COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, *SS.*

SUPREME JUDICIAL COURT
FOR SUFFOLK COUNTY
NO. BD-2025-053

IN RE: JANE I. COOGAN

MEMORANDUM OF DECISION

This matter came before the court (Wendlandt, J.) on an information and record of proceedings filed by the Board of Bar Overseers (board), pursuant to S.J.C. Rule 4:01, § 8 (6), as appearing in 453 Mass. 1310 (2009). The board recommended that the respondent, Jane I. Coogan, be suspended from the practice of law for six months, with three months stayed on conditions, for, inter alia, her failure to file a trust-related document with the Probate and Family Court, her misrepresentations to her clients to conceal her misconduct, and her false statements under oath to the Office of Bar Counsel (bar counsel) during the investigation of the same.

Following a November 2024 hearing before a hearing committee (committee), the committee found that bar counsel had proved the misconduct outlined above; one member, however, dissented largely based on the member's disagreement with the majority as to the respondent's credibility. The respondent

and bar counsel submitted memoranda of law before this court and, on September 26, 2025, a hearing was held.

The court has reviewed the record and pertinent papers in this case (including the legal memoranda) and considered the parties' arguments at the hearing. For the reasons set forth below, it is ordered that the respondent's license to practice law be, and the same hereby is, suspended for a period of six months, with three months of the term stayed on conditions as set forth in § (3) infra as well as the order to issue with this memorandum.

1. Background. The following facts were adopted by the board, supplemented by undisputed facts from the record. See Matter of Sargent, 496 Mass. 505, 506 (2025), citing Matter of Angwafo, 453 Mass. 28, 29 (2009). The respondent, who was already a seasoned attorney at the time that she was admitted to the Massachusetts bar in 2014,[1] began working for her father's firm that same year; her practice was in the areas of estate planning, as well as business and administration law.

a. Count one. The complainant, an attorney based in Rhode Island, retained the respondent on behalf of two sisters -- the beneficiaries of two trusts established by the sisters' deceased

[1] She was also admitted to the New Jersey bar in 2007 and the Rhode Island and New York bars in 2010.

parents -- in late December 2021 to assist with an estate matter. The sisters had contacted the complainant and expressed their desire that he be appointed successor trustee for both trusts. In turn, the complainant retained the respondent to file a petition on behalf of the sisters, seeking to appoint the complainant as the successor trustee for the trusts.

The sisters expressed that time was of the essence. There was "friction" with their brother, and the sisters wanted to file their petition first to gain a strategic advantage in the selection of their preferred trustee. Additionally, one of the trusts owned properties that needed to be maintained and generated rental income, which the beneficiaries could not access because the bank account affiliated with the properties was still in their late mother's name. The complainant explained the urgency to the respondent, which she understood.[2] The respondent did not inform the complainant that her workload at the time was onerous, or that other lawyers at her firm had

[2] Following the hearing before this court, the respondent submitted a letter citing to testimony from the complainant, as well as testimony from a partner in the respondent's firm, purportedly in support of the proposition that time was not of the essence in the filing of the petition. Having considered the submission, which largely concerns testimony that a first-filed petition can be opposed, the court is not persuaded either that the committee's finding that the filing of the petition before the sisters' brother's filing was significant from a strategic perspective or that the respondent did not understand the urgency or advise that the perceived strategic advantage was illusory.

greater bandwidth to file the petition, or otherwise indicate that she could not perform the services for which she was retained. They agreed that the complainant would prepare the initial draft petition for her review.

On February 3, 2022, the complainant emailed a draft petition requesting the appointment of a successor trustee (petition) as well as a schedule of the trusts' assets to the respondent. Over the next month, the respondent made some edits to the petition; entered information about the trusts and the beneficiaries in a standard form document; and, after having received the sisters' permission, signed the form on their behalf. The respondent signed her name to the form, dating it March 10, 2022. On or around March 18, 2022, the respondent prepared a cover letter to accompany the petition. She addressed the letter to the Bristol County Probate and Family Court and dated it March 22, 2022; neither the complainant nor the sisters were listed as being copied on the purported filing.[3]

[3] The letter contained a typo and errors in formatting. In addition to the respondent's signature block appearing twice, the letter contains no "enclosure" line, "cc's or bcc's," and does not reflect that the complainant or the sisters were copied, and the respondent has admitted that they were not. The respondent attributed the defects to her own inability to perform secretarial work and to her then-secretary's inabilities.

On March 28, 2022, the complainant, who believed that the petition had been filed and anticipated that the sisters' brother would oppose the petition, emailed the respondent and asked if she heard from the court about securing a hearing date. The respondent replied in the negative but added that she would "reach out to the clerk [she was] friendly with" if she did not hear from the court by the end of the week. Thereafter, between April 11, 2022, and May 25, 2022, the complainant and his paralegal emailed the respondent at least five times seeking a status update and information about the hearing date for the petition; they also left her multiple voicemail message. The respondent did not respond to these inquiries.

The complainant again emailed the respondent on June 1, 2022, to inquire whether a hearing date had been set. He reminded her that there were tenants in one of the properties and expressed his understanding that the petition had been filed over a month ago. The next day, the respondent called the complainant and left a message with his paralegal regarding her availability. On June 8, 2022, in response to a request initiated by the respondent, the complainant's paralegal provided her with a copy of the trust instrument for one of the trusts.

By June 20, 2022, ten weeks had passed since the respondent purportedly filed the petition. When asked about the hearing date by the complainant's paralegal, the respondent identified the date as July 13, 2022. The paralegal, in turn, informed the complainant that a hearing date was set for July 13. On June 27, 2022, the complainant's paralegal sent an email to the respondent to confirm that the complainant did not need to be present for the hearing; she also requested a copy of the filed petition, with docket number, and the time of the hearing. The respondent replied that she was "on vacation," but would have her secretary "get that over to you." Neither the respondent nor her secretary sent the petition or otherwise responded with the requested details.

Between July 5, 2022, and the purported date of the hearing (July 13, 2022), the complainant's paralegal repeatedly sought clarification from the respondent regarding, inter alia, the time of the hearing, the docket number, and whether notice had issued to the parties.[4] The respondent either ignored these inquiries or provided incomplete answers; she stated, however,

[4] In response to the paralegal's request for a copy of the signed petition, the respondent emailed the complainant's office a self-styled "copy of the General Trust Petition." See HCR Ex. 14. The email submitted in evidence before the committee does not include a petition. In an email from the paralegal to the respondent on July 8, 2022, she stated that the petition, which apparently was attached to the correspondence, was missing a docket number. See HCR Ex. 15.

that neither the complainant nor the sisters needed to appear on July 13.

After July 13, 2022, the complainant's office asked the respondent for an update regarding what had occurred at the hearing. On July 21, 2022, the complainant called the respondent, and the respondent told him that "the matter was entered by the [Probate and Family C]ourt," which the complainant understood to mean that the appointment was "finalized" but for the ministerial task of the clerk entering the order. In a text message on July 22, 2022, the respondent told the complainant that she "[s]poke with the clerk and she will monitor for me."

Unbeknownst to the complainant, the sisters' brother had filed a petition for appointment of successor trustee on July 8, 2022. The complainant learned of that filing on July 24 and sent a text message to the respondent the same day: "PLEASE call me. Thus is [sic] now gone on too long." The respondent did not respond.

On August 8, 2022, the complainant wrote to the sisters that he had spoken with the respondent weeks ago, that the judge had granted the appointment requested in their petition at the hearing, and that, per his understanding, the clerk was to issue

the order. Further attempts by the complainant's office to contact the respondent about the matter went unanswered.

Thereafter, the complainant called the court and learned that, in fact, the respondent had not filed the petition. The sisters, on learning this news, terminated the complainant; ultimately, the sisters decided not to oppose their brother's petition, having lost the strategic advantage for which they had retained the complainant and the respondent to secure. HCR Ex. 29.[5]

For failing to file the petition with the Probate and Family Court or take any action of substance to advance the matter, the committee found that the respondent violated Mass. R. Prof. C. 1.1 (failure to provide competent representation), 1.2 (a) (failure to seek client's lawful objectives), and 1.3 (failure to represent client with reasonable diligence and

[5] The complainant refused the sisters' request to refund the $7,500 they had paid him. The sisters, claiming that by virtue of the respondent's failure to file the petition they had lost rental income from the properties held by one of the trusts and had incurred expenses to maintain the properties, then sued the complainant in Rhode Island small claims court, where, following three days of trial, the complainant was ordered to reimburse the sisters $2,900, which he did. The complainant was later reimbursed in that amount by the respondent; insofar as the record shows, the sisters otherwise were not compensated for the out-of-pocket expenses they claimed to have incurred.

promptness).[6] Relatedly, for failing to maintain reasonable communication with her clients concerning the status of the petition, failing to inform them that she had not filed the petition, and failing to explain the status of the case to her clients, the committee (including the dissenting member) concluded that the respondent violated rules 1.4 (a) (2) (failing to reasonably consult with client about accomplishing objectives) and (b) (failing to explain matter to extent necessary to permit client to make informed decisions regarding representation).

For misrepresenting that she had filed the petition, the committee concluded that the respondent violated rules 4.1 (a) (knowingly making false statement of material fact to third person) and 8.4 (c) (engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation) and (d) (engaging in conduct prejudicial to administration of justice). Additionally, the committee found that the respondent violated

---

[6] Based largely on the respondent's preparation of the letter dated March 22, 2022, the dissenting member found that the respondent attempted to file the petition. As this act would constitute "some action" taken on the matter, the dissenting member did not find that the respondent violated Mass. R. Crim. P. 1.1, 1.2 (a), and 1.3. See HCR at *32, 34 (dissent). For reasons discussed in § 2 infra, the committee's contrary finding that the respondent did not mail the petition is supported by the record and reasonable inferences drawn therefrom; consequently, this court is bound by that finding. See S.J.C. Rule 4:01 § 8 (5) (a).

rules 4.1 (a) and 8.4 (c) and (d) when she represented to the complainant that the matter had been heard by the Probate and Family Court. In so finding, the committee did not credit the respondent's testimony that she did not tell the complainant that the matter had been heard; instead, the committee credited the complainant's testimony, which was supported, inter alia, by his August 8, 2022 email to the sisters that the respondent had personally told him that "the judge granted the Order" and his statement in his August 16, 2022 complaint to bar counsel representing the same.[7,8]

---

[7] See HCR Ex. 21, Complainant's letter to Bar Counsel, August 16, 2022 (alleging that respondent called complainant and "personally told [him] that the matter had been heard by the Court and that the only part left was for the Clerk to enter the Judge's Order").

[8] Based on her conclusion that the respondent attempted to file the petition by mail in March 2022, see n.6, supra, the dissenting member did not find that the respondent made a misrepresentation when she told the complainant and his paralegal that she filed the petition. Additionally, the dissenting member did not find that the respondent misrepresented that the matter had been heard. Rather, the dissenting member credited the respondent's testimony that she had explained to the complainant's paralegal that the event scheduled on July 13, 2022, was a "return" date rather than a "hearing" date. The dissenting member thus concluded that bar counsel failed to prove a violation of Mass. R. Prof. C. 4.1 (a) and 8.4 (c) and (d). For reasons discussed in § 2 infra, the committee's contrary finding that the respondent did not mail the petition and that the respondent represented that a hearing date was scheduled is supported by the record and reasonable inferences drawn therefrom; consequently, this court is bound by those findings. See S.J.C. Rule 4:01 § 8 (5) (a).

b. Count two. On October 12, 2022, in response to bar counsel's request for an explanation of her conduct in the sisters' matter and a copy of the client file, the respondent submitted an informal, narrative letter. She represented that she mailed the petition to the Bristol County Probate and Family Court on March 22, 2022, but that it was returned to her in early June because she had omitted the filing fee.[9] Intending to refile the petition by hand, the respondent represented that she had called the Probate and Family Court in early June to ask what return dates were being issued, and was told "July 13." Also included in her written response to bar counsel was the March 22, 2022 cover letter to the petition that she represented that she had mailed to the Probate and Family Court. The respondent also told bar counsel that she had not represented to the complainant or his paralegal that a "hearing" date had been set by the Probate and Family Court. According to the respondent, she only told them that a "return" date had been scheduled, suggesting that the error was the result of the complainant's and the paralegal's confusion.

At the hearing before the committee, the respondent similarly testified that she had attempted to file the petition

[9] The respondent represented that she was not concerned that it took until June to hear back from the court because "the turnaround time is usually around eight weeks" before the court processes and dockets a filing and provides a return date.

in March 2022 and that the Probate and Family Court had returned the petition to her for lack of a filing fee. Asked to explain how she learned that the fee was the reason that the petition had been rejected by the clerk's office, the respondent testified that she vaguely recalled a Post-it note had been affixed to the pleading; she testified further that she did not keep the Post-it note or the envelope in which the materials were returned.

Two employees of the Bristol Probate and Family Court -- an operations supervisor and an assistant register -- testified at the hearing regarding court procedures for handling petitions with missing filing fees. They testified that, when dealing with missing filing fees, the usual practice was to email or call the attorney rather than to return the filing. See HCR ¶¶ 57, 61. However, in spring 2022, dozens of court staff were tasked with opening the mail, and each staff member had their own protocol to address a filing that was missing a filing fee. The staff member could call or email the attorney, send a deficiency notice, or affix a Post-it note to the petition and send the documents back.

For intentionally making false statements to bar counsel in the course of the investigation -- namely, that she had attempted to file the letter and petition with the Probate and

Family Court in March 2022, that the Probate and Family Court returned the package to her for her failure to include the filing fee, and that she did not tell the complainant and his paralegal that a "hearing" date had been set -- the committee found that the respondent violated Mass. R. Prof. C. 8.1 (a) (knowingly making false statement of material fact in connection with disciplinary matter), and 8.4 (c), (d), and (h) (any other conduct that adversely reflects on fitness to practice law).

In support of the conclusion and concomitant findings, the committee cited, inter alia, (i) that the respondent had not sent a copy of the March 22, 2022 letter and petition to the complainant or the sisters; (ii) that the respondent had no physical evidence to corroborate her statement that she filed the letter or petition -- despite bar counsel's request for her file on the matter, the respondent did not, for example, produce a copy of the Post-it note that purportedly accompanied the returned petition, the return envelope from the Probate and Family Court, or the copy of the petition she purportedly filed; (iii) the absence of any evidence that the petition was received by the Probate and Family Court; (iv) the implausibility that it took over ten weeks for the Probate and Family Court to alert the respondent that the filing fee was missing; (v) the committee's conclusion that, based on the employees' testimony, the likelier course would have been for the Probate and Family

Court to keep a deficient filing and either call or email the attorney or send a deficiency notice; (vi) the committee's determination that, in light of the complainant's increasingly insistent demands, the respondent more likely realized by June 2022 that she could no longer continue to "string" him along and for that reason asked for a copy of the trust instrument for one of the trusts intending at that time to finally file the petition; and (vii) that in their written correspondence with the respondent, the complainant and his paralegal consistently used the term "hearing" date without any attempt by the respondent to correct or clarify the alleged misunderstanding.[10,11]

---

[10] The dissenting member found credible the respondent's testimony that she mailed the petition and letter to the Probate and Family Court and received these documents back with a Post-it note. The dissenting member pointed to the absence of a consistent practice in the Probate and Family Court for handling missing fees, the large number of staff who opened and responded to court mail, and staffing issues surrounding the COVID-19 pandemic. Because the committee considered this evidence and nonetheless found, having assessed the respondent's credibility, that she had not mailed the petition in the first instance nor had it returned to her for lack of a filing fee, the court is bound by the committee's findings in this regard. See n.6, supra.

[11] The committee did not find that bar counsel had shown that the respondent knowingly submitting a "fabricated" cover letter to bar counsel when she provided the March 22, 2022 letter. The committee credited that the respondent prepared the March 22, 2022 letter contemporaneously, but had never sent it or the petition.

c. Procedural history. The respondent did not appeal the committee's findings, conclusions, or recommendations to the board. On June 9, 2025, the board voted unanimously to adopt the committee's recommendations and thereafter filed an information and record of proceedings. The parties submitted memoranda of law; and a hearing was held on September 26, 2025, attended by assistant bar counsel, counsel for the respondent, and the respondent.

2. Discussion. a. Standard of review. This court will uphold "[t]he subsidiary findings of the hearing committee, as adopted by the board, . . . 'if [they are] supported by substantial evidence.'" Matter of Weiss, 474 Mass. 1001, 1001 n.1 (2016), quoting S.J.C. Rule 4:01, § 18 (5), as appearing in 453 Mass. 1315 (2009). See Matter of Abbott, 437 Mass. 384, 393-394 (2002), and cases cited. "[T]he [] committee's ultimate 'findings and recommendations, as adopted by the board, are entitled to deference, although they are not binding on this court.'" Weiss, supra, quoting Matter of Ellis, 457 Mass. 413, 415 (2010). See Matter of Lupo, 447 Mass. 345, 356 (2006). The committee, however, is the sole judge of credibility. Matter of Zankowski, 487 Mass. 140, 144 (2021). Accordingly, its "credibility determinations will not be rejected unless it can be said with certainty that the finding was wholly inconsistent with another implicit finding"

(internal quotations omitted). Matter of Haese, 468 Mass. 1002, 1007 (2014).

b. Rule violations. The respondent does not contest the gravamen of the misconduct alleged in count one, namely, that she failed to file the petition, thereby violating Mass. R. Prof. C. 1.1, 1.2 (a), and 1.3; and that she made misrepresentations to the complainant and his paralegal to conceal her inaction, thereby violating rules 1.4 (a) (2) and (b), as well as 4.1 (a) and 8.4 (c) and (d). See Matter of Laroche-St. Fleur, 490 Mass. 1020, 1023 (2022) (respondent "bears the burden" of demonstrating that findings of board not supported by substantial evidence). The board determined that bar counsel proffered substantial evidence related to said misconduct. The court agrees, with one exception. See Matter of Collins, 494 Mass. 1024, 1029 (2024), citing S.J.C. Rule 4:01, § 8 (6). Rule 4.1 (a), as bar counsel acknowledged at the hearing before the court, proscribes an attorney from making a "false statement of material fact or law to a third person," such as a witness or clerk. See Matter of Crossen, 450 Mass. 533, 565-566, 581 (2008).[12] Here, the respondent made

[12] See also Massachusetts Bar Discipline: History, Practice, and Procedure; the Board of Bar Overseers of the Supreme Judicial Court, at 275 (2018) (lying to clients "not covered by Rule 4.1 [a]"). See, e.g., Matter of Hilson, 448 Mass. 603, 618 (2007) (lesser presumptive sanction for attorney

the falsehoods in question to the complainant, his paralegal, and the sisters. Because the complainant was retained by the sisters, and because he in turn retained the respondent on behalf of the sisters, the committee's apparent conclusion that the complainant was a "third party" is in error. Consequently, bar counsel has failed to prove a violation of this rule.

The committee also found that the respondent separately violated rules 4.1 (a) and 8.4 (c) and (d), by misrepresenting to the complainant that the matter had been heard by the Probate and Family Court. Having considered testimony from both the respondent and the complainant on the issue of whether the former had represented that a hearing date was scheduled and was held, the committee credited the complainant's testimony.[13] Accordingly, the court will defer to the committee's credibility determination, see Matter of Dasent, 446 Mass. 1010, 1012 (2006), quoting Matter of Saab, 406 Mass. 315, 328 (1989) ("[t]he fact that the hearing committee

---

who misappropriates "third-party funds," as distinguished from "client funds").

[13] The complainant's version of events regarding the July 21, 2022 conversation with the respondent is supported by his contemporaneous communication with the sisters. See HCR Ex. 19 (contemporaneous email from complainant to sisters, writing he had spoken with respondent "the week before last[,] and the judge granted the [o]rder appointing me as administrator"). See also Ex. 21 (complainant's letter to bar counsel representing respondent had "personally told [him] that the matter had been heard by the [c]ourt" and issuance of order all that remained).

'accorded weight to the [] testimony of the complainant[] rather than accept[] the respondent's explanations for what had occurred,' however, does not render the evidence supporting the committee's findings 'not substantial'") and legal conclusion that bar counsel proved violations of rules of 8.4 (c) and (d), while departing as to rule 4.1 (a), which, as noted above, was not proved.

Turning to count two, there is substantial evidence to support the committee's conclusion that the respondent knowingly made false statements under oath to bar counsel during the investigation, thereby violating rules 8.1 (a) and 8.4 (c), (d), and (h). The committee could infer that the respondent did not attempt to file the petition and that it was not returned, contrary to her representations to bar counsel under oath. See Zankowski, 487 Mass. at 149 (adverse inference warranted from respondent's "failure to offer materials, readily available to [the attorney], that would presumably support [the attorney's] version of the facts if true"). In addition, the committee was well within its discretion to infer from her June 2022 request for a copy of one of the trust instruments that she had not filed the petition in March 2022 and instead intended to do so in June in a belated attempt to respond to the complainant's increasingly urgent demands for information. The committee "simply was not required to credit"

the respondent's unsupported account that she had taken some action to file the petition in March 2022 but simply had failed to include the filing fee, see Matter of Strauss, 479 Mass. 294, 301 (2018), and the committee's conclusion that the respondent violated rules 8.1 (a) and 8.4 (c), (d), and (h), is supported. Likewise, the committee was not required to credit her unsupported testimony that she had repeatedly told the paralegal, over the phone, that the July 13, 2022 court event was a "return" date, not a "hearing" date.

On appeal, the respondent, while apparently recognizing that her failure to appeal the committee's findings to the board entitles her to limited relief before the court, nonetheless essentially maintains that the court should reverse the committee's determination that she knowingly made false statements under oath to bar counsel. As an initial matter, the respondent's arguments before the court are waived because she did not appeal her challenges to the committee's findings and conclusions to the full board. See B.B.O. Rules, § 3.50 (a) ("Any party objecting to the findings, conclusions, or recommendations of a hearing committee" shall first appeal to full board) and (c) ("A party will be conclusively deemed to have waived all objections to the findings, conclusions and

recommendations of the hearing committee . . . unless the party files an appeal").[14]

Even if the respondent had preserved her arguments, they lack merit, as discussed infra. First, the respondent argues that the finding that she lacked candor before bar counsel, see HCR ¶¶ 67-69, 77-78, is at odds with the committee's subsequent determination not to consider her lack of candor before the committee as a factor in aggravation, id. at ¶ 101, where the respondent's version of what transpired was the same before both bar counsel and the committee -- namely, that she tried to file the petition; that it was returned for failure to include the filing fee; that she failed to re-file it; and that she did not tell the complainant that a "hearing" date was scheduled. The argument misapprehends the committee's findings. The committee's refusal to find that the respondent's testimony before the committee lacked candor related to its determination not to consider her lack of candor as an aggravating factor in

[14] At the hearing before the court, the respondent purported to take a "nuanced" position regarding waiver, suggesting that arguments not made before the board should be considered on appeal to this court. While the court must ensure that the sanction meted out to an offending attorney fits the circumstances, Matter of Discipline of an Attorney, 392 Mass. 827, 837 (1984), the court disagrees that an attorney may simply ignore the critical role played by the board acting in its appellate capacity in disciplinary matters and forego marshalling arguments before it.

determining the appropriate sanction for her misconduct, which the committee found bar counsel had shown.

As discussed supra, the committee did not credit the respondent's account of the March 2022 filing or the subsequent return of the filing for failure to include the filing fee; and it did not credit her explanation that she did not tell the complainant and his paralegal that a "hearing" date was scheduled, but only that a "return" date had been given.[15] Contrary to the respondent's assertion, the committee did not credit the respondent's testimony at the hearing and expressly rejected her version of events, concluding that she made multiple misrepresentations to bar counsel while under oath.

Instead, the committee elected not to weigh her decision to hold to her earlier account of the filing against her for aggravation purposes. See Zankowski, 487 Mass. at 153 ("While an attorney is entitled to defend against allegations of a petition for discipline, the hearing committee may determine whether to credit the testimony and evidence, and it may consider in aggravation any lack of candor it finds" [emphasis added]). That the committee recognized that the respondent was "entitled to present a defense," without needing to disavow

[15] See, e.g., HCR at ¶¶ 67-69, 77-78; id. at *29-30 ("[W]e found numerous instances of additional, intentional misconduct, including . . . lying to bar counsel under oath").

past misrepresentations that formed part of her initial narrative to bar counsel, does not support the respondent's suggestion that the committee believed the respondent's defense; clearly, the committee did not.

The respondent next argues that her misrepresentations to bar counsel relating to her attempt to file the petition in March 2022 were not "material" under rule 8.1 (a), because the gravamen of her misconduct concerned her failure to file the petition altogether and subsequent misrepresentations about the same. Having admitted to the crux of the misconduct, the respondent argues that her additional misrepresentations to bar counsel "provided her with no benefit."

Rule 8.1 (a) provides, in relevant part, that a "lawyer in connection . . . with a disciplinary matter, shall not[] knowingly make a false statement of material fact" (emphasis added). As the first comment to rule 8.1 (a) states, "it is a separate professional offense for a lawyer to knowingly make a misrepresentation . . . in connection with a disciplinary investigation of the lawyer's own conduct." Mass. R. Prof. C. 8.1 (a) comment 1 (2024). See, e.g., Matter of Shaw, 427 Mass. 764, 769 (1998), quoting Matter of Budnitz, 425 Mass. 1018, 1019 (1997) ("[A]n attorney who lies under oath engages in 'qualitatively different' misconduct from an attorney who makes

false statements and presents false evidence"). Whether an attorney makes a false representation for some identified personal gain is not an element of the rule. Instead, the inquiry centers on whether the attorney knowingly made a false statement of material fact.

Here, the committee was warranted in concluding that the misrepresentations were material. As bar counsel contends, the misrepresentations were an attempt to minimize the scope of her neglect of the client matter by suggesting to bar counsel that she had, at the very least, taken some action to file the petition and that her failure to complete the filing essentially was clerical in nature, the omission of a filing fee. The same can be said of her misrepresentation to bar counsel regarding the "hearing" date; as bar counsel maintains, this misrepresentation was an attempt (albeit misguided) to disguise her efforts to cover-up her misconduct by blaming the complainant and his paralegal for the purported "confusion."

Last, the respondent contends that charging an attorney with lack of candor to bar counsel should be, as a matter of public policy, reserved for the most egregious cases, because it could chill an attorney from offering a defense for fear that if the committee does not believe the attorney's narrative, the attorney will ipse dixit be found in violation of the rule.

Marshaling a defense does not give the respondent a license to misrepresent material facts. "The respondent's candor and trustworthiness both directly affect [her] capacity to practice law." Matter of Eisenhauer, 426 Mass. 448, 456 (1998). See Matter of Curry, 450 Mass. 503, 521 (2008) ("False representations to bar counsel are 'comparable to making false representations to a court'" [quotation omitted]). Here, the committee found that the respondent knowingly gave false testimony under oath to bar counsel; a finding which, as discussed supra, is supported by substantial evidence in the record and reasonable inferences drawn therefrom. See §§ (1) (b), supra, (2) (b) supra.

c. Mitigating factors. The committee (including the dissenting member) found that events related to the respondent's marriage and divorce bore upon her "ability to function professionally" and were therefore mitigating. The board affirmed the committee's finding, which is supported by substantial evidence. See Matter of Balliro, 453 Mass. 75, 87-89 (2009) (attorney's "dysfunctional psychological state" mitigating where attorney provided false testimony under oath to protect abusive boyfriend). The details of her then-husband's personal, professional, and legal problems do not bear reciting here, except to observe that the respondent proffered considerable evidence that these circumstances impacted her work

throughout the relevant period. See HCR ¶¶ 85-88, 90-99, and exhibits cited.

At the hearing before the court, bar counsel contended that the circumstances detailed above are mitigating only as to count one. See Sargent, 496 Mass. at 514 ("[S]evere . . . emotional distress may rise to the level of a 'special' mitigating factor, provided that the respondent establishes that the distress caused the misconduct"). However, as the committee found, see HCR ¶ 95, the timing of the misconduct at issue in count two, generally overlaps with the events that produced her mental distress. See HCR ¶¶ 83, 91 (respondent's husband's legal issues began in May 2021; respondent filed for divorce in August 2023). Contrast Sargent, supra (circumstances underlying attorney's distress "arose years before the misconduct occurred"). In sum, the committee's finding of a causal connection between the mitigating circumstances and the respondent's conduct, inclusive of her misrepresentations to bar counsel, is well supported.

d. Aggravating factors. The committee found that several aggravating factors applied in the respondent's case, including that she is an experienced attorney, see Matter of Moran, 479 Mass. 1016, 1022 (2018) ("substantial experience" practicing law considered aggravating); that she violated multiple professional

rules, see Saab, 406 Mass. at 326-327 (consideration of cumulative effect of several rule violations proper for fixing sanction); and that her conduct caused harm to her clients, see Matter of Foster, 492 Mass. 724, 752 (2023) ("[H]arm is . . . properly taken into account as an aggravating factor"). The board affirmed these findings, which are well supported, and the court agrees with the board.[16]

The respondent contends that the committee's finding that the sisters and the complainant were harmed is not supported. However, the record showed that the sisters wanted to be the first to file a petition for successor trustee and, due to the respondent's failure to act with reasonable diligence, the sisters' brother was the first to file, thereby losing a desired strategic advantage. And, at the least, the complainant suffered reputational harm with his clients. He had been

[16] The court sees no reason to depart from the committee's finding -- discussed at length in § (2) (b), supra -- that the respondent's testimony before them was candid and, as such, should not factor against her in aggravation. See HCR ¶ 101. The court further adopts the committee's refusal to find that the respondent did not appreciate that her behavior was wrongful or that she did not understand why what she had done violated the professional rules. See HRC ¶ 102. See HCR Tr. Vol. I at *132, 159; HCR Tr. Vol. II. at *35, 45.

selected by them to be the trustee for the trusts; following the respondent's failure to file the petition, he was terminated.[17]

The respondent also maintains that the committee "double counted" the injury that the respondent caused to the sisters and the complainant by considering it in connection with the results of her neglect under Matter of Kane, 13 Mass. Att'y Disc. R. 321 (1997), as well as an aggravating factor. However, it is plain from the committee's discussion that the injury caused by the respondent's neglect was considered properly in determining the starting point for the appropriate sanction under Kane, as discussed infra.

e. Sanction. This court must "decide [each case] on its own merits," affording "every offending attorney . . . the disposition most appropriate in the circumstances," Foster, 492 Mass. at 746, quoting Matter of Murray, 455 Mass. 872, 883 (2010), guided by the precept that "[t]he appropriate level of

---

[17] Despite referencing the sisters' reported economic costs for continued maintenance of the properties and loss of rental income in its findings, see HCR ¶ 71, the committee did not consider the sisters' reported economic costs in assessing the harm the respondent's conduct caused the sisters. See HCR ¶¶ 99-100.

Notably, the record does not support the committee's further finding that the sisters and the complainant were harmed by needing to seek recourse in Rhode Island small claims court. The complainant could have refunded the unearned portion of the sisters' retainer without requiring them to pursue an action against him; it should not be laid at the respondent's feet.

discipline is that which is necessary to deter other attorneys and to protect the public." Matter of Zak, 476 Mass. 1034, 1038 (2017), quoting Curry, 450 Mass. at 532. See, e.g., Matter of Foley, 439 Mass. 324, 333 (2003) (sanctions must not be "markedly disparate from judgments in comparable cases" [citation omitted]). The most important consideration in attorney discipline cases is "the effect upon, and perception of, the public and the bar." Matter of Finneran, 455 Mass. 722, 737 (2010), quoting Matter of Finnerty, 418 Mass. 821, 829 (1994). The board's recommendation on the appropriate sanction is given "substantial deference." Matter of Gannett, 489 Mass. 1007, 1011 (2022).

As alleged in count one, the respondent failed to file a petition in the Probate and Family Court and, when confronted on the matter, made false representations to conceal her neglect. The starting point in calibrating discipline for neglect of a legal matter is Kane, which instructs that, absent aggravating and mitigating factors, discipline for attorney neglect proceeds on a sliding scale, with an admonition, on one end, sufficing where an attorney neglects a single client and/or matter and that misconduct "causes little or no actual or potential injury to a client," and a suspension, on the other end, where a lawyer has "engaged in a pattern of neglect" and that misconduct

"causes serious injury or potentially serious injury to a client or others." 13 Mass. Att'y Disc. R. at 327-328.

Properly framed, the respondent's neglectful conduct in count one involved a single legal matter resulting in some harm to her clients, see § (2) (d), supra.[18] See, e.g., Foster, 492 Mass. at 753-754 (attorney did not engage in "pattern of neglect" under Kane where attorney neglected single matter over short period of time, and "either several instances of misconduct or a protracted period of neglect are necessary before a 'pattern of neglect' finding is appropriate"); Matter of Kydd, 25 Mass. Att'y Disc. R. 341, 345 (2009) ("[P]ublic reprimand has been imposed for repeated neglect of a single estate with no resulting harm"). Moreover, as discussed supra, the committee was warranted only in finding some actual or potential harm to the sisters and the complainant. While the record shows that the sisters' lost a perceived strategic advantage in being first to file the petition and that the complainant was terminated by the sisters, suffering some

[18] The committee appears to have concluded that because the respondent "repeatedly failed, for months on end, to act with competence and diligence," that her neglectful conduct alone merited a suspension under Kane. HCR at *29. To the extent the committee's conclusion confuses the respondent's neglect of a single matter during a relatively confined period of time with conduct involving neglect across multiple matters or over a protracted period, the court disagrees. See Matter of Kydd, 25 Mass. Att'y Disc. R. 341, 345 (2009).

reputational harm, it is not the type of harm that has been considered "serious" under Kane. See note 20, infra.

Of course, the neglectful conduct in count one does not stand alone. Bar counsel also showed that, as additionally alleged in count one, the respondent repeatedly made misrepresentations to the complainant and the sisters about the status of the petition. Among other things, she falsely asserted that she had filed the petition in March 2022; falsely stated that a hearing date had been scheduled for July 2022; and falsely represented that the Probate and Family Court had allowed the petition at the hearing and that all that remained was the entry of the order. These material misrepresentations to conceal the respondent's lack of diligence warrant an upward departure from the sanction that might otherwise be appropriate under Kane. See Kane, 13 Mass. Att'y Disc. R. at 328 ("[m]aking misrepresentations to a client to conceal the neglect or lack of diligence" warrants departure from prescribed sanctions for neglect).

In addition, as alleged in count two, the respondent made misrepresentations under oath to bar counsel during the investigation, behavior which can warrant a two-year suspension. See, e.g., Balliro, 453 Mass. at 89 (six-month suspension for providing false testimony under oath to court); id. at 86-87,

citing Matter of O'Donnell, 23 Mass. Att'y Disc. R. 508, 514 n.3 (2007) ("[T]he presumptive sanction for lying under oath is a two-year suspension"); Matter of Early, 21 Mass. Att'y Disc. R. 220, 226 (2005) (lying under oath "for personal gain" regarding material facts warranted two-year suspension). See also Curry, 450 Mass. at 532 ("False representations to bar counsel are comparable to making false representations to a court" [internal quotation marks omitted]).[19]

The respondent proffers several reasons why her intentional misrepresentations to bar counsel should not factor into the sanction. The respondent first argues that her misrepresentations to bar counsel must be considered (at most) an aggravating circumstance as opposed to a stand-alone violation of the rules of professional conduct. As discussed supra, this position runs counter to the text of rule 8.1 (a), appended commentary, and case law. See Mass. R. Prof. C. 8.1 (a) comment 1 (2024) (instructing that "it is [] separate

[19] The court agrees with the respondent that some of the cases cited by the committee in support of a presumptive two-year suspension for intentionally providing false testimony under oath are distinguishable. See, e.g., Matter of Sousa, 25 Mass. Att'y Disc. R. 557 (2009) (two-year suspension for attorney engaged in romantic relationship with criminal client who, after testifying falsely in front of committee, gave false testimony under oath at client's criminal trial); Matter of Merrill, 34 Mass. Att'y Disc. R. 347 (2018) (eighteen-month suspension for, inter alia, submitting false document to Supreme Judicial Court in addition to lying to bar counsel in statement under oath).

professional" misconduct for lawyer to make intentional misrepresentation "in connection with a disciplinary investigation of the lawyer's own conduct"); Budnitz, 425 Mass. at 1019 ("Lying under oath before a grand jury, and perpetuating the lies by making knowingly false statements in a bar disciplinary proceeding, is conduct plainly within the scope of" precursor rules to rules 8.1 [a] and 8.4 [c], [d], and [h]).

Second, the respondent maintains that attorneys should not be disciplined for lack of candor to bar counsel absent some additional "egregious act[] of fraud for personal gain" not present here. For the reasons discussed supra, the court disagrees. Indeed, in Matter of Hashem, 33 Mass. Att'y Disc. R. 192, 194 (2017), an attorney was found to have violated rules 8.1 (a) and 8.4 (c), (d), and (h), for making numerous intentionally false statements to bar counsel during the investigation, including that she had sent a letter to an insurance company on behalf of her client. Notably, as in the respondent's case, there were no additional egregious acts of fraud for personal gain in Hashem; instead, the record was devoid of any evidence suggesting a motive to gain personally

from her misrepresentations to bar counsel. Nevertheless, the attorney in Hashem received a term suspension of nine months.[20]

Because, as discussed supra, the respondent's position that her misrepresentations to bar counsel should not factor into the sanction is untenable, her further reliance on Matter of Kirby, 29 Mass. Att'y Disc. R. 366 (2013), is misplaced. Relevant to the present matter, the attorney in Kirby, who suffered from

---

[20] As the committee appears to have recognized in view of its recommended sanction of six months rather than nine months, Hashem is not entirely comparable to the present circumstances. There, after requesting disclosure of an adverse driver's insurance policy limits, the attorney failed to perform any work of substance on her client's personal injury claim in violation of rules 1.1, 1.2 (a), and 1.3; and failed to respond to any of her client's many inquiries as to the status of said claim in violation of rules 1.4 (a) and (b). 33 Mass. Att'y Disc. R. at 194. The attorney also made multiple intentional misstatements to bar counsel under oath during the investigation of the matter in violation of rules 8.1 (a) and 8.4 (c), (d), and (h). Id.

Unlike here, however, the client in Hashem suffered substantial harm because the statute of limitations expired on her claim without an action having been filed or a settlement negotiated. Id. The attorney in Hashem also engaged in misconduct that is absent here, namely, forging documents, failing without good cause to comply with bar counsel's request for information -- thereby violating rules 8.4 (d), (g), and (h) -- and intentionally failing to comply with an order of administrative suspension, in violation of S.J.C. Rule 4:01, § 17, and Mass. R. Prof. C. 3.4 (c) and 8.4 (d) and (h). 33 Mass. Att'y Disc. R. at 194-195. And, there were no mitigating circumstances in Hashem, unlike the instant case. The attorney was suspended for nine months. See also Matter of McCarthy, 17 Mass. Att'y Disc. R. 41 (2001) (stipulation to year-and-a-day suspension for persistent neglect of client medical malpractice case, multiple misrepresentations to client to cover-up neglect, and false representations to bar counsel resulting in client's claim falling outside statute of limitations; no factors in mitigation).

substance use disorder, neglected a client matter and made misrepresentations to the client in an attempt to cover up his neglect. Id. at 368-370. Unlike the present matter, however, bar counsel in Kirby failed to show that the attorney made misrepresentations to bar counsel during the investigation. See id. at 373.[21]

Having reviewed the cases cited by the parties for purposes of calibrating the appropriate sanction here, the court agrees that Matter of Gallagher, 35 Mass. Att'y Disc. R. 196, 196-197 (2019), provides the most apt guidance.[22] In Gallagher, the attorney received a six-month suspension, stayed for two years

---

[21] The respondent's assertion that she neglected only one matter and therefore should receive a public reprimand rather than a term suspension fairs no better. See Kydd, 25 Mass. Att'y Disc. R. at 343-345 (three-month suspension, stayed for one year on conditions, for neglect of single client matter, mitigated by attorney's "lack of experience in the realm of probate law" and payment of unpaid taxes owed by estate). See also Abbott, 437 Mass. at 395 (term suspension for two and one-half years for neglect of single client matter; intentional misrepresentations to client and to bar counsel under oath; and forging of [non-partner] attorney's signature on attorney's stationary).

[22] See also Matter of Harris-Daley, 31 Mass. Att'y Disc. R. 244 (2015) (six-month suspension where attorney made misrepresentations in two matters concerning issues tangential to merits, including once to tribunal, and did so not for financial gain; no mitigation); Matter of Molloy, 19 Mass. Att'y Disc. R. 302 (2003) (stipulation to three-month suspension, where lawyer signed client's name to affidavit and filed it in court; did not copy client; did not maintain proper communication with client; and lied to bar counsel, with mitigation [inexperience]).

with conditions, for failing to file a motion for relief with reasonable competence and for making repeat misrepresentations to her client and to bar counsel that certain papers had been filed with the Sex Offender Registry Board (SORB), and that SORB had ruled on her client's motion. Id. In mitigation, the attorney suffered from multiple psychological conditions that affected her conduct and returned the full retainer paid to her. Id. at 198. Moreover, the client's motion had little chance of success even if it had been well drafted, thus there was minimal harm to the client. Id.

Based on the foregoing, the court defers to the sanction recommended by the committee and adopted by the board. See Gannett, 489 Mass. at 1011.

3. Conclusion. The respondent shall be subject to a term suspension of six months, three of those months stayed for three months pending the respondent's (i) successful completion of a legal education program to be approved by bar counsel; and (ii) an audit of her practice by the Law Office Management Assistance Program. Accordingly, an Order of Term Suspension partially stayed consistent with this Memorandum of Decision shall enter.

By the court,

/s/ Dalila Argaez Wendlandt
Associate Justice

Dated: October 7, 2025