IN RE: MATTER OF MARC OSBORNE
BBO NO. 683300

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

BAR COUNSEL,	:	
Petitioner	:	BBO File No. C2-22-00275341
vs.	:	
MARC OSBORNE, ESQ.	:	
Respondent	:	

HEARING REPORT

On June 13, 2024, bar counsel filed a petition for discipline against the respondent, Marc Osborne, Esquire.

The petition charged that the respondent fraudulently submitted a deed to the Norfolk County Registry of Deeds ("Registry") for recording when he knew his client had not actually purchased the land; misused the Registry's electronic recording system to prevent the rightful owner of the land from selling it; failed to respond once the Register of Deeds questioned his actions; and frivolously asserted to the Land Court, in support of his client's claim of ownership, that a deed to the land had been delivered to his client.

Represented by two attorneys, the respondent filed his answer on September 6, 2024. Both counsel filed notices of withdrawal on March 4, 2025. A remote prehearing conference was held March 6, 2025. The respondent appeared without counsel. He was urged to retain new counsel, but he declined to do so.

The hearing was held on April 22 and April 30, 2025. Sixty-two exhibits were admitted. Among these was a Joint Stipulation of Fact (JS), in which the parties expressed their agreement on numerous issues. Three witnesses testified: John M. Keough, Esq.; Norfolk County Register of Deeds William O'Donnell, Esq. (remotely); and the respondent. On July 18, 2025, the parties filed their proposed findings and conclusions.

Findings and Conclusions[1]

Findings of Fact

1. The respondent, Marc Osborne, was admitted to the Massachusetts bar on November 17, 2011. JS, ¶ 1.

The Richardson Lots

2. Prior to the events at issue here, Margaret Richardson ("Richardson") and her family owned or controlled real property in Brookline, Massachusetts, which included three undeveloped lots at 621 and 623 Boylston Street, and at 7 Fisher Avenue (the "Richardson Lots"). Tr. 1:36-37 (Keough); JS, ¶ 2; Ans. ¶ 3.

[1] The transcript is referred to as "Tr. __: __"; the matters admitted in the answer are referred to as "Ans. ¶_"; and the hearing exhibits are referred to as "Ex. _." The matters admitted by the answer include those deemed admitted as a result of the respondent's failure to deny them in accordance with B.B.O. Rules, § 3.15(d). See Matter of Moran, 479 Mass. 1016, 1018, 34 Mass. Att'y Disc. R. 376, 379 (2018). 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.

3. In 2017, Pankaj Merchia ("Merchia ") and his family, individually and/or through an entity known as BoylstonD3 LLC, owned or controlled real property at 615 and 617 Boylston Street, near or adjacent to the Richardson Lots. Tr. 1:36 (Keough); Ans. ¶ 4.

4. In or about November 2017, Richardson and Merchia entered into a Purchase and Sale Agreement ("P&S"), pursuant to which Richardson agreed to sell the Richardson Lots to Merchia for $1.6 million. Ex. 1, ¶ 7 (MO590); JS, ¶ 3; Ans. ¶ 5. Along with his Offer to Purchase, Merchia paid $40,000, which was designated as a nonrefundable deposit. Ex. 1, ¶ 7. The balance of $1,560,000 was "to be paid at the time of delivery of the deed . . . ." Id.

5. Richardson was represented by Joseph T. Hawkins, Esq. Merchia was initially represented by counsel, but later gave notice to Hawkins that he would be representing himself. Ex. 1 (MO596); Ex. 42 (MO004233).

6. Several provisions of the P&S are relevant to our analysis. The P&S provided that it was to take effect as a sealed instrument. Ex. 1, ¶ 27 (MO593).

7. The P&S stated that the deed to the property was to be delivered "at 1:00 p.m. on September 1, 2018 at the Norfolk County Registry of Deeds." Ex. 1, ¶ 8 (MO591); see JS, ¶ 4; Ans. ¶ 6. Reference was made to Rider A. Ex. 1 (MO591).

8. Rider A to the P&S provided, in a paragraph entitled "Signatures/Authority" that "for purposes of this Agreement, email transmissions and/or facsimile signatures on this and on other written instruments shall be binding." Ex. 1 (MO597).

9. Rider A was followed by Rider B. In a paragraph entitled "Faxed or Electronic Signatures," Rider B provided: "Faxed, scanned or electronic signatures on this agreement, as well as on any extensions, amendments, modifications or ancillary agreements, shall be considered as binding as original signatures and may be relied upon. **Faxed or Electronic**

Signatures may not be used for Deeds which shall be original signatures." Ex. 1 (MO601) (emphasis added).

10. By an Amendment to the P&S dated December 20, 2017, Richardson and Merchia extended the closing date to December 31, 2018. Ex. 2 (MO67); JS, ¶ 6; Ans. ¶ 8.

11. In November **2018**, roughly one month before the scheduled closing, Merchia requested another extension of the closing date, to November 30, **2019**. As part of his rationale, he alleged that the Richardson Lots lacked certain easement rights to a driveway that provided access to Boylston Street. Ex. 42 (MO004228-MO004229); see JS, ¶ 7; Ans. ¶ 9.

12. Richardson did not agree to another extension. JS, ¶ 8; Ans. ¶ 10.

13. In December 2018, Hawkins contacted an attorney for a title insurance company about the easement issue. JS, ¶ 9; Ans. ¶ 11.

14. The title insurer's attorney subsequently advised Merchia of his opinion that the Richardson Lots had easement rights over the driveway. JS, ¶ 10; Ans. ¶ 12.

15. On December 24, 2018, a few days before the scheduled closing, Merchia sent an email in which he continued to express concern about the driveway easement. Ex. 3 (BC175-176) JS, ¶ 11; Ans. ¶ 13.

16. On December 27, 2018 at 1:55 PM, Hawkins replied to Merchia's email, stating that Merchia's concerns about the easement were unfounded. Ex. 3 (BC175); JS, ¶ 12; Ans. ¶ 14.

17. In his December 27, 2018 email, Hawkins also stated that Richardson was "ready, willing and able to perform on [December] 31 at 1:00 at the Norfolk County Registry of Deeds in accordance with the [P&S]," and warned Merchia that "[i]f you do not perform on that date, my client will retain the deposit as liquidated damages." Ex. 3 (BC175); see JS, ¶ 13; Ans. ¶ 15.

18. Hawkins attached to his December 27, 2018 email a PDF copy of an executed quitclaim deed signed by Richardson (the "PDF Deed Copy"). Ex. 3 (BC178-BC179); JS, ¶ 14; Ans. ¶ 16.[2] The deed had been signed by Richardson and notarized several days earlier, on December 22, 2018. Ex. 3 (BC179).

19. We find that Hawkins attached the PDF Deed Copy to his December 27, 2018 email to demonstrate that Richardson would be ready, willing and able to deliver the deed and close the sale on December 31, 2018 at the Norfolk County Registry of Deeds, as the parties had agreed in the P&S.

20. In a later-attested affidavit dated November 20, 2020, Hawkins explained that he had sent the PDF Deed Copy to Merchia "consistent with my custom and practice." Ex. 40, ¶ 8 (BC521). He had not intended for the deed to effect "a present transfer of title to Merchia." Id.

21. Merchia responded by email at 3:22 PM, less than two hours after Hawkins emailed the deed, claiming an inability to obtain title insurance. He cited Rider B to the P&S, and requested a refund of the $40,000 deposit, asking Hawkins when he could pick up a check at his office. Ex. 42 (MO004231). He wrote Hawkins again at 3:42 PM, once more citing Rider B and claiming that it allowed him "to terminate the agreement and receive a full refund in the event I am unable to obtain title insurance," and asking Hawkins when he could "pick up a check refunding the deposit." Ex. 42 (MO004246).

[2] The deed recited that a purchase price of $1,616,000.00 had been paid. Ex. 3 (BC178). We heard no explanation for the slight increase in the purchase price from $1,600,000 to $1,616,000. This minor discrepancy is irrelevant to our analysis.

22. On December 31, 2018, an attorney for Richardson appeared at the Norfolk County Registry of Deeds, in accordance with the terms of the P&S, to close on the sale of the Richardson Lots to Merchia. JS, ¶ 15; Ans. ¶ 20.

23. Merchia did not appear for the closing. JS, ¶ 16; Ans. ¶ 21. Other than the $40,000 deposit, Merchia did not pay the purchase price for the Richardson Lots in accordance with the P&S. JS, ¶ 17; Ans. ¶ 22.

24. After December 31, 2018, in emails dated January 3, January 19 and January 23, Merchia requested that Richardson return his deposit, and Richardson refused. Ex. 42 (MO004253); see JS, ¶ 19; Ans. ¶ 25.

25. On January 25, 2019, Tyler Chapman, an attorney for Richardson, emailed Merchia to place him on notice that he had breached the P&S by failing to perform on the closing date, and that therefore Richardson would not be returning the deposit. Ex. 42 (MO004255).

26. We find that neither Richardson nor Hawkins intended the December 27, 2018 email to constitute the delivery of the deed to Merchia, effectuating the transfer of the Richardson Lots without simultaneous payment therefor and prior to the closing scheduled for December 31, 2018. We find that the email did not cause the transfer of the Richardson Lots to Merchia.

27. We find that no original deed for the Richardson Lots was ever delivered to Merchia.

28. We find that Merchia never told Hawkins that he believed the PDF Deed Copy gave him ownership of the Richardson Lots. We find that Merchia knew that the email did not constitute delivery of the deed and, to the contrary, expressly (and unreasonably) demanded return of his deposit.

29. These findings are based, among other things, on the Hawkins affidavit, Merchia's emails, the parties' course of conduct, relevant case law, set out below, and common sense.

Keough Buys the Richardson Lots and Files a Trespass Action in the Land Court; Merchia Hires the Respondent

30. At all relevant times, John Keough and his family lived in a house adjacent to the Richardson Lots. Ex. 19 (BC412-413); Tr. 1:35-36 (Keough).

31. In February 2019, Richardson sold the Richardson Lots to John Keough, as trustee of the Fisher Hill Realty Trust, for $1.4 million. Ex. 4; JS, ¶ 20; Ans. ¶ 26.

32. As part of the transaction, Richardson executed a new quitclaim deed and delivered it to Keough (the "Keough Deed"). Ex. 4; JS, ¶ 21; Ans. ¶ 27.

33. On February 28, 2019, Keough's attorney recorded the Keough Deed at the Norfolk County Registry of Deeds. Ex. 4; JS, ¶ 22; Ans. ¶ 28.

34. Shortly thereafter, on March 3, 2019, Keough emailed Merchia that he had just closed on the Richardson Lots, one of which he described as "between your house and ours." Ex. 42 (MO004271). He wrote that he looked forward to "being good neighbors and cooperating with [other neighbors] in connection with any communal responsibilities that run with the land." Id.

35. Merchia responded the following day, March 4, 2019, that he also looked forward "to being good neighbors and getting to know you better." Id. Shortly after sending this email, Merchia emailed Chapman, responding to Chapman's January 25 email (see above, ¶ 25) by expressing his understanding that Richardson had conveyed the property to Keough and his wife, and maintaining that he was "due a refund of my security deposit." Ex. 42 (MO004255).

36. After receiving the March 3, 2019 email telling Merchia that Keough had purchased the property, Merchia and his partner began to park their minivans on the Richardson Lot. Tr. 1:41 (Keough). Keough did not address this immediately but after a week or so, when the

parking continued, Keough sent Merchia an email asking him to stop parking there. Tr. 1:41-42 (Keough).

37. Mercia did not cease this behavior, instead claiming that he had a parking easement that allowed him to park on Keough's property. Tr. 1:42 (Keough). His support for this was that when he had viewed the property, prior to trying to buy it, the broker had parked in this area, and he assumed he also had a right to do so. Id. His rationale changed later when, as discussed below, he claimed that he retained certain rights under the P&S. Tr. 1:42-43 (Keough). He did not then, as he did later, see infra, claim to actually own the property. Tr. 1:43 (Keough).

38. On or about April 29, 2019, Keough, represented by counsel, filed a verified complaint against Merchia in the Land Court, followed shortly by an amended complaint. The case is captioned Keough v. Merchia, 19 MISC 000190 (the "Land Court Case"); Ex. 6.[3]

39. Keough's complaint alleged, among other things, that Merchia and his co-defendants were trespassing by parking their vehicles on a portion of the Richardson Lots, and that they had refused to remove them. Ex. 6 (BC402-403); see JS, ¶ 24; Ans. ¶ 30.

40. It also alleged that Keough had purchased the Richardson Lots on or about February 28, 2019. He attached as Exhibit 1 a copy of the Keough Deed, showing the sale of the Richardson Lots to him. Ex. 6 (BC408).

41. At around this time, Merchia posted an online advertisement on Craigslist seeking a lawyer to handle a land zoning dispute. JS, ¶ 25; Ans. ¶ 31.

[3] The complaint also named as defendants Shona S. Pendse, who is Merchia's partner or wife, and AgileD3 LLC, an entity owned or controlled by Merchia and other members of his family. Ex. 5 (MO002488); JS, ¶ 23; Ans. ¶ 29.

42. The respondent had no zoning experience but answered the Craigslist advertisement anyway. JS, ¶ 26; Ans. ¶ 32; see Tr. 1:96-97 (Respondent).[4]

43. Merchia and the respondent corresponded from April 28, 2019 through May 9, 2019 about legal representation. Tr. 1:97-98 (Respondent); Ex. 61. They ultimately came to an agreement. We have not been provided with a signed copy of a fee agreement, but credit that the unsigned agreement that is part of the agreed exhibits, see Ex. 61, was ultimately signed. See Tr. 1:97-98 (Respondent).

44. The respondent was to be paid $25.00 an hour. Ex. 61 (RES021). He was to work primarily at Merchia's offices, and exclusively on Merchia's cloud computers. Ex. 61 (RES021,022). He was to work for Merchia not less than an average of twenty hours per week. Ex. 61 (RES020).

45. The respondent was already working for Merchia when the summons in Keough's Land Court case, see above, ¶ 38, was served on him. Tr. 1:108 (Respondent); Ex. 59 (MO002791). The respondent and Merchia agreed in writing that the respondent would represent all of the defendants in the Land Court Case. See supra, n. 3; JS, ¶ 27.

46. After the respondent was retained, he took various steps to research the factual background. He spoke with Merchia and his partner Pendse. Tr. 1:111 (Respondent). He went online to the website for the Norfolk County Registry of Deed to look at the deeds and plans referenced in Keough's complaint. Id. He did some legal research on trespass and easements. Id.

[4] The zoning dispute is not at issue here. Tr. 1:97 (Respondent).

He reviewed the P&S, Riders A and B, and the December 27, 2018 email from Hawkins to Merchia attaching the PDF Deed Copy. Tr. 1:112-118 (Respondent).

47. The respondent knew that Merchia had never paid the $1.6 million purchase price. Tr. 1:113 (Respondent). He saw the email Merchia had sent to Keough congratulating him on his purchase, and he saw the emails Merchia had sent Hawkins asking for the return of his deposit. Tr. 1:117 (Respondent).

48. The respondent understood that in order for there to be delivery and acceptance of a deed, there must be both intent to deliver and intent to accept. Tr. 1:121 (Respondent).

49. On May 20, 2019, the respondent filed an Answer and Counterclaims in the Land Court Case on behalf of Merchia. Ex. 7; JS, ¶ 29; Ans. ¶ 35.[5]

50. The Answer filed by the respondent denied that Keough had purchased the Richardson Lots on February 28, 2019. Compare Ex. 6, ¶ 9 (BC401-402) with Ex. 7, ¶ 9 (MO002498); see JS, ¶ 30; Ans. ¶ 36.

51. Concomitantly, in his Counterclaim, the respondent alleged that Richardson had conveyed the Richardson Lots to Merchia by delivering the PDF Deed Copy by email, and that "[u]pon information and belief Ms. Richardson believed she had sold the property to Mr. Merchia when she delivered the deed on or about December 27, 2018." Ex. 7. ¶¶ 48-51 (MO002508); see JS, ¶ 31; Ans. ¶ 37.

52. This was the first time Keough was made aware that Merchia was claiming that he owned the Richardson Lots. Tr. 1:44-45 (Keough).

[5] He filed separate answers and pleadings on behalf of the other defendants. See Ex. 59 (MO002791). These are not relevant to our analysis.

53. The Answer and Counterclaims filed by the respondent requested that the Court "[d]etermine that [Merchia] has superior title to 621 Boylston Street" and that the Court "register [Merchia's] title with the Norfolk Registry of Deeds." Ex. 7, ¶ 7 (MO002510); JS, ¶ 32; Ans. ¶ 38.

54. The respondent made the above-described arguments and requests in his Answer and Counterclaims despite his recognition that his argument in favor of possession was not likely to succeed and in fact was "very weak"; at best he had evidence of Merchia's intent to receive the deed, but no evidence of intent to deliver by Richardson. See Tr. 1:100, 168-169 (Respondent).

The Respondent Electronically Records the PDF Deed Copy at the Registry of Deeds

55. At or around the time the respondent filed the Answer and Counterclaims in the Land Court Case, Merchia informed the respondent that he wanted to submit the PDF Deed Copy for recording to the Norfolk County Registry of Deeds. Ans. ¶ 41.

56. Merchia told the respondent that he wanted the "land frozen" in order to prevent Keough from conveying it to someone else. Tr. 1:134-135 (Respondent); JS, ¶ 34; Ans. ¶ 42. The intention was to create a cloud on the title to keep the property from being sold while the litigation was pending. Tr. 1:171-172 (Respondent).

57. The respondent advised Merchia against submitting the PDF Deed Copy to the Norfolk County Registry of Deeds before a judge had ruled on its validity, and recommended instead filing a "Lis Pendens." Tr. 1:100-101, 136-137 (Respondent); Ex. 53; JS, ¶ 35; Ans. ¶ 43.

58. "Lis pendens" means "pending lawsuit." Register O'Donnell explained that a judge can issue a lis pendens, sometimes ex-parte, after a hearing, and can record it at the Registry. "[I]t

tells the world . . . there's a title issue defect on this property, so you'd better not buy it because there are . . . problems here." Tr. 2:25 (O'Donnell).[6]

59. Merchia insisted that the respondent record the PDF Deed Copy before the judge in the Land Court Case had ruled on its validity. Tr. 1:136-137 (Respondent); Ex. 53; JS, ¶ 36; Ans. ¶ 44.

60. The respondent agreed to record the PDF Deed Copy in accordance with Merchia's wishes. JS, ¶ 37; Ans. ¶ 45. He did not tell Merchia he could not "do it in good conscience." Merchia was his only client at the time, and he wanted to pay his rent and his student loan debt. Tr. 1:175-176 (Respondent). Having boxed himself into the position that the deed had been duly delivered, to the respondent's mind it followed logically that "it would have been legally enforceable and I could see no reason why a legally-enforceable deed could not be recorded." Tr. 1:100-101 (Respondent).

61. The respondent had never recorded a deed before. JS, ¶ 38; Ans. ¶ 46.

62. The respondent and Merchia decided to record the deed electronically. We infer and find that this was because they wanted to avoid any questions about the deed at the Registry counter. At the time, in order to be eligible to record a document electronically at the Norfolk County Registry of Deeds, a lawyer first had to execute an E-File Submitter Agreement with the electronic recording vendor for Norfolk County, known as eRecording Partners Network, LLC ("ePN"). JS, ¶ 39; Ans. ¶ 47.

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[6] "[A] memorandum or recording of lis pendens may issue if a case's subject matter concerns a claim of title to real property. See Mass. Gen. Laws ch. 184, § 15(b). Indeed, a lis pendens is a tool meant to provide recorded notice of lawsuits that impact title to real property." Sakab Saudi Holding Company v. Aljabri, 58 F.4th 585, 604 (1st Cir. 2023). "A memorandum of lis pendens, like an attachment of real estate, temporarily restricts the power of a landowner to sell his or her property, by depriving the owner of the ability to convey clear title while the litigation is pending." Debral Realty, Inc. v. DiChiara, 383 Mass. 559, 564 (1981).

63. On May 23, 2019, three days after the respondent had filed Merchia's Answer and Counterclaims, Merchia communicated with ePN by phone and email. Ex. 8 (BC180). Merchia was sent detailed information from ePN, which he promptly forwarded to the respondent, including: Set up Instructions for eRecording [in] Barnstable, MA, with an E-File Submitter Agreement; an eCourier Subscriber Agreement; FAQs for Submitters; Set up Instructions for eRecording [in] MA Jurisdictions; a Submitter Memorandum of Understanding from the Commonwealth's Registry of Deeds Division; and Set up Instructions for eRecording [in] Norfolk, MA, with an E-File Submitter Agreement. Ex. 8.

64. The respondent had never seen the E-File Submitter Agreement before. Tr. 1:142 (Respondent). Although the documents were numerous and detailed, the respondent claims that he read them. Tr. 1:140-142 (Respondent).

65. Had he in fact read them, he would have seen the following:

a. The Subscriber Agreement includes a requirement, at Section 4.5(c), that the "Subscriber [efiler] represents and warrants that [it] shall have the legal right to file for recording each and every document submitted for electronic recording …." Ex. 8 (BC191).

b. The FAQs explain, in a section entitled "How Does it Work?," that "**[o]nce a closing has been completed**, you need to scan the documents . . . ." Ex. 8 (BC202) (emphasis added).

66. The requirement that only images of original documents are eligible for recording appears repeatedly, in every efiling document the respondent received. E.g., **Subscriber Agreement**, Sec. 4.5(b) (subscriber represents and warrants that electronic image it submits "shall be a true, exact, complete and unaltered copy of the Original Paper Document" and that it "shall not submit any document for electronic recording through eCourier that is not an original document" (Ex. 8 (BC191)); **Commonwealth's Memorandum of Understanding, ¶ 2**

("Submitter shall record electronically only original documents bearing original signatures and acknowledgements . . . [and] SHALL NOT electronically record any copy of an original document unless it is a certified copy from a different Registry of Deeds or governmental entity in compliance with applicable law") (Ex. 8 (BC206)) (emphasis in original); **E-File Submitter Agreement for Norfolk County**, ¶¶ 5, 7 (lawyer executing the agreement acknowledges that he or she "shall record electronically only original documents bearing original signatures and acknowledgments" and "SHALL NOT record electronically a copy of an original document except for certified copies from a Registry or from another governmental agency . . ."). Ex. 8, BC212 (emphasis in original).

67. The purpose of the originality requirement in the E-File Submitter Agreement is to prevent fraud. Tr. 2:12-13 (O'Donnell).

68. On May 23, 2019 at 11:37 AM, seven minutes after receiving the package of materials from Merchia, the respondent emailed the signed E-File Submitter Agreement to ePN. In the email, the respondent stated that he would also be communicating directly with the Norfolk County Registry of Deeds. Ex. 9 (BC216); JS, ¶ 45; Ans. ¶ 54.

69. He did so almost immediately thereafter. At 11:41 AM, the respondent transmitted the signed E-File Submitter Agreement and the PDF Deed Copy to the Registry of Deeds by sending an email to William O'Donnell, the Norfolk County Register of Deeds, and Richard Kennedy, the First Assistant Register. In the email, the respondent informed Register O'Donnell and First Assistant Register Kennedy that he hoped to file the PDF Deed Copy "later this afternoon" and added: "[p]lease let me know if you need anything from me to expedite the process." Ex. 10 (BC246); see JS, ¶ 46; Ans. ¶ 55.

70. The PDF Deed Copy that the respondent submitted to the Register falsely stated on its

face that Merchia had paid the purchase price for the Richardson Lots. Specifically, it stated that Richardson had transferred the property "for consideration and in full consideration of $1,616,00.00] Dollars *paid*" by Merchia (emphasis added). Ex. 10 (BC247).

71. This statement was false; the respondent admitted that he knew Merchia had not paid the purchase price. Tr. 1:113, 177 (Respondent); JS, ¶28.

72. The documents the respondent sent to the Registry did not explain the circumstances under which his client had obtained the PDF Deed Copy. Ex. 10; JS, ¶ 48; Ans. ¶ 62.

73. The Norfolk County Registry of Deeds allowed the respondent to record the PDF Deed Copy on May 24, 2019. Exs. 15, 16; JS, ¶ 50; Ans. ¶ 65.

74. Electronic recording of a document typically happens only after a closing has taken place. Tr. 2:15-16 (O'Donnell).

75. The "rules of the road when it comes to recording electronically" are that consideration has been paid, and a closing has occurred; these assumptions are behind the requirement that the submitter possess an original deed. Tr. 2:18-19 (O'Donnell). Put another way, the originality requirement presupposes that there has been tender of the purchase price and a closing.

76. We reject as beside the point the respondent's specious arguments about what is or is not an original document in our digital age; the "original" requirement rests, at its core, on an unremarkable convention: that a legal transaction has occurred, and that the deed is what it purports to be—an accurate record of that transaction.

77. We find that the Registry of Deeds relies on the accuracy of documents submitted to it for recording. The Registry had no way of knowing, and in fact did not know, that Merchia had not tendered the purchase price for the property. Tr. 2:8, 17-18 (O'Donnell). The Registry did not know, and had no way of knowing, that no closing had occurred. Tr. 2:18 (O'Donnell).

78. Had the Registry known that the purchase price had not been paid and no closing had occurred, it would have rejected the PDF Deed Copy. Tr. 2:20 (O'Donnell).

79. We find that the recording of the PDF Deed Copy constituted a fraud on the Registry.

80. We credit Keough's testimony that, having paid cash for the Richardson Lots to make his offer attractive to Richardson and to effect a quick closing, he would have liked, thereafter, to mortgage the property to get some cash. Tr. 1:60-61 (Keough). We credit that with the cloud on his title created by the respondent's recording of the PDF Deed Copy, it would have been difficult to do this. Id.

The Respondent Tells the Land Court Judge that He Recorded the PDF Deed Copy

81. On or about June 10, 2019, the respondent and Keough's counsel prepared and signed an Amended Joint Statement in advance of a June 14, 2019 court conference in the Land Court Case. This document described the position of the respondent's clients to be that "Merchia purchased the [Richardson Lots] from Margaret Richardson, and the deed was delivered and accepted by Mr. Merchia." Ex. 19 (BC414); JS, ¶ 51; Ans. ¶ 68. This misrepresentation echoed and amplified the respondent's earlier misrepresentation, to the same effect, in his Answer and Counterclaims. See above, ¶ 51.

82. At the June 14, 2019 Land Court conference, Judge Howard P. Speicher questioned the respondent about Merchia's claimed ownership of the Richardson Lots. The respondent asserted that Richardson had delivered a deed to the Richardson Lots to Merchia, and that Merchia had recorded that deed after the property had been sold to Keough. Ex. 50 (BC87-89); see JS, ¶ 52; Ans. ¶ 69.

83. Prior to the June 14, 2019 court conference, the respondent had not informed Keough

that the PDF Deed Copy had been recorded. Keough's counsel learned about the recording for the first time during the conference. Tr. 1:46-47 (Keough); Ex. 49, ¶31 (MO152-153); Ex. 50 (BC87-89); Ans. ¶ 70

84. When the respondent explained to Judge Speicher his theory about the ownership of the property, culminating in his admission that he had recorded the Merchia deed after the property had been sold to Keough, Judge Speicher seemed incredulous, stating: "That's kind of crazy, isn't it?" Ex. 50 (BC89).

85. Keough's attorney informed Judge Speicher that the deed on which the respondent relied was merely a copy of an undelivered deed transmitted by email in anticipation of a closing that never occurred, and that Merchia had never tendered the purchase price. Ex. 50 (BC096,098).

86. The Court then turned to the respondent for an explanation:

> The Court: All right. And is that true, Mr. Osborne?
> Mr. Osborne: In the funds never being tendered, it is true …
> The Court: The funds were never tendered by the buyer?
> Mr. Osborne: Correct
> The Court: Well, then, how can you claim the closing happened, that your client owns the property?
> Mr. Osborne: That's a separate issue in regards to –
> The Court: Well, no, that's a pretty fundamental issue. You're saying your client was tendered a deed which states a consideration of --
> Mr. Osborne: 1.6 –
> The Court: -- 1.6 million dollars, but your client didn't pay the 1.6 million dollars, yet you recorded the deed?
> Mr. Osborne: Yes.
> The Court: Wow. Okay. All right.

Ex. 50 (BC098-099).

87. Although he believed Judge Speicher was "mistaken about . . . the law," the respondent admitted that he was flustered by "getting yelled at by a judge," and that he was "scared." Tr. 1:102 (Respondent).

88. Attorney Chapman, Richardson's attorney, "cornered" the respondent in an elevator after the conference, and advised him to contact the Registry of Deeds to see what he could do to rectify the "mis-recorded deed." Tr. 1:102 (Respondent).

89. The respondent went straight from the courthouse to the Norfolk County Registry of Deeds, and asked at the counter about getting a deed or document off the record. Tr. 1:102-103 (Respondent). He was directed to the supervisor's office. Tr. 1:103 (Respondent). He did not give his name, and did not identify the particular deed he was inquiring about. Tr. 1:160-161 (Respondent). He did not show a copy of the December 27 email with the deed attached. Tr. 1:161 (Respondent). He did not explain the circumstances of why the deed had been mistakenly recorded. Tr. 1:161-162 (Respondent).

90. The respondent was told by a Registry clerk that once on record, a deed could not be unfiled, but that he could submit an affidavit pursuant to M.G.L. c. 183, § 5B.[7] Tr. 1:103 (Respondent).

91. The respondent chose to do nothing. He did not think a § 5B affidavit would be appropriate. Tr. 1:103, 173-174 (Respondent). He did not want to harm his client's case by putting something on record saying Merchia did not own the property. Tr. 1:163-164 (Respondent). He decided to wait until the judge decided whether the deed was enforceable. Tr. 1:103, 174 (Respondent).

[7] G.L. c. 183, § 5B provides: "Subject to section 15 of chapter 184, an affidavit made by a person claiming to have personal knowledge of the facts therein stated and containing a certificate by an attorney at law that the facts stated in the affidavit are relevant to the title to certain land and will be of benefit and assistance in clarifying the chain of title may be filed for record and shall be recorded in the registry of deeds where the land or any part thereof lies."

92. In an email dated June 26, 2019, less than two weeks after learning what the respondent had done, Keough complained to the Registry, saying that Merchia and the respondent had never possessed an original deed, and that the PDF Deed Copy they had electronically recorded was a copy. Ex. 24 (BC257); JS, ¶ 53; Ans. ¶ 71. He explained that the respondent had a copy of the deed in connection with a prospective sale transaction that had never closed; because Merchia had not paid the purchase price, Merchia had never received an original deed from the prior owner. Ex. 24 (BC257).

93. The following day, on June 27, 2019, the respondent filed a Motion to Withdraw from his representation of Merchia in the Land Court Case, citing in support that Merchia had asked him to withdraw. The motion was allowed on July 1, 2019. Ex. 20; JS, ¶ 54; Ans. ¶ 72.[8]

The Respondent Fails to Respond to the Register or Rectify the Improper Recording

94. On or about July 10, 2019, Register O'Donnell became aware of Keough's complaint about the improper recording of the PDF Deed Copy. He was "deeply troubled" by the allegation that someone had electronically recorded a non-original deed as if it were an original deed, and he opened an investigation. Tr. 2:21-23 (O'Donnell).

[8] The Motion to Withdraw was only as to Merchia. The respondent remained counsel for Pendse and AgileD3 LLC, the other defendants in the Land Court Case, and for BoylstonD3 LLC and Shona Pendse in another Land Court matter not relevant to our proceedings. He also continued to represent Merchia, for another few weeks, in a Superior Court case brought by Richardson where, in an Answer and Counterclaims filed **August 9, 2019**, he alleged that Richardson had breached the PSA by **not** conveying the Richardson Lots to Merchia and by instead selling to Keough. Ex. 27, ¶ 69 (MO3032); Ans. ¶ 90. He sought specific performance of the PSA to convey the Richardson Lots to Merchia. Ex. 27 (MO3037); Ans. ¶ 91. This position was entirely inconsistent with the arguments the respondent had made in the Land Court Case. See above, ¶¶ 50-53. He withdrew from his representation of Merchia in the Superior Court Case on **September 5, 2019**. Ex. 58 (MO003160); JS, ¶ 70; Ans. ¶ 92. Bar counsel has not charged the respondent with misconduct for taking this inconsistent position in the Superior Court case, or for any other aspect of his conduct there.

95. On July 16, 2019, Register O'Donnell sent the respondent a letter by certified mail, informing him of Keough's allegation that the respondent had not possessed an original deed at the time he electronically recorded the PDF Deed Copy. Ex. 24; JS, ¶ 58; Ans. ¶ 77.

96. Register O'Donnell's letter enclosed Keough's June 26, 2019 email, and requested: (1) that the respondent confirm that he had possessed the original deed when he electronically recorded the PDF Deed Copy; and (2) that the respondent make arrangements to bring the original deed to the Registry to allow First Assistant Register Kennedy to inspect it. Ex. 24; JS, ¶ 59; Ans. ¶ 78.

97. Also at this time, on or about July 16, 2019, Keough's counsel urged the respondent over the phone to take steps to rectify the improper recording of the PDF Deed Copy. Ex. 50 (113); JS, ¶ 57; Ans. ¶ 76.

98. The respondent received Register O'Donnell's letter but did not respond to it, or to the request he had received from counsel. Tr. 1:157 (Respondent); JS, ¶¶ 60, 61; Ans. ¶¶ 79, 80.

99. He told us that he "did not want to go there and have to litigate everything I was . . . hoping to litigate or had been hoping to litigate because this was received after . . . I had withdrawn. Basically, I didn't want to make my legal argument at the Registry of Deeds in full when I had to make it to the Court later." Tr. 1:157-158 (Respondent).

100. On July 23, 2019, Keough's counsel sent a letter to the respondent, memorializing her July 16, 2019 telephone request that the respondent rectify the recording of the PDF Deed Copy. Ex. 50 (BC113); JS, ¶ 63; Ans. ¶ 82.

101. The respondent did not make arrangements for the First Assistant Register to inspect the PDF Deed Copy, or take steps to rectify the improper recording of the PDF Deed Copy. Ans. ¶ 83.

102. On or about July 31, 2019, Register O'Donnell sent a second certified letter to the respondent, citing his failure to respond to the first letter and terminating his electronic recording privileges. Ex. 26; JS, ¶ 64; Ans. ¶ 84.

103. The respondent never made any legal argument to the Register, to Richardson's counsel, to Keough's counsel or to any Court explaining why he thought he was entitled, on behalf of Merchia, to record the PDF Deed Copy. Tr. 154-156 (Respondent); Ex. 10; JS, ¶ 49; Ans. ¶¶ 63.

104. The respondent told us that he did not care that his access had been terminated because he "didn't think [he] was going to be going into real estate transactions and didn't think [he] needed to ever record anything again." Tr. 1:164 (Respondent).

Keough Moves for and is Granted Summary Judgment in the Land Court

105. On or about October 21, 2019, the Land Court consolidated the two Land Court cases. See above, n. 8.

106. On January 30, 2020, some months after learning that the respondent had filed the PDF Deed Copy with the Registry, Keough filed a second amended complaint in the Land Court Case. This amended complaint sought, among other things, a declaration that the PDF Deed Copy was of no force and effect. Tr. 1:51 (Keough); Ex. 33; JS, ¶ 72; Ans. ¶ 94.[9]

107. In November 2020, Keough filed a Motion for Partial Summary Judgment in the Land Court Case. Among other things, Keough requested a declaration that the PDF Deed Copy was void. Ex. 41 (BC525); JS, ¶ 76; Ans. ¶ 98.

[9] As noted above, the respondent had already withdrawn his appearance for Merchia by this time. On or about October 6, 2020, he withdrew as counsel for Pendse. He remained as counsel of record for AgileD3 LLC and BoylstonD3 LLC until June 7, 2022, when the Land Court allowed his March 10, 2022 motion to withdraw. Exs. 47, 59 (MO002798, 2802); JS, ¶¶ 75,80; Ans. ¶¶ 97, 102.

108. Merchia, represented by new counsel, the respondent having withdrawn, admitted in his response to Keough's Motion for Summary Judgment that he had never possessed an original deed to the Richardson Lots. Ex. 45, ¶ 37 (MO002746); JS, ¶ 77; Ans. ¶ 99.

109. By decision dated June 1, 2022, Judge Rubin allowed Keough's Motion for Summary Judgment. Ex. 49; JS, ¶ 81; Ans. ¶ 103.

110. After reviewing the elements necessary for an effective conveyance of property and delivery of a deed, Judge Rubin held that Richardson had not delivered a deed to Merchia for the Richardson Lots, writing that "based on the undisputed record before the court it is evident that the [PDF Deed Copy] emailed to Merchia did not effectuate a transfer of title. It is undisputed that Margaret Richardson did not intend a present transfer of [the Richardson Lots]. " Ex. 49 (MO155-156); JS, ¶ 82; Ans. ¶ 104.[10]

111. Judge Rubin found that "it is also clear from the email communications between Merchia and Attorney Hawkins … and the [P&S], that [Richardson] intended to convey the [Richardson Lots] at the closing scheduled for December 31, 2018 and not beforehand." Ex. 49 (MO156). She found further that "[t]he prior emails between Attorney Hawkins and Merchia were in anticipation of closing. As such, inclusion of a pdf copy of the Merchia Deed as an attachment to Attorney Hawkins' December 27, 2018, email was also in preparation for closing and nothing further." Id.

112. Judge Rubin held that Attorney Hawkins' statement in the December 27, 2018 email that "[Richardson] is ready, willing and able to perform on the 31st at 1:00 at the

[10] We have not accorded preclusive effect to Judge Rubin's decision. However, it is in evidence as an agreed exhibit and, as is the case with all received evidence, we are entitled to assess it and give it the weight we think it deserves.

Norfolk County Registry of Deeds in accordance with the contract . . . eliminates any doubt that the [Richardson Lots] were not then transferred via the pdf copy of the Merchia Deed, but rather that transfer was to occur at closing." Id.; see JS, ¶ 82; Ans. ¶ 104.

113. She concluded that Richardson "never delivered an original deed to Merchia as necessary for recording with the Registry." Ex. 49 (MO157). This conclusion was not changed by the fact that the respondent had in fact recorded the Merchia Deed, because "'[t]here is nothing magical in the act of recording an instrument that invests an otherwise meaningless legal document with legal effect.'" Id. (citation omitted).

114. Judge Rubin concluded that the PDF Deed Copy was never properly recorded because the respondent never held the original deed, and that the respondent electronically recorded the PDF Deed Copy "in clear violation of the Registry's policies." Ex. 49 (MO157-158); JS, ¶ 83; Ans. ¶ 105.

115. Judge Rubin ordered that judgment issue declaring the PDF Deed Copy "null, void, and of no force and effect." Ex. 49 (MO158); JS, ¶ 84; Ans. ¶ 106.

116. We credit Keough's testimony that he paid his counsel $350/hour for her work in the Land Court. He estimated that it cost approximately $15,000 to $20,000 to address the improperly recorded deed, including amending the Land Court complaint and moving for summary judgment on that issue. Tr. 1:57-58 (Keough). [11]

[11] For the sake of completeness, we briefly summarize the resolution of the other cases we have mentioned, which reached their conclusions after the respondent had withdrawn. On or about June 30 and July 1, 2022, Merchia and Pendse filed notices of appeal of the Land Court's summary judgment decision. Ex. 59 (MO002803). These were unsuccessful. Ex. 56, Keough v. Merchia, 103 Mass. App. Ct. 1126 (2024) (unpublished). By Memorandum of Decision and Order dated July 24, 2023, Norfolk Superior Court Judge Maynard Kirpalani granted summary judgment to Richardson in the Superior Court Case. Ex. 54; JS, ¶ 87; Ans. ¶ 109. He relied on Judge Rubin's rulings as res judicata on the questions of breach of contract and the request for declaratory relief. Ex. 54 (MO003153-3154). As to the plaintiff's claim alleging breach of the implied covenant of good faith and fair dealing, he found that Merchia had "conjur[ed] up a pretended dispute," and that his reasons for failing to attend the closing were

Conclusions of Law

117. Bar counsel charged that **by asserting to the Land Court, in support of Merchia's claim to ownership of the Richardson Lots, that a deed to the Richardson Lots had been delivered to Merchia and recorded**, the respondent violated Mass. R. Prof. C. 1.1 (act with competence), 3.1 (do not bring a proceeding or assert an issue unless there is a non-frivolous basis for doing so, which includes a good faith argument for an extension, modification or reversal of existing law) and 8.4(d) (conduct prejudicial to the administration of justice).[12]

118. Although the respondent did not make extensive argument to the Land Court about his motives or authority, see above, ¶¶ 84-87, he claims to us that statutory and case law support his actions and justify his Land Court Case Answer and Counterclaims.

119. The respondent wrote in his initial response to Keough's complaint to bar counsel that when he learned that Richardson had sent a signed and executed deed to Merchia, "[t]his immediately sparked the memory from law school that the act of delivering a deed is [an] act of conveying land." Ex. 51 (BC171). He elaborated about this at the hearing, testifying that under G.L. c. 183, § 1,[13] "delivery of the deed is the sole thing that needs to happen [and that] no closing is necessary." Tr. 1:120-121 (Respondent).

based on "entirely baseless claims concerning easements and title insurance." Ex. 54 (MO003155); see JS, ¶ 89; Ans. ¶ 111. He also found a violation of c. 93A, citing Merchia's "entirely fraudulent representations concerning the easements and title insurance related to such property." Ex. 56 (MO003156); see JS, ¶ 88; Ans. ¶ 110.

[12] Bar counsel's Petition for Discipline includes four "charging" paragraphs containing alleged rule violations: ¶¶ 113, 114, 115 and 116. To ensure the most coherent flow of our discussion, we begin out-of-order with ¶ 116.

[13] M.G.L. c. 183A, § 1 provides: "A deed executed and delivered by the person, or by the attorney of the person, having authority therefor, shall, subject to the limitations of section four, be sufficient, without any other act or ceremony, to convey land."

120. The respondent recognized that for there to be delivery and acceptance of a deed, there must be both intent to deliver and intent to accept. Tr. 1:121 (Respondent). He claimed before us that case law provided that a seller's signature on the deed indicates the seller's intent to deliver the property. Tr. 1:122 (Respondent).

121. Our research confirms that "[t]he acts of parties and the circumstances attending the execution of a deed are important as indicating their purpose and intent in determining whether there has been a delivery of the deed." Frankowich v. Szczuka, 321 Mass. 75, 77 (1947) (no delivery where deeds were executed for purposes of refinancing, not conveyance of property). "The factors essential to delivery are that the grantor intend the deed to effect a present transfer of the property and that the grantee by his conduct assent to the conveyance. . . . Whether there has been a delivery of a deed is ordinarily a question of fact."); see Emami-Tabrizi v. Emami, 2022 WL 4112809, *6 (Mass. Land Ct., September 9, 2022) (not reported) (no intent to effect a conveyance of property where seller prepared and forwarded deed to brother at brother's request, purportedly to allow latter to deal with condominium association and administer property).

122. We reject, as implausible and unsupported, the respondent's argument that where a seller signs a deed and sends the buyer a copy, to show she is "'ready, willing and able"' to close in accordance with the purchase and sale agreement, see Ex. 42, Hawkins Aff., ¶ 8 (MO004170), she has legally delivered the deed. The respondent's argument boils down to a claim that one who transmits a signed deed, without more, thereby evinces an intent to convey the subject property. This reasoning violates common sense, and is wrong as a matter of law. See generally Tewksbury v. Tewksbury, 222 Mass. 595, 597 (1916) ("[t]he mere manual act of handing the deeds to the defendant was not enough to constitute legal delivery. An intention that the deeds

should operate as a present conveyance of title was also essential."). We conclude that there was no legally valid delivery of the deed from Richardson to Merchia.

123. It is undisputed that Merchia never paid Richardson the agreed-to purchase price. The respondent offers case law he claims stands for the proposition that this is not an impediment to finding a valid transaction. E.g., Parsons v. Parsons, 230 Mass. 544, 551 (1918) (upholding conveyance of land from mother to son where, in lieu of payment, she received "love and affection" and son incurred significant financial risk in undertaking related construction); Ward v. Ward, 70 Mass. App. Ct. 366, 371 (1907) (denying father's right to rescind deed he had conveyed to son for nominal consideration in the mistaken belief that he could later change transaction; Court notes that absent fraud, a deed is not void because of lack of consideration, failure of consideration, or insufficient consideration). Cf. Freedom Financial Acquisition, LLC v. Laroche, 90 Mass. App. Ct. 1104 (2016) (unpublished) (mortgage that mother gave to Financial pertained only to mother's life estate and did not impact fee simple interest she had already given her son, where mortgage company knew about deed to son, and deed was not effectively delivered to son until date he learned about and accepted it, which was significantly after it had been recorded).

124. The respondent argues further that in any event, the failure to pay the full purchase price was not an impediment to a consummated sale, because (1) the contract was "under seal," see Ex. 1, ¶ 27 (MO593); and (2) the seller would have retained her rights to sue the buyer. Tr. 1:123 (Respondent). He claims that Morad v. Silva, 331 Mass. 94 (1954) and Bressel v. Jolicoeur, 34 Mass. App. Ct. 205, rev. den., 415 Mass. 1101 (1993) support these arguments.

125. At issue in Morad was the plaintiff seller's right to compel specific performance after the defendant buyers refused to go through with a sale. The Court rejected the buyers' argument

that, because the seller had not owned the property when the agreement was signed but was merely a mortgagee, the seller's promise to sell had been illusory and without consideration. The Court ruled that "the agreement, by reason of the recital that it was under seal, was in legal effect a sealed instrument . . . and want of consideration is of no avail." Morad, 331 Mass. at 98. [14]

126. Bressel v. Jolicoeur concerned a suit by a seller against the buyers, in which the seller claimed the buyers owed her more money than they had paid. The parties' purchase and sale agreement provided that the price for a lot with a house would be $410,000, but would be reduced to $350,000 if the property could not be divided into two buildable lots. The parties argued about the price at the closing. The seller agreed to sell for $350,000 and to sign and execute a deed to this effect, but announced that she would sue for the $60,000 balance if the buyers tore down the house and built houses on each lot. When the buyers did this, the seller sued.

127. The Appeals Court upheld judgment for the seller on her breach of contract claim. In pertinent part, it rejected the buyers' arguments that extrinsic evidence was inadmissible to contradict the consideration recited in the deed, writing that "it is not the purpose of a deed to set forth the price paid for the property conveyed, for that purpose is accomplished by the contract in pursuance of which the deed was given" and that "the likely purpose of requiring the deed to set forth the consideration paid was to aid in collecting the deed excise tax due, see G.L. c. 64D, § 1, rather than to make the recital of consideration in a deed conclusive." Bressel, 34 Mass. App. at 208-209.

[14] See also Mather v. Corliss, 103 Mass. 568, 571 (1870) (where there was a valid delivery of a deed, all the covenants in it took effect; because the covenant was under seal, "the consideration cannot be inquired into").

128. The case law cited and reviewed above does not remotely support the respondent's claim that the deed emailed to Merchia effectively conveyed the property. Nothing in the case law allows the respondent to skirt the fact that merely emailing a deed several days before a scheduled closing does not establish the intent required for delivery. Nothing supports the astonishing argument that because the contract was under seal, Merchia enjoyed a massive windfall – ownership of the property despite having failed to pay for it, while Richardson suffered a huge loss, mitigated only by the scant comfort that she could sue for the purchase price. See Respondent's Post-hearing Brief, p. 2; Tr. 1:123 (Respondent). This is manifestly not how land transactions work.

129. The respondent's arguments in support of his claims are unsupported, illogical, disingenuous and frivolous. They had no chance of prevailing and, in wasting the limited resources of the Court and its personnel, and in forcing opposing counsel to respond to baseless arguments, interfered with the administration of justice.

130. We conclude that bar counsel has proved a violation of rules 1.1, 3.1 and 8.4(d). See Matter of Kaplan, No. BD-2024-020 (May 28, 2024), slip op. at 22-23 (eighteen-month suspension for varied misconduct including rule 3.1 violation where lawyer's defense to request for production of documents had no basis in fact); Matter of Hurley, 33 Mass. Att'y Disc. R. 225 (2017) (year-and-a-day suspension for lawyer who helped clients assert a fraudulent claim to property of another, in violation of 1.2(d), 3.1, 3.3(a)(1), 8.4(d) and (h), with aggravation); Matter of Kim, 32 Mass. Att'y Disc. R. 297 (2016) (year-and-a-day suspension after facts deemed admitted; lawyer commenced groundless suits and appeals, some in violation of Court orders, in violation of rules 1.1, 3.1, 3.4(c), 8.4(d) and 8.4(h), with aggravation).

131. Bar counsel charged that, **by submitting the PDF Deed Copy for electronic recording to the Register**, the respondent violated Mass. R. Prof. C. 1.1, 1.2(d) (do not counsel client to engage, or assist, in conduct lawyer knows is fraudulent), 4.1(a) do not knowingly make a false statement of material fact or law to a third person); 4.1(b) (do not fail to disclose a material fact to third person when disclosure is necessary to avoid assisting a criminal or fraudulent act by client), 8.4(c) (do not engage in conduct involving dishonesty, fraud, deceit or misrepresentation) and 8.4(d).

132. As we wrote above, the respondent was aware, when he agreed to record and then when he recorded the PDF Deed Copy, that the sale by Richardson to Merchia had never actually occurred, and that Merchia had not paid for the property. He was also aware of the numerous emails Merchia had sent, requesting the return of his $40,000 security deposit, actions inconsistent with ownership. Tr. 1:111-117 (Respondent).

133. Above, we reviewed in some detail all of the Registry materials, provided to the respondent, that mandated the recording of only original documents. See supra, ¶¶ 65-66.

134. Despite this, he offered various justifications for his actions in forwarding the PDF Deed Copy to the Registry, among them that: (1) under the P&S, the deed *was* an original, because the P&S authorized electronic signatures; (2) M.G.L. c. 110G, § 7 controls and dictates that an electronic document cannot be denied legal effect because it is electronic; (3) the Subscriber Agreement provides that electronic signatures shall have the same legal effect as a signature on a paper document; and (4) there is no such thing as an original in our electronic age. See generally Respondent's Brief, pp. 5-8.

135. We do not agree that the P&S authorized electronic signatures on deeds, or that there was any conflict in its provisions. While Rider A provided that in general email or facsimile

signatures were binding, Rider B specifically addressed deeds, and mandated that "[f]axed or Electronic Signatures may not be used for Deeds which shall be original signatures." Ex. 1 (0597, 0601). The more specific provision – the one pointedly addressed to deeds – controls over the general. See Doe v. Att'y Gen., 425 Mass. 210, 215–216 (1997).

136. We do not agree that M.G.L. c. 110G, § 7 justified the respondent's actions. It provides:

> (a) A record or signature may not be denied legal effect or enforceability solely because it is in electronic form.
>
> (b) A contract may not be denied legal effect or enforceability solely because an electronic record was used in its formation.
>
> (c) If a law requires a record to be in writing, an electronic record satisfies the law.
>
> (d) If a law requires a signature, an electronic signature satisfies the law.

137. The respondent claimed at the hearing, and argues post-hearing, that this statute supports his argument that the PDF Deed Copy attached to the December 27 email was the original. He reasons as follows: Electronic signatures cannot be denied legal effect because they are electronic; subsection (c) of M.G.L. c. 110G, § 7 provides that when the law requires a record to be in writing, an electronic record satisfies that law; and "when an original is required, an electronic copy can be an original because it satisfies that law." Tr. 1:149-152 (Respondent).

138. This simplistic syllogism misses the mark. At issue is not whether the respondent was allowed to transmit a document electronically; he was. The problem was that what he transmitted was not what it purported to be – a deed reflecting a properly consummated real estate transaction. Neither this statute nor the respondent's argument sheds any light on what constitutes an original or, more compelling, why there must be an extant original before an electronic copy can serve in its stead.

139. We agree with the respondent that the Subscriber Agreement, in Sec. 4.4, allows the transmission "in electronic formats [of] documents and business records and the document or records shall be considered as the "original" record of the transaction in substitution for, and with the same intended effect as, paper documents. . . ." Ex. 11 (MO550). This gets him precisely nowhere; it presupposes that there exists a valid original. See 4.5(d) ("Subscriber shall retain the Original Paper Document during the time that such document is being electronically recorded through eCourier.") Ex. 11 (MO551). It does not transform into an original a document, like the PDF Deed Copy, which never enjoyed the status of an original deed because it never reflected an intent to convey or an effective conveyance of title.

140. The respondent is correct that we were not offered a decisive definition of "original" at the hearing. Register O'Donnell referenced "original signatures and things of that sort," and "a generated document that . . . has a wet signature [and] an acknowledgment from the notary," often with a seal. Tr. 2:13, 31-32 (O'Donnell).

141. More to the point, Register O'Donnell emphasized that the "original" requirement "presupposes" and "mandates" that the efiler has the original and that a closing has taken place. Tr. 2:30 (O'Donnell). We do not find fatal to bar counsel's case that he has offered no definitive definition of original; the purpose of the originality requirement is self-evident, and has been explained to our satisfaction by Register O'Donnell.

142. For the reasons enumerated above, we conclude that the bar counsel has proved a violation of rule 1.1.

143. The respondent resists the conclusion that his actions were knowing, a component of the intentional conduct charged in rules 1.2(d), 4.1(a), 4.1(b) and 8.4(c).

144. We find that the respondent's conduct was not simply incompetent, but that he knew[15] his arguments were baseless and false. He essentially told Merchia as much. Tr. 1:136-137, 175-176 (Respondent). He went ahead anyway, because he needed, for financial reasons, to keep Merchia as a client. Tr. 1:175-176 (Respondent). He duped the Register into recording a deed he knew was invalid, submitting it with the clear intention that the Register would rely on it and record it. He misrepresented to the Register that the deed he filed was a copy of the original, and that he was properly in possession of it. He knew, contrary to his representations, that the purchase price had not been paid, and that there had not been a closing. When later asked by the Register to provide an explanation, see infra, he offered nothing to support the validity of the deed or the reasons for his actions. The various disingenuous, specious, and after-the-fact arguments the respondent has made to us would have been wholly unconvincing even if they had been timely made.

145. We conclude that the respondent assisted Merchia in conduct the respondent knew was fraudulent, in violation of rule 1.2(d). See Matter of Hurley, supra. He completely subverted his role as counselor to his client. See generally Mass. R. Prof. C. 2.1 ("[i]n representing a client, a lawyer shall exercise independent professional judgment and render candid advice. In rendering advice, a lawyer may refer not only to law but to other considerations such as moral, economic, social and political factors, that may be relevant to the client's situation"). Instead of counseling his client, the respondent became his accomplice

[15] See Mass. R. Prof. C. 1.0(h) ("'knowingly,' 'known,' or 'knows' denotes actual knowledge of the fact in question. A person's knowledge may be inferred from circumstances").

146. The conduct we have described compels the conclusion that the respondent violated rules 4.1(a), 4.1(b), and 8.4(c). See Matter of Alberino, 27 Mass. Att'y Disc. R. 1 (2011) (stipulation to eighteen-month suspension for misconduct in three real estate transactions, where the lawyer prepared false HUD-1 forms and submitted them to lender clients, in violation of rules 1.2(d), 1.4(a), 4.1(a) and (b), and 8.4(c) and (h), with mitigation and aggravation); Matter of Hanserd, 26 Mass. Att'y Disc. R. 229 (2010) (stipulation to year-and-a-day suspension for misconduct in three transactions, including preparation of false HUD-1 forms and sending a fax to a seller falsely showing that lawyer held funds she did not actually hold, in violation of rules 1.1, 1.2(d), 1.4(a), 4.1(a) and (b), and 8.4(c) and (h), with mitigation).

147. The rule 8.4(d) charge merits a fuller discussion in the non-litigation context of this charge. The SJC first discussed the predecessor to rule 8.4(d) in Matter of Discipline of Two Attorneys, 421 Mass. 619, 628, 629 (1996). The subject attorneys represented both a buyer of real estate and the judgment creditor of the seller of the real estate. On behalf of the judgment creditor, they moved ex parte for a trustee process of expected proceeds, anticipating that their firm would hold the proceeds as escrow agents.

148. The Court found that the conduct of the two attorneys had violated the client confidence and conflict of interest rules. On the "prejudicial to the administration of justice" question, the Court noted first that "most situations in which an attorney's conduct has been held to be prejudicial to the administration of justice have involved judicial or adjudicative proceedings." Id. at 627. It quoted the Florida Supreme Court's interpretation of its similar rule: "'[t]he term is not so broad as to include all conduct which is illegal but rather those activities [such as bribery, perjury, misrepresentations to a court] 'which undermine[ ] the legitimacy of the judicial processes.'" Id. at 628 (internal quotation marks and citations omitted).

149. As to situations where the rule had provided the only basis for discipline, it quoted the New Jersey Supreme Court's observation that the rule "'has been applied only in situations involving conduct flagrantly violative of accepted professional norms.'" Id. (internal quotation marks and citations omitted). This restrictive interpretation avoided the risks of vagueness and arbitrary application. Id. at 628-629.

150. The SJC found no violation of the "prejudicial to the administration of justice" rule, concluding that the attorneys' conduct as escrow holders "involved no egregious conduct and did not undermine the legitimacy of the judicial process." Id. at 629. Although the lawyers had "used the judicial system to obtain service of trustee process on their firm," there was no "showing of wrongdoing before the judge in obtaining the attachment." Id.

151. In Matter of the Discipline of an Attorney, 442 Mass. 660 (2004), the Court again addressed the reach of rule 8.4(d). At issue there was the conduct of an attorney who defended his gas utility client in a negligence action. During a deposition, he was distinctly unimpressed by the breadth of knowledge of the state trooper investigating the scene. After the deposition, he caused a third party to send a copy of the deposition to the trooper's supervisor in the fire marshal's office.

152. The hearing committee in the Matter of the Discipline of an Attorney case rejected all of bar counsel's charges except for the "prejudicial to the administration of justice" allegation. The Board and the Court concluded that this charge had not been proved. The Court reiterated the analysis it had used in the Two Attorneys case, and rejected bar counsel's open-ended interpretation of the rule. It held that to avoid due process problems of vagueness and fairness, it would adopt a "cabining construction" of the rule rather than "jettison[ing] the rule altogether." Id. at 669. Finding neither "egregious interference" with the administration of justice nor the

violation of any "specific statute, rule, order, regulation, or established norm of professional conduct," it found no rule violation. Id. at 670. 671.

153. In a more recent case, Matter of Smith, 35 Mass. Att'y Disc. R. 554, 562 (2019), the Board found no rule 8.4(d) violation where a lawyer posted comments on Facebook about a confidential juvenile court matter, in violation of Rule 1.6, writing "[a]lthough the posts concerned a confidential court hearing, there is nothing in the record to indicate that they interfered with the ability of the court to conduct its business or that they affected the rights of any of the parties to the proceeding."

154. Two of us conclude that bar counsel has failed to prove a rule 8.4(d) violation. The respondent's conduct did not undermine the legitimacy of the judicial process, nor was it flagrantly violative of accepted professional norms. It was foolish and dishonest, but its essence is best captured by the other rules bar counsel has charged. Stretching rule 8.4(d), with its clear reference to the administration of justice, to cover conduct such as the respondent's activities described here, "presents the risk of vagueness and arbitrary application." Matter of Discipline of Two Attorneys, 421 Mass. at 628-629. Our third member concludes otherwise. See Dissent of Mary Louise Nunes ("Nunes Dissent"), below.

155. Bar counsel charged that **by using the electronic recording system to cause the recordation of the PDF Deed Copy in order to prevent Keough from conveying his own property**, the respondent violated Mass. R. Prof. C. 1.2(d), 4.4(a)(1) (do not use means that have no substantial purpose other than to embarrass, harass, delay or burden a third party); and 8.4(d).

156. Our analysis above leads us to conclude that bar counsel has proved a violation of rule 1.2(d).

157. Case law offers illustrations of what a rule 4.4(a)(1) violation looks like. E.g., Matter of Samra, No. BD-2023-048 (August 17, 2023) (two-year suspension for varied misconduct, including knowing false statement in an affidavit lawyer filed in Court and in testimony he provided under oath, the purpose of which was to embarrass or burden the brother of his former domestic partner, in violation of rules 3.3(a)(1), 4.4(a), 8.4(c), (d) and (h), with aggravation); Matter of Szymanski, 35 Mass. Att'y Disc. R. 581, 582 (2019) (stipulation to public reprimand for violation of rules 4.4(a) and 8.4(d) where lawyer used his position as a state trooper to access CORI records to use in his private practice).

158. The respondent's activities, in light of the case law cited above, lead us to conclude that bar counsel has proved a violation of rule 4.4(a)(1).

159. Largely for the reasons cited above, two of us conclude that bar counsel did not prove an 8.4(d) violation. We find that any impact on the administration of justice is even more attenuated here, where as charged, the heart of the respondent's conduct misconduct was harm to Keough, not to the registry. Contrast Nunes Dissent, below.

160. Bar counsel charged that **by failing to respond to the Register or cooperate with the Register's inquiries regarding his electronic recording of the PDF Deed Copy**, the respondent violated rules 1.1, 1.3, 8.4(d) and 8.4(h) (do not engage in any other conduct that adversely reflects on fitness to practice law).

161. We were given no sound reason for the respondent's refusal to respond to the Register. There were things he could have done to ameliorate his wrongful filing. At our hearing, Register O'Donnell concurred with the advice the respondent had been given at the Registry about filing a § 5B certificate, explaining that "we're pretty liberal about accepting affidavits that deal with titles, especially from attorneys . . . if there was a mistake of some sort." Tr. 2:51 (O'Donnell).

162. He testified further that the respondent could have recorded a release deed, signed by Merchia, "releasing the effect of the deed and putting it back to Mrs. Richardson." Id. He summarized: "So, you know, you can't take the document that was recorded off, but there are ways to at least try to correct the situation. Or at least make people aware of it." Id.

163. Instead, the respondent did nothing. Had he believed that his reasons for recording the PDF Deed Copy were legal or even in good faith, we can fathom no reason why he would not have advanced them to the Register.

164. We conclude that the respondent violated Mass. R. Prof. C. 1.1, 1.3, 8.4(h).

165. Two of us do not conclude that bar counsel proved a rule 8.4(d) violation. The Register does not administer justice; he oversees and manages the reporting process. See Tr. 2:7 (O'Donnell). In our view, finding a rule 8.4(d) violation based on the conduct charged here would empty rule 8.4(d) of any independent content. Contrast Nunes Dissent, below.

Matters in Mitigation and Aggravation

Mitigation

166. The respondent has presented nothing in mitigation, and we find that none exists.

Aggravation

167. The respondent engaged in multiple disciplinary violations. This is a recognized factor in aggravation. E.g., Matter of Strauss, 479 Mass. 294, 302, 34 Mass. Att'y Disc. R. 522, 531 (2018); Matter of Saab, 406 Mass. 315, 326-327, 6 Mass. Att'y Disc. R. 278, 289-290 (1989).

168. The respondent's conduct caused harm. He deliberately created a cloud on Keough's title to limit Keough's ability to encumber or sell his property. He caused Keough to incur significant attorney fees to respond to his fraudulent recording of the PDF Deed Copy and his baseless claims in the Land Court. Harm to non-clients is a factor in aggravation. See Matter of

Laroche-St. Fleur, 490 Mass. 1020, 1024, 38 Mass. Att'y Disc. R. 292, 299 (2022) (factors in aggravation include financial harm to others).

169. The respondent had a selfish motivation for his misconduct. He admitted to us that he chose to further Merchia's interests because Merchia was his only client and he needed the income. This is a recognized factor in aggravation. E.g., Matter of Greene, 477 Mass. 1019, 1021 (2017), 33 Mass. Att'y Disc. R. 163, 165-166 (2017).

170. The respondent lacked insight into or appreciation of his basic ethical obligations, and has not acknowledged the nature, effects, or implications of his misconduct. He is certainly entitled to defend himself against charges of misconduct, but his twisted reading of the case law and statutes missed the forest for the trees, and resulted in wholly specious and disingenuous argument. The respondent never acknowledged, and did not seem fully to understand, the fundamental dishonesty of his conduct, insisting that in the current digital age there is legitimate confusion over the definition of "original," and belittling the outrage resulting from his actions as "a little bit of a generational shift." Tr. 2:63 (Respondent). This lack of insight is an aggravating factor. See Matter of Rosenberg, 491 Mass. 1027, 1029 (2023) (lawyer's misconduct is further aggravated "by his abject refusal to appreciate the wrongful nature of his behavior"); Matter of Bailey, 439 Mass. 134, 152, 19 Mass. Att'y Disc. R. 12, 34 (failure to recognize or appreciate wrongful nature of misconduct as factor in aggravation); Matter of Clooney, 403 Mass. 654, 657, 5 Mass. Att'y Disc. R. 59, 63 (1988) (finding aggravating conduct showing lawyer was "unmindful of certain basic ethical precepts of the legal profession").

Recommended Disposition

Bar counsel recommends a year and a day suspension and, if less time is imposed, a reinstatement hearing. The respondent recommends a "public admonition," which is not a

recognized sanction; non-suspension options are a private admonition or a public reprimand. We recommend a year-and-a-day suspension. Should the eventual sanction fall below a year-and-a-day suspension, in light of the rule violations and the aggravating factors we have found, we strongly recommend a reinstatement hearing.

In recommending a sanction, we are guided by the mandate that "[e]ach bar discipline case is decided on its own merits. . . ." Matter of Zankowski, 487 Mass. 140, 149, 37 Mass. Att'y Disc. R. 554, 566 (2021). "[E]ach attorney receives the discipline that is 'most appropriate in the circumstances,' taking into account 'what measure of discipline is necessary to protect the public and deter other attorneys from the same behavior.'" Id. (citations omitted). It goes without saying that we will not find a case precisely like this one, but certain themes are reflected in the case law, and we are attuned to the rule that our recommendation should not be "'markedly disparate' from judgments in comparable cases." Matter of Foster, 492 Mass. 724, 746 (2023).

The respondent's intentional misconduct, combined with his other rule violations and the significant aggravation we have found, warrants a term suspension. Rule-wise, the cases we have found with the most overlap are those in which lawyers, using inaccurate or incomplete information, duped a lender or litigation funder to finance a transaction. While those facts do not align precisely with the respondent's shenanigans, we think the heart of the misconduct is the same. E.g., Matter of Alberino, supra (stipulation to eighteen-month suspension for misconduct in three real estate transactions, where lawyer prepared false HUD-1s and submitted them to lender clients, with misrepresentation that the buyers had paid a deposit and had brought funds to the closing; the HUD-1s did not show payments to the real estate broker and overstated the funds paid to the seller; lawyer failed to disclose to client other pertinent facts, in violation of rules 8.4(c), 4.1(a) and (b), 1.4(a), 1.2(d), and 8.4(h), with aggravation and mitigation); Matter of

Hanserd, supra (stipulation to year-and-a-day suspension for misconduct in three transactions; lawyer prepared false HUD-1s; caused deed she knew was fraudulent to be recorded; and sent sellers a fax falsely showing that she held a $75,000 check when she did not have such a check in her possession, revealing only after a Court order that she had never held the funds, in violation of rules 8.4(c), 8.4(h), 4.1(a) and (b), 1.2(d) and 1.1, with mitigation); Matter of Mulvey, 25 Mass. Att'y Disc. R. 398 (2009) (stipulation to six-month suspension for lawyer who represented medical malpractice client; client sought an advance against the expected settlement from a litigation funder; lawyer did not disclose to funder that civil suit was part of bankruptcy estate and that it was bankruptcy trustee, not lawyer, who had transaction authority; conduct in violation of rules 4.1(a), 4.1(b), 8.4(c) and 8.4 (h), with mitigation); Matter of Robbins, 24 Mass. Att'y Disc. R. 605 (2008) (stipulation to nine-month suspension for law firm associate whose employer was hired to conduct twenty-four closings in a building recently converted to condominiums; although no buyers contributed funds or brought money to the closings, lawyer failed to correct fraudulent HUD-1s in nineteen closings, and failed to inform lenders that statements were inaccurate, in violation of rules 1.2(d), 8.4(c), 1.1, 1.2, 1.3 and 1.4(a) and (b); misconduct also included conflict of interest in violation of rules 1.7(a) and (b), with mitigation).

The respondent's additional misconduct is typically sanctioned less harshly, but is still deeply problematic. E.g., Matter of Szymanski, supra, (stipulation to public reprimand for violation of rules 4.4(a) and 8.4(d)); Matter of Waickowski, 35 Mass. Att'y Disc. R. 614 (2019) (stipulation to three-month suspension where lawyer failed to make reasonable inquiry of client and accordingly pursued fraudulent claim and failed to withdraw in timely manner, in violation of rules 1.2(a), 3.1, and 1.16(a)(1)); Matter of Cloonan, 25 Mass. Att'y Disc. R. 121 (2009) (stipulation to six-month suspension where lawyer was offered severance after termination by

employer for whom he did not provide legal services, and fraudulently replaced part of severance agreement with a new section that gave him a huge bonus; after he demanded bonus and former employer sued, he made frivolous arguments in counterclaim, in violation of rules 8.4(c),(d), (h) and 3.1, mitigated by fact that misconduct occurred outside the practice of law); Matter of Gilbert, 21 Mass. Att'y Disc. R. 280 (2005) (public reprimand, where lawyer misused role as bar advocate to get CORI records of father of her child, and forwarded them to GAL investigating lawyer's private child custody matter, in violation of rules 4.4, 8.4(c),(d) and (h)).

The respondent's misconduct is exacerbated by the significant aggravation we have found, most troubling the harm he caused to others and to the legal system with his baseless, frivolous claims; his selfish motive; and his utter lack of insight as to what it means to represent a client and what the rules of professional conduct require.

Conclusion

We recommend that the respondent, Marc Osborne, be suspended for a year and a day. As noted above, should the sanction fall below a year and a day, we strongly recommend a reinstatement hearing.

Dated: September 10, 2025

Respectfully submitted,
By the Hearing Committee,

Sean T. Carnathan, Esq.
Sean T. Carnathan, Esq., Chair

Richard N. Gottlieb, Esq.
Richard N. Gottlieb, Esq., Member

Dissent of Mary Louise Nunes

I am in agreement with all of the Hearing Report, including the recommended sanction, except for the rule 8.4(d) analysis and the majority's conclusions in paragraphs 154, 159 and 165. I write separately as to those to express my own views and explain my analysis.

I would find and conclude that **by submitting the PDF Deed Copy for electronic recording to the Register**, the respondent violated not only rules 1.1, 1.2(d), 4.1(a), 4.1(b) and 8.4(c), but also rule 8.4(d). The respondent recorded the PDF Deed Copy to further and strengthen the (baseless) position he had taken in Land Court litigation. This constitutes a sufficient nexus to the conduct proscribed rule 8.4(d). Moreover, in ordering their conduct, lenders and the land-transacting public rely on the accuracy of the Registry. Lying to the public about ownership jeopardizes this reliance. I do not think it too much of a stretch to construe "justice," as used in rule 8.4(d), to cover fairness and honesty in a public-focused transaction.

My conclusion has no due process implications. The other rule violations charged and proved alerted the respondent to the context for and contours of his misconduct. Perhaps more compelling, unlike the attorney in the 2004 case described above, the respondent DID violate a specific rule, and an "established norm of professional conduct" when he intentionally misled the Registry. Cf. Matter of Corben, 26 Mass. Att'y Disc. R. 115 (2010) (lawyer stipulated to misconduct in violation of various rules including rule 8.4(d) for, inter alia, altering expiration date on disability placard issued to another to avoid paying parking fees); Matter of Collins, 25 Mass. Att'y Disc. R. 132 (2009) (lawyer stipulated to misconduct in violation of various rules including rule 8.4(d) where, inter alia, she failed properly to supervise office manager, resulting in criminal conviction for manager, plus shortages in fiduciary accounts and the charging and collecting of fees to which the lawyer was not entitled).

I would further find and conclude that **by using the electronic recording system to cause the recordation of the PDF Deed Copy in order to prevent Keough from conveying his own property**, the respondent violated not only Mass. R. Prof. C. 1.2(d) and 4.4(a)(1), but also 8.4(d). The respondent exploited official Registry processes, designed to order and safeguard land transactions throughout the Commonwealth, to further and facilitate his misconduct. I would conclude that this is sufficient to implicate the administration of justice.

Finally, I would find and concluded that **by failing to respond to the Register or cooperate with the Register's inquiries regarding his electronic recording of the PDF Deed Copy**, the respondent violated not only rules 1.1, 1.3 and 8.4(h), but also 8.4(d). The Register "oversee[s] and manage[s] the reporting processes that take place with legal documents for the 28 communities that make up Norfolk County." Tr. 2:7 (O'Donnell). The respondent showed a marked lack of respect in repeatedly ignoring the Register. Forcing the Register to take time away from his duties to deal repeatedly with the respondent's misconduct undermined the administration of the Registry, which is central to the smooth functioning of land transactions.

Respectfully submitted,

Mary Louise Nunes

Dated: September 10, 2025 Mary Louise Nunes, Member