the Board's findings concerning Lipis's petition for reinstatement; necessarily, this conversation occurred after the August 13, 2012 vote by the board adopting the hearing panel's recommendation. Ex. 4; Tr. 2:168-169 (Epstein); Tr. 2:181-182 (Bauer).

33. We do not need to decide what Lipis told Vasa or Hutton before beginning work because, as a matter of law under SJC Rule 4:01, § 17(7), Lipis needed permission from the Court to do any type of work at the firm. We find no evidence that he had such permission.

34. We find that before Lipis began work, Vasa did not call the BBO himself. Ex. 15, p. 57 (Vasa).

35. We credit Hutton's testimony that when he arrived home from Europe August 10, Lipis met him at the door of their home and told him he was working at the firm. Tr. 2:103, 105 (Hutton).

36. We credit that upon his return to the office, Hutton asked Vasa if he had obtained BBO clearance for the firm to engage Lipis, and that Vasa replied "yes." Tr. 2:106 (Hutton); Ex. 16, p. 65 (Hutton). We find that Hutton himself never checked with the BBO as to whether Lipis could work at V&H as a volunteer. Tr. 2:126-127 (Hutton). We would have liked to have seen more proactive behavior on Hutton's part. But in the circumstances, where he and Vasa were the only two partners in the firm and where Vasa knew BBO approval was important to Hutton (see Tr. 2:107 (Hutton)), we find that Hutton trusted his partner (Ex. 16, p. 66 (Hutton)) and that it was reasonable for him to rely on Vasa's representation. There was testimony from Serwetman that Vasa had acted unilaterally in the past (Tr. 1:312 (Serwetman)), leading the committee to credit that Vasa made more of the firm's managerial decisions.

37. We find that beginning in early August 2012, and continuing into October 2012, V&H engaged Lipis as an unpaid "settlement consultant." His hours varied but we find that he came into the office most week days for at least a few hours each day. See Tr. 2:32 (Lipis); Ex. 16, p. 66 (Hutton).

38. V&H occupied two suites, known as Unit 5 and Unit 8, located on either side of a hallway. Ex. 21; see Ex. 32, ¶ 7. Vasa and Hutton had offices in Unit 8. Ex. 21. Serwetman's office was in Unit 5. That space included a conference room and another office, used periodically by employees and sometimes by Vasa or by one of his assistants. Tr. 1:185-187 (Serwetman).

39. Lipis was situated in the conference room in Unit 5. He reviewed files, valued cases, determined demand amounts, negotiated settlements with insurance adjusters, and communicated with clients about any settlement offers. Tr. 2:33 (Lipis); Ans. ¶ 13 (Hutton); see Ans. ¶ 13 (Vasa). Vasa either gave Lipis files or, with Vasa's instructions, had Serwetman do so. Tr. 2:33-34 (Lipis). Lipis was to call the insurance companies to try to effectuate a settlement. Id.

40. Lipis explained, and we credit, how he proceeded. He would check each file to make sure everything was in there – medical records; a medical end result letter, if necessary; and lost wage information. Tr. 2:36-37 (Lipis). If anything was missing, he would return the file to the file handler and explain what was needed or he might call the client and explain. Tr. 2:37 (Lipis).

41. Once the file was complete, Lipis would evaluate the case. Tr. 2:37 (Lipis). He did not receive instructions from either Vasa or Hutton on how to evaluate cases; we credit that he had taught them how to do it, so having them instruct him would have been "a waste of time for them." Tr. 2:38 (Lipis). Hutton testified, and we find, that it was understood that Lipis was to get as much money as possible for each case. See Tr. 2:121 (Hutton). Lipis used the same system he had had in place when he had been an attorney in his own firm. Id. We credit that V&H kept in place the same formula to evaluate cases. Tr. 2:121-122 (Hutton).

42. Lipis testified, and we credit, that the work he did was similar to what he had done before he sold Vasa and Hutton the business. Tr. 2:75 (Lipis).

43. We find that one client was concerned about Lipis handling his case. Tr. 1:234 (Serwetman). The client had thought Serwetman was handling his matter; after receiving a call from Lipis, the client looked Lipis up and saw that he was suspended. Tr. 1:234-235

(Serwetman). Serwetman explained that Lipis was making some calls to settle cases but that Serwetman was the attorney handling the case. Tr. 1:235 (Serwetman).

44. We have already noted that no one instructed Lipis on what to do. We find further that with the exception of one case that Hutton gave Lipis, neither Hutton nor Vasa supervised Lipis. Hutton was across the hall in Unit 8. Tr. 2:120-121 (Hutton). Vasa's office was also in Unit 8. Ex. 15, p. 55 (Vasa). We credit that Vasa was rarely in the office between early August and October 2012. Ex. 17, p. 48 (Lipis).

45. We credit that neither Vasa (Ex. 15, pp. 53-54) nor Hutton (Tr. 2:122-123) believed Lipis was calling clients. However, we credit that Lipis indeed called clients. Tr. 2:37 (Lipis); Ex. 17, p. 42 (Lipis).

46. On August 17, 2012, Serwetman's attorney friend emailed him the name of the case discussing whether a suspended attorney could act as a mediator, Matter of Bott, and its citation. Tr. 1:225-227; 275 (Serwetman).

47. We credit that the next day, Serwetman offered the email and case citation to Vasa, and explained the case to him. Tr. 1:227, 305-306 (Serwetman). We credit that Vasa told Serwetman that because Lipis was unpaid, it would be treated differently than Bott. Tr. 1:227-228 (Serwetman).

Use of False Name and Attorney Designation

48. We find that during his time at V&H, between early August and late October, 2012, Lipis falsely identified himself to insurance adjusters as "Jeffrey Kreiger."[6] Tr. 2:34 (Lipis). He testified, and we find, that he did this for two reasons: he worried that some of them might recognize his voice and not want to deal with him, and he was concerned they might think he was doing something wrong and think "ill" of him. Tr. 2:35 (Lipis).

[6] This name is also spelled "Kriger." For the sake of consistency, we use the spelling "Krieger."

49. We find that both Hutton and Vasa knew Lipis was using the name Jeff Krieger, and why he was doing so. Hutton saw the name on the mail slot on the secretary's desk, asked who it referred to and was told that this was the name Lipis was using. Tr. 2:113-114 (Hutton). We credit that he believed Lipis used a false name so the adjusters would not get the "wrong idea." Tr. 2:123 (Hutton). Vasa admitted, and we find, that he learned "sometime at the beginning" that Lipis was using the false name Krieger. Ex. 15, p. 60 (Vasa). He heard him use the name and, at first, thought it was a joke. Ex. 15, p. 61 (Vasa). Lipis used the name "quite often" with the adjusters. Id. Vasa thought he was doing it so the adjusters would not think he was an attorney. Ex. 15, p. 61 (Vasa).

50. We find further that Lipis falsely identified himself as an attorney to insurance adjusters. On Aug. 31, 2012, Hutton had a conversation with an Allstate adjuster who referred to "Attorney" Krieger, and Hutton corrected her, explaining that Jeff Krieger was a negotiator in the office, not an attorney. Ex. 18, p. 7 of 50; see Tr. 2:133-134 (Hutton).

51. Kathy Bleier, an insurance claims investigator for Allstate, testified about her interactions with "Jeff Krieger." We credit her testimony as follows:

a. She spoke with "Krieger" twice between September 4, 2012 and October 31, 2012. Tr. 1:75-78 (Bleier); Ex. 18, pp. 14-17.

b. He identified himself as an attorney in one of their phone conversations. Tr. 1:88, 90 (Bleier).

c. In a conversation October 15, 2012, "Krieger" told Bleier to go to hell. Tr. 77-78 (Bleier); Ex. 18, p. 15.

d. After that conversation, something "clicked" and she thought Krieger might be Jay Lipis; she talks to a lot of attorneys and "nobody speaks that way." Tr. 1:87, 118 (Bleier).

e. Krieger demanded to speak with Bleier's supervisor, Alfonso Capparella. Bleier called Krieger's firm back and gave Nicole at V&H the supervisor's contact information. Tr. 1:78-79 (Bleier); Ex. 18, p. 15.

f. Bleier searched the BBO website, determined that there was no attorney named Jeff Krieger, and made a note to this effect in the file. Tr. 1:88 (Bleier); Ex. 18, p. 15.

g. Krieger called back roughly fifty minutes after the "go to hell" conversation and left Bleier a voice mail message that he would be forwarding a c. 93A letter. Ex. 18, p. 14; Ex. 3.

52. Bleier's supervisor, Alphonso Capparella, also testified, and we credit his testimony as follows:

a. Bleier made him aware in October 2012 that Krieger wanted to talk to him. Tr. 1:145-146 (Capparella).

b. Capparella returned a call to Krieger on October 16, 2012 and left him a "call back message." Tr. 1:147-148 (Capparella). He called Krieger again later that day and left another call back message. Tr. 1:148 (Capparella); Ex. 18, p. 14.

c. They finally spoke on October 18, after Kreiger called Capparella. Tr. 1: 149-151. Capparella asked Krieger if he was the legal representative on the case, and Krieger confirmed that he was. Tr. 1:151-152 (Capparella); Ex. 18, p. 14. He asked this

because Bleier had been unable to verify Krieger's license and she wanted role clarification. Tr. 1:152-153 (Capparella).

Lipis is Terminated

53. Lipis was talented at settling cases. Tr. 2:133 (Hutton); Ex. 15, p. 64 (Vasa) (Lipis got "positive results" for clients). While he was unable to say how many cases he settled, we credit that he brought in about $117,000 in fees, and that this figure was one-third of the total settlements achieved between early August 2012 and his October termination. Tr. 2:44-45 (Lipis).

54. In mid-October 2012, Vasa offered to pay Lipis $1,000 a week to stay on settling cases, and told him not to tell Hutton. Tr. 2:45-46 (Lipis); Tr. 2:107 (Hutton).

55. Around this time, Vasa asked Lipis to do a voice shot for the firm, where his voice would be recorded saying he was Jay Lipis and he was back at the firm. Ex. 17, p. 25-26 (Lipis). We find that Lipis told Hutton about the voice shot and the proposed salary in October 2012. Tr. 2:107-108 (Hutton).

56. After learning in mid-October about the proposed salary and the voice shot, Hutton called assistant bar counsel Linda Bauer on October 16, 2012. Tr. 2:109 (Hutton); see Tr. 2:198-199 (Bauer).

57. Hutton asked Bauer if the firm could hire Lipis in a non-legal capacity to negotiate with insurance adjusters on bodily injury claims. Tr. 2:202 (Bauer); see Tr. 2:111 (Hutton). Bauer said that this was prohibited, referred him to SJC Rule 4:01, § 17(7) and confirmed her advice with a letter dated October 16, referencing their phone conversation earlier that day. Tr. 2:203 (Bauer); Ex. 13.

58. Hutton fired Lipis after his conversation with Bauer. Tr. 2:112 (Hutton).

59. Hutton did not immediately tell the support staff Lipis had been fired. Tr. 2:123-124 (Hutton). Lipis returned to the office on October 18 and placed a call to Capparella. Ex. 18, p. 14; see Tr. 2:50-51 (Lipis).

Conclusions of Law

60. Bar counsel charges that by permitting, assisting in, and/or acquiescing to Lipis's performance of legal work and the practice of law while suspended, Hutton and Vasa violated Mass. R. Prof. C. 5.5(a) (lawyer shall not engage in or assist unauthorized practice of law) and S.J.C. Rule 4:01, Section 17(7) (with limited exception not relevant here, lawyer shall not knowingly employ or otherwise engage, directly or indirectly, in any capacity, a person who is suspended). Bar counsel has proved a violation of these rules. We address each of them separately.

61. We agree with the respondents that it is not always easy to define the practice of law. See generally Matter of Shoe Manufacturers Protective Ass'n, 295 Mass. 369, 372 (1936). However, we have no hesitation in concluding that in the circumstances of this case, Lipis's actions constituted the practice of law. We do not need to provide an abstract or stand-alone definition of the "practice of law" to resolve this issue. To be sure, the Court has provided some general guidance about the nature of work that might readily be categorized as the practice of law: "In the context of bar discipline proceedings, it is relevant whether a disbarred or suspended lawyer draws on his or her legal education and experience and exercises judgment in applying legal principles to address the individual needs of clients." Matter of Bott, 462 Mass. 430, 437, 28 Mass. Att'y Disc. R. 54, 62 (2012). Using that criterion, Lipis's evaluation of V&H's cases would appear prima-facie to fall generally within the practice of law. Done properly, such evaluation required that Lipis consider, in the specific factual context of each client's individual

case, the evidence and the applicable law, including rights to recovery, available defenses, the admissibility of the available evidence and the legal avenues available for obtaining evidence where needed, all for the purpose of making a recommendation for settlement.

The respondents argue strenuously that Lipis did no more than what a non-lawyer insurance adjuster routinely does. This misses the point that a suspended attorney may, nonetheless, be prohibited from performing work a non-lawyer is allowed to perform. Where the person who is said to be engaged in the unauthorized practice of law is, like Lipis, a suspended lawyer, "[t]here may be circumstances where work that does not constitute the practice of law when engaged in by nonlawyers may qualify as legal work that [the attorney] is precluded from performing." Bott, 462 Mass. at 436, 28 Mass. Att'y Disc. R. at 61-62. The Court in Bott listed four factors to aid in determining whether a suspended attorney has been engaging in the practice of law even where that activity might not fall wholly within the practice of law and, therefore, might not be prohibited to nonlawyers:

> (1) whether the type of work is customarily performed by lawyers as part of their legal practice; (2) whether the work was performed by the lawyer prior to suspension, disbarment, or resignation for misconduct; (3) whether, following suspension, disbarment, or resignation for misconduct, the lawyer has performed or seeks leave to perform the work in the same office or community, or for other lawyers; and (4) whether the work as performed by the lawyer invokes the lawyer's professional judgment in applying legal principles to address the individual needs of clients.

Bott, 462 Mass. at 438, 28 Mass. Att'y Disc. R. at 63-64.

62. In addition to the points we made above, we note that Lipis was returning to V&H to do precisely what he had done before he sold the firm; that the firm was, by agreement, run by Vasa and Hutton in the same way Lipis had run it; and that the respondents agreed that Lipis did not need training in how to settle cases since he had taught them how to do it. Cf. Matter of Rome, 10 Mass. Att'y Disc. R. 229, 231-232 (1994) (single justice denies permission for lawyer

to work as a self-employed real estate title abstractor; suspension resulted from felony convictions arising from his real estate practice so "public interest would be disserved were he permitted to continue to engage in activities that would involve the legal skills associated with his former practice"); Matter of Eastwood, 10 Mass. Att'y Disc. R. 70,77 (1994) (single justice denies suspended lawyer's request to abstract records at the registry of deeds; this constitutes the practice of law when conducted by a lawyer and, since lawyer's misconduct occurred in real estate context, it would be inappropriate to allow him to participate in real estate matters).

63. In light of the extensive evidence concerning the arrangements among Lipis and the respondents, we conclude that bar counsel has proved a violation of rule 5.5(a).

64. SJC Rule 4:01, § 17(7) provides unambiguously that with an exception not relevant here, no lawyer or law firm shall knowingly "employ or otherwise engage, directly or indirectly, in any capacity, a person who is suspended . . . ." It would be difficult to think of a way to word more broadly the prohibition against hiring, for pay or otherwise, a suspended attorney. Cf. Matter of Eastwood, supra, 10 Mass. Att'y Disc. R. at 77 (construing earlier version of § 17(7) which used only the verb "employ" to prohibit "use," not simply "hire" of an employee).

65. Hutton does not challenge his violation of this rule. Hutton's Proposed Findings of Fact, Conclusions of Law, and Recommendations for Discipline, ¶ 114, p. 11. Vasa does. We have already rejected his argument that Lipis's suspension had expired. See supra, n. 4. Even if Vasa genuinely believed that Lipis was not suspended as of July 2012 – a difficult position to sustain in light of the Hearing Panel's June 13, 2012 decision not to reinstate him - his ignorance of the rules "or their true import" does not shield him. Matter of the Discipline of an Attorney

and Two Companion Cases (Three Attorneys), 392 Mass. 827, 835, 4 Mass. Att'y Disc. R. 155, 165 (1984).

66. Vasa claims further that he did not knowingly employ a suspended and ineligible lawyer because he thought Lipis had BBO approval. Putting aside for the sake of argument the violence this does to the plain meaning of section 17(7),[7] we reject it on its merits.

67. We think it sufficient that bar counsel has proven that Vasa knew he was hiring a suspended lawyer. Cf. Matter of Hrones, 457 Mass. 844, 854-855, 26 Mass. Att'y Disc. R. 256, 267-268 (2010) (Court rejects defense, in rule 5.5(b) context, that the lawyer did not know that nonlawyer's conduct was unauthorized practice of law, noting that lawyer "was aware of the nature and the extent" of the practice, which was unauthorized, and that the lawyer's conduct in "knowingly facilitating" unsupervised practice constitutes assistance in unauthorized practice). Aside from the limited right to apply to be a paralegal, which Lipis had not done, § 17(7) prohibits a suspended lawyer from all other legal or paralegal work, and prohibits a law firm from engaging such a person "in any capacity." In light of the strong policy against unauthorized practice reflected in this rule and our rules of professional conduct, we conclude that a lawyer acts at his peril if, without confirmation from the BBO or Court, he engages to work in his law firm a person he knows to be a suspended attorney. Bar counsel has proved a violation of SJC Rule 4:01, § 17(7).

68. Bar counsel charges that by failing to adequately supervise Lipis's work and to take reasonable steps to ensure that they had in place measures to assure reasonably that Lipis's conduct was compliant with their obligations under the Rules of Professional Conduct, Hutton and Vasa violated Mass. R. Prof. C. 5.3(a) (partner shall make reasonable efforts to ensure that

[7] See generally Sullivan v. Brookline, 435 Mass. 353, 360 (2001) (statutory language should be given plain meaning).

firm has in place measures to assure that nonlawyer's conduct is compatible with lawyers' obligations under rules) and (b) (lawyer with supervisory authority over nonlawyer shall make reasonable efforts to assure that nonlawyer's conduct is compatible with lawyers' obligations under rules).

69. We have detailed above the respondents' nearly complete lack of supervision of Lipis. It is undisputed that he worked alone in a conference room across the hall from the respondents' offices. Hutton was out of the country when Lipis started, and Vasa was rarely in the office during the relevant time period; both respondents had offices in a separate suite from the one where Lipis was working. Although the respondents did not think he was doing so, Lipis indeed called clients. In addition, as discussed below, Lipis was permitted to adopt and use a false name. Bar counsel has proved a violation of these rules.

70. Bar counsel charges that by permitting Lipis to falsely identify himself to insurance adjusters to conceal the fact that he was a suspended attorney, Hutton and Vasa violated Mass. R. Prof. C. 5.3(b) and (c) (if lawyer knows of or ratifies conduct of nonlawyer that would violate rules if engaged in by lawyer, lawyer responsible for such conduct) and 8.4(a) (knowingly assist another to violate rules) and (c) (conduct involving dishonesty, fraud, deception or misrepresentation).

71. The fact that Lipis decided he needed to use a false name to avoid recognition by insurance adjusters he had worked with in the past should have raised a large red flag for the respondents. Their admission that it did not speaks volumes. Indeed, Vasa thought the false name was a joke, and Hutton was apparently unperturbed. In their requests for findings, both respondents resist the conclusion that there is anything wrong with the use of a false name. Hutton cites an IRS Bulletin that apparently authorizes the use of pseudonyms (Hutton's

Proposed Findings, ¶ 118, p. 12) and Vasa cites cases he claims support his position (Vasa's Proposed Findings, ¶ 88, p. 12).

72. The IRS Bulletin, Part 10, Chapter 5, Section 7 of the Internal Revenue Manual (IRM), details specific steps for employees to take to acquire a pseudonym. The publication reflects deep concern for employees' personal safety and the prevention of harm to employees and their families. IRM 10.5.7.1, ¶ 1. Although some employees are grandfathered in, those seeking to acquire a pseudonym need "adequate justification," defined to include credible evidence that a taxpayer "engaged in physically, financially, or emotionally threatening activity"; or that an employee is exposed to "an increased risk to personal safety," because of a taxpayer who has a violent criminal history, is active in a group that advocates violence against IRS employees or has engaged in activities that harm federal or municipal employees. IRM 10.5.7.1, ¶ 3B; IRM 10.5.7.2.5. It is manifestly clear that the concerns which animate the IRS' limited acquiescence in its employees' use of pseudonyms are wholly irrelevant here and have no light whatsoever to shed on the respondents' situation.

73. We do not agree that either Attorney Grievance Commission of Maryland v. Kalil, 402 Md. 358, 936 A.2d 854 (2007) or Firearms Records Bureau v. Simkin, 466 Mass. 168 (2013) stands for the proposition that the use of a pseudonym is not a violation of the ethical rules. At issue in Simkin was whether a license to carry firearms was properly revoked where, among other things, Simkin used a pseudonym at a medical appointment to protect his privacy. Simkin has nothing to do with, and makes no reference to, ethical rules. In the course of rejecting the licensing bureau's arguments, the Court noted that "[t]here is no suggestion that Simkin was attempting to . . . perpetrate a fraud." Id. at 183. In contrast, that is exactly what

Lipis, assisted by both respondents, intended to do: fool insurance adjusters into believing they were dealing not with Jay Lipis, but with someone else.

74. Kalil concerns the actions of a non-practicing attorney who endured an adverse judgment in an employment matter. While his action was pending before the Merit Systems Protection Board, Kalil telephoned the presiding judge and identified himself with a false name. In subsequent calls, he used another false name and misrepresented that he was gathering information about ethics violations on behalf of the DC bar. The Court concluded that while the representation that Kalil was working for bar counsel violated rule 8.4 (c), Kalil's use of pseudonyms did not, since that conduct "did nothing to mislead the call recipients to their detriment." Kalil, 402 Md. At 368.

75. We do not find this reasoning persuasive. Our cases have not construed rule 8.4(c) to require a showing of detrimental reliance. And while there is no case quite on point, our cases reflect low tolerance for the use of false names. E.g., Matter of Donohue, 17 Mass. Att'y Disc. R. 183, 183-184 (2001) (suspension of a year and a day, by stipulation, for criminal conduct including third DUI and willfully furnishing a false name or social security number to a law enforcement official; lawyer admitted that his conduct violated rules 8.4(b), (c), (d), and (h)); Matter of Marshall, SJC No. BD-2000-059 (November 21, 2000) (indefinite suspension for conduct including filing bar application under false name and fabricating accompanying documents; heavy sanction reflects a pattern of misconduct, planning and premeditation). Cf. Matter of Gross, 435 Mass. 445, 17 Mass. Att'y Disc. R. 271 (2001) (finding, among other rule violations, dishonest conduct as the result of criminal defense attorney advising alibi witness to impersonate client at district court hearing).

76. We conclude further that Hutton knew, as of August 31, 2012, that Lipis was falsely representing himself as an attorney to Allstate. We conclude that bar counsel has proved a violation of rules 5.3(b), 5.3(c). 8.4(a) and 8.4(c).

Matters in Mitigation and Aggravation

Mitigation

77. Vasa argues nothing in mitigation, although his answer includes a statement of mitigating circumstances. These include: no harm to any clients; Lipis's time with the firm was short; Vasa was not aware that his firm could not employ a suspended attorney and reasonably believed that Lipis's work was not legal work; Vasa allowed Lipis's assistance because Lipis seemed depressed; Vasa reasonably believed Lipis's assurances that his assistance would not violate any rules and that Lipis would not take any action to jeopardize his reinstatement bid. Hutton argues over thirty separate points allegedly in mitigation including, without limitation, that his license to practice has never been suspended; Vasa, not Hutton, hired Lipis and did so while Hutton was away; Serwetman advised Vasa, not Hutton, about the Bott case; Hutton relied on Vasa's representation about BBO clearance and, at the time, had no reason to suspect Vasa; Hutton was not aware that it was wrong to have Lipis in the office; Hutton terminated Lipis once he learned that Lipis could not work there; Hutton's father's illness played a role in this matter; clients benefitted financially from Lipis's activities; and the office serves a low socioeconomic class.

78. Most of these claims are defenses; almost none, with exceptions discussed below, are mitigating. See generally Matter of Alter, 389 Mass. 153, 157, 3 Mass. Att'y Disc. R. 7-8 (1983) (typical factors which do not mitigate the sanction include excellent reputation; cooperation; absence of dishonesty; lack of harm). Assuming without more that the respondents'

clients are underserved, this is not mitigating. Matter of Jackman, 444 Mass. 1013, 1014, 21 Mass. Att'y Disc. R. 349, 352 (2005).

79. Illness of a family member has been found mitigating. See generally Matter of Pudlo, 28 Mass. Att'y Disc. R. 714, 720 (2012). While Hutton did not testify specifically about the impact his father's illness had on him, he did testify that he was told his father was very ill and he had to go to Germany as a result. However, since he offered no evidence of his father's condition after he returned on August 10, and since Lipis remained in the office for over two more months, we do not consider this factor mitigating.

80. We do find that Hutton, once aware of the inappropriateness of having Lipis in the office, took prompt steps to rectify the situation. While this is not classic mitigation, it is conduct to be encouraged, and we find these ameliorative actions should be reflected in some reduction in the sanction. Cf. Matter of Franchitto, 448 Mass. 1007, 1010, 23 Mass. Att'y Disc. R. 63, 67 (2007) (finding mitigation in alerting banking authorities to client's fraudulent scheme and bringing own misconduct to board's attention); Matter of Bryan, 411 Mass. 288, 292, 7 Mass. Att'y Disc. R. 24, 29 (1991) (payment of restitution can reduce a disbarment to an indefinite suspension).

Aggravation

81. Bar counsel argues that the respondents are experienced, that they have failed to acknowledge their misconduct, and that it was fueled by their selfish motivation. Bar counsel is correct that experience (Matter of Luongo, 416 Mass. 308, 311-312, 9 Mass. Att'y Disc. R. 199, 203 (1993)), failure to acknowledge misconduct (Matter of Clooney, 403 Mass. 654, 657-658, 5 Mass. Att'y Disc. R. 59, 67-68 (1988)) and a selfish motive (Matter of Pike, 408 Mass. 740, 745, 6 Mass. Att'y. Disc. R. 256, 261-262 (1990)) have been found aggravating.

82. We decline to recommend an enhanced sanction due to experience or alleged pecuniary interest. As to the latter, while we agree that the firm was in bad financial shape, and Lipis was brought on to help it, there was credible evidence that both Hutton and Vasa wanted to help Lipis improve his mental state. See, e.g., Ex. 15, pp. 51-52 (Vasa); Tr. 2:101-102 (Hutton); Ex. 16, pp. 55-56 (Hutton). There was no evidence of actual benefit to the respondents. Hutton took only $3,000 in salary in 2012. Tr. 2:114 (Hutton). We do not find the sort of selfish motivation manifest in Matter of Bailey, 439 Mass. 134, 152, 19 Mass. Att'y Disc. R. 12, 34 (2003) or Matter of Pike, supra.

83. We find that in his sworn statement to bar counsel, Vasa was evasive, showed no contrition or insight and did not appear to recognize the rules' requirements. See generally Ex. 15, pp. 53-57, 58-60, 62-63 (Vasa).

Recommended Disposition

Bar counsel recommends a six-month suspension for each respondent. Hutton suggests a public reprimand. Vasa insists he deserves no sanction at all or, at most, a private admonition.

We have reviewed the cases cited by bar counsel in support of a six-month suspension. In Matter of Levin, 22 Mass. Att'y Disc. R. 474 (2006), Levin assisted a suspended attorney by appearing in scores of closings over a four-month period where the suspended attorney's company was the settlement agent. Levin knew that the suspended attorney: was a principal of the settlement agent; was its only attorney; was providing legal advice and opinions; and controlled the bank account from which the closing proceeds would be disbursed. Levin received a six-month stipulation by agreement.

Other six-month cases include Matter of Burns, 16 Mass. Att'y Disc. R. 35 (2000) (lawyer suspended, by stipulation, for six months after he employed a disbarred attorney to

research and draft pre-trial motions and legal memoranda that the lawyer filed in a criminal case; after the client was found guilty, the client consulted – with the lawyer's knowledge – the disbarred attorney for legal advice); and Matter of Dash, 22 Mass. Att'y Disc. R. 179 (2006) (lawyer suspended, by stipulation, for six months and a day for entering agreement with non-lawyer to open a legal practice; permitting her to: accept new clients, assemble records and make presentations to insurance companies; advise clients on legal matters; receive and disburse settlement funds; access IOLTA account, resulting in commingling and other trust account violations; and sign lawyer's name to correspondence without his review; lawyer twice lied to insurance adjuster). Cf. Matter of Barros, SJC BD. No. 2012-121 (January 23, 2013) (suspension for six months and a day for lawyer whose conduct included employing a disbarred lawyer as a bankruptcy specialist and assisting that lawyer in the unauthorized practice of law, failing to appear for court proceedings involving his own corporation, and willfully misrepresenting the nature and size of his law firm).

We do not think the respondents' conduct rises to the level manifest in the six-month suspension cases. Bar counsel did not prove that Lipis gave legal advice, actively assisted in litigation matters, had extensive client contact or had access to IOLTA funds. Lipis worked part-time for at most ten weeks. We think a six-month suspension is too severe for the conduct we have found.

Turning to Hutton first, we note that he could certainly have been more proactive about contacting bar counsel once he learned Lipis was back. However, we find that Hutton was misled by Vasa into thinking that bar counsel had given the arrangement her blessing, and that this misplaced reliance on Vasa was reasonable. This does not mean there should be no sanction, since we have found above that Hutton, too, violated various rules. But to some extent, Hutton

was Vasa's dupe; as discussed below, Vasa did not include Hutton when he emailed Lipis about starting work, he brought Lipis back while Hutton was out of town, and he twice tried to make arrangements with Lipis behind Hutton's back - the proposal that Lipis do a voice shot, and the proposal to pay him $1,000 per week to stay on.

Clearly some sanction is in order for Hutton. As a partner and a supervising attorney in a small firm, he was equally responsible with Vasa for V&H engaging Lipis in violation of the rules. Further, Hutton knew that Lipis was using a false name and he knew that on at least one occasion, Lipis represented himself to an insurance agent as an attorney. At any point, Hutton could have called Linda Bauer to determine if indeed the Lipis arrangement was lawful, or he could have opened the rule book. But unlike Vasa, Hutton was ashamed, contrite and insightful and, as indicated, fired Lipis promptly once he heard from Bauer that the firm could not engage Lipis. He acknowledged that he violated the ethical rules and conceded that punishment is called for. Hutton's Proposed Findings, ¶ 175, p. 24; counsel's closing argument (Tr. 2:231-232). We think a public reprimand, along with the condition that Hutton will, within a year of the final order in this matter, take a CLE course in ethics designated by bar counsel, is the proper disposition of this matter. Cf. Matter of Holzberg, 15 Mass. Att'y Disc. R. 264 (1999) (public reprimand, with CLE, by stipulation, for lawyer who allowed paralegal to handle personal injury matter from intake through disbursement of funds; lawyer unaware of fee dispute concerning check he prepared at paralegal's direction; mitigated by repayment to client and aggravated by prior discipline).

Vasa was the mover behind the arrangement to hire Lipis in August 2012. We found above that he deliberately brought Lipis in while Hutton was preoccupied and abroad, and that he twice tried to hide key V&H decisions from Hutton. He misrepresented to Hutton that they had

BBO approval to engage Lipis. He offered Lipis money after having rejected, on the ground that Lipis was unpaid, the analysis in Matter of Bott. We indicated above that a review of Vasa's sworn statement before bar counsel showed a lack of insight and a failure to understand the import of the rules. He denied any wrongdoing. His case was not helped by his failure to testify and to explain away the numerous instances of inculpatory testimony by others. We exercise our prerogative to draw adverse inferences from his failure to testify. See generally Attorney General v. Pelletier, 240 Mass. 264, 316 (1922) (noting that when faced with accusations, "men commonly do not remain mute but voice their denials with earnestness, if they can do so with honesty. Culpability alone seals their lips. The law simply recognizes the natural probative force of conduct contrary to that of the ordinary man of integrity").

For Vasa's greater culpability and continued failure to acknowledge any wrongdoing, we recommend a three-month suspension.[8] Cf. Matter of O'Neill, SJC No. BD-2014-059 (June 19, 2014) (three-month suspension, with CLE, for co-signing application for IOLTA account with non-lawyer, allowing her to handle bankruptcy matters and failing to ensure compliance with IOLTA rules; in mitigation, lawyer reimbursed all of debtors' fees). We recommend further that before he can be reinstated, Vasa be ordered to take a CLE course in ethics designated by bar counsel.

[8] We do not agree that Private Reprimand 90-2, 6 Mass. Att'y Disc. R. 391 (1990) is apposite. At issue there was the lawyer's delegation of responsibility to an employee in a single insurance matter. While the employee in that case gave false advice to the client, the case did not feature the length and breadth of the arrangement at issue here, the lawyer's repeated refusal to address the legality of the situation, or his behavior in trying to fool and undermine his partner.

Respectfully submitted,
By the Hearing Committee

Judith A. Jarashow, Esq., Chair

Amy Goganian, Esq., Member

Marcelle Willock, M.D., Member