IN RE: MATTER OF MICHAEL JAMES SHIVICK
BBO NO. 685696

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

BAR COUNSEL,
Petitioner

vs.

MICHAEL J. SHIVICK, ESQ.,
Respondent

B.B.O. File Nos. C4-21-00271350
C4-21-00271789
C4-22-00274544

MEMORANDUM OF BOARD DECISION

Seeking a public reprimand, the respondent has appealed a hearing committee's recommendation of a nine-month license suspension (with the final three months stayed on conditions). Having reviewed the matter, we adopt in full the committee's factual findings and legal conclusions. We disagree with its sanction recommendation. In light of the respondent's widespread and egregious misconduct, we recommend that the Supreme Judicial Court suspend the respondent's law license for one year and one day. Our reasons follow.

Factual Findings and Procedural History

On appeal, the facts are undisputed. We adopt those found by the hearing committee. B.B.O. Rules § 3.53.

A solo practitioner since his admission to the bar in 2012, the respondent primarily represents residential tenants in disputes with their landlords. He appears in Housing Courts throughout the commonwealth.

Count One

In 2020, Meaghan Cormier hired the respondent to represent her in a dispute with her landlords, Yan Cindy Wu and Wu's spouse, concerning an apartment in Gardner,

Massachusetts.[1] The fee agreement described the following legal services: "(1) draft and send 93A demand letter and attempt to negotiate settlement for all housing claims and excluding any claims of her minor children. (2) if settlement cannot be reached, file suit in housing court and prosecute through judgment."

On January 23, 2020, the respondent sent to Wu and her spouse a demand letter pursuant to Mass. G.L. c. 93A, alleging numerous claims about the condition of the apartment and seeking damages of $36,750. The demand letter asserted numerous and varied causes of action: violations of the implied covenant of quiet enjoyment; violations of the implied warranty of habitability; breach of contract; fraud; fraudulent misrepresentation; conspiracy to commit fraud; fraud on the government; unjust enrichment; conversion; intentional infliction of emotional distress; unfair and deceptive; practices; assault; discrimination based on race or national origin and sex and gender; constructive and partial actual eviction; larceny by deception; and violation of the lead paint law.

The respondent's demand letter included the following excerpts:

> a. "When my client refused to go to MOC ["Making Opportunity Count"] for the fraud you promoted, you made the Notice to Quit 'real' and made her pay the false $3285.00 as a penalty fee above rent to keep a roof over her children's heads. Larceny or extortion? The District Attorney can decide."
>
> b. "It takes a special person to willingly force a single mother of two children, 6 and 3, out of the 46 Wright Street address and into an illegal apartment with no lead paint certificate, while stealing her security deposit, and trying to force her to engage in governmental fraud – which she expressly refused. You also tried to get her to run the property as a rooming house. A copy of this letter has been sent to the District Attorney and Attorney General."

[1] Since the inception of the lease in 2019, Cormier had withheld a portion of her rental payment on the basis that the landlord had failed to make necessary repairs to the premises. In response, Wu served Cormier with several notices to quit for non-payment of rent. The litigation ended with a court order that Cormier pay Wu unpaid rent of $6,616.50. The Housing Court found for Cormier on her claims of breach of the warrant of habitability; interference with quiet enjoyment; violation of chapter 93A; and failure to properly handle the security deposit and last-month's rent. She received an attorney's fees award of $2,500.

c. "While you sauntered around at your comfortable home in Harvard, no doubt built on the tears of the innocent, your willful blindness to your own predatory tendencies has waxed into a general entitlement to use my client's property – and life and identity – as your own . . ."

d. "The gig is up and the mask is off on this *de facto* nuisance you created and will now pay dearly for" (italics in original text).

The respondent's letter accused Wu of criminal conduct and threatened her with prosecution by the Attorney General and/or District Attorney. The hearing committee found no basis for the threat to report allegedly criminal conduct. He took no action to follow up on his threat. Indeed, at the hearing, he admitted that the statements quoted above could be interpreted as an attempt to use criminal prosecution to gain an advantage in civil litigation.

In addition to the insolent and impertinent language quoted above, the respondent's letter said the following:

a. "To top your sundae of malfeasance, you have delivered a defective 14-day Notice to Quit . . . indicating both my client and [another tenant] are both collectively being evicted for alleged non-payment and '**bleach of lease term** [sic]' and for-cause alleging storage of items in common area, as well as the vague cause of 'and **bleach other lease terms** [sic].'" (emphasis added)

b. "My client is being forced to endure your severe mental health problems, including quite anti-social tendencies, losing the benefit of the bargain she dickered-for, as well as being physically displaced from her initial apartment due to same – even forced to pay phantom arrears to satisfy your gluttonous lust for fraudulently – and criminally – obtained government funds – while you sit back and collect rent through your sophisticated mask of legitimacy – and then '**plead Asian**' (e.g. playing the unwitting foreigner who speaks little English and forgets about her preexisting knowledge of laws and regulations at convenient times yet concurrently can effectuate financial scams on the government and appeal administrative orders *pro se*) when confronted – despite your obvious and sophisticated ability to exploit Massachusetts laws and benefits for nefarious purposes and otherwise without right" (italics in original text). (emphasis added).

The hearing committee found that the respondent's use of the phrase "bleach of lease term" was intended to mock and disparage Wu's English-language skills, essentially an ethnic/racist slur. The committee found similarly offensive the respondent's allegation that Wu would "plead Asian" when confronted with his client's claims.

In its report, the hearing committee found,

> the respondent's language abhorrent and utterly indefensible. He has offered, and we find, no excuse for his appalling lack of judgment and his choice of demeaning and offensive insults. Instead, he tried to deflect the point by claiming in defense that he 'was never really trained to write [G.L. c. 93A] letters' and, remarkably, that he 'thought [he] was doing it [the right] way.' Tr. 1:189 (Respondent). This makes no sense. He could easily have found, in the Mass. Practice Series or MCLE materials or any of many other readily-available sources, a draft c. 93A letter. He should not have needed a template to know that his obnoxious comments and accusations were entirely out of place."

(Hearing Committee Report (HCR) at ¶ 20.[2]

Count Two

In October 2021, the respondent represented a tenant in the Central Housing Court in Worcester before Judge Diana Horan, defending against a motion for summary judgment. At a hearing on October 15, 2021, Judge Horan told the respondent that his opposition was deficient under Mass. R. Civ. P. 56, because it did not include an affidavit signed by his client. She gave the parties 14 days to supplement their pleadings but specifically barred the respondent from filing an affidavit. Later that day, the respondent called the Chief Administrative Office of the Trial Court to complain about Judge Horan. Advised that he needed to file a written complaint, the respondent submitted a five-page, single-spaced letter that contained the following:

[2] Adding fuel to the fire, the respondent blamed his client for suggesting the phrase "plead Asian." (HCR ¶ 18). Even if true, Rule 1.2, comment [1A] of the Massachusetts Rules of Professional Conduct advises lawyers that they should not permit a client's personal prejudiced to dictate the treatment of the opposing party and should reject client requests to engage in abusive tactics. (HCR ¶ 21).

a. "Her behavior is unbecoming of a judge and she is constantly pressing these paranoid delusions that I – and others – are somehow up to some nefarious plan to breach Rule 11. Nothing positive comes out of this except she exerts total domineering control, often holding contrary to the law with zero consequences. . . . She makes up things and intentionally misholds [sic] the law, to obtain results that she personally agrees with."

b. "In my opinion, Diana Horan is a wanna-be bully who overcompensates for her cerebral palsy by abusing litigants and lawyers. Were it not for her political connections she would probably be a real estate broker or on disability in Section 8 housing, certainly not a 'First Justice'. On belief and information her husband treats his employees the same way – screaming and yelling, abusing anyone that 'gets in her way.' I am sick and tired of this mentally ill woman – who already has visible comorbid physical disabilities – taking her life problems out on me."

c. "Judge Horan . . . tries to make everything you do a serious violation of Rule 11. She tries to stuff words in your mouth then call you a liar, then blame you for it. She is a 'gaslighter' (extreme form of mental abuser) and I bet falls into what is called 'Cluster B Personality Disorders' – which are known as untreatable. Judge Horan essentially tries to play politics to choose who can and cannot practice law at housing court. When I say she is a gaslighter, she presses a false reality she creates with lies and manipulation, to try and cause you damage by making it real and then blaming you for it. Usually this is done in retaliation for some perceived slight – like expecting a fair hearing in her court or sticking up for yourself to her abusive session clerk."

d. "Apparently I'm not Irish 'enough' to be part of their clan, despite my mother having dual citizenship in the US and Ireland. . . . Often I don't even get paid because of Judge Horan and her band of cronies. I certainly enjoy a much lower quality of life than the work I have done should have dictated simply because Judge Horan exists."

e. "Judge Horan tends to target male solo-practitioners for this type of unnecessary and *extremely violent verbal abuse*" (italics in original text). I believe her disability has progressed to the point that her comorbid afflictions have made her cognitively unfit to be a judge. She should have been removed from the bench years ago. Judge Horan is an ultra-violent, controlling, female psychopath, who has absolutely no conscience and absolutely zero clue what being in practice alone is like. She is an unreasonable human monster who needs to be mitigated for the good of society."

f. "She has used her position over the years to bully countless people and abuse anyone she sees as a threat to her control or – even worse – anyone who dares stand up to her regular psychotic episodes. . . . Please do the world a favor and get this horrible monster off the bench. I am tired of living in constant fear

of this extremely mentally ill woman, who regularly threatens me for no reason, except maybe to pick up political points with other 'better' people."

g. "Judge Horan is one of the most abusive human beings I have ever met and she needs to be required to see a psychiatrist, forthwith. I am beyond tired of having to not only handle my clients and opposing counsel – but also have an activist judge out there damaging me and my firm – intentionally – so she can feel like a tough guy and storm around like she's God. *Judge Horan is NOT God*" (emphasis in original text)

h. "She's a true psychopath whose purpose is domineering control and maintenance of her façade of normally at any and all costs. No one deserves to be abused and scapegoated like this, and she does it for sport. It's a prime symptom of a Cluster B Personality Disordered female."

i. "It's not her court and she is not the legislature, God, or anything other than a single housing court judge with severe mental health issues who spends her time hurting other [sic] to compensate for the fact that she is and always will be disabled."

Characterizing the letter as "outrageous," the hearing committee rejected the respondent's defense that his statements were made in good faith and based on his reasonable observations and personal experiences. It rejected his argument that he could faithfully rest his accusations on his undergraduate degree in psychology (with honors) and his "substantial interactions with individuals." (HCR ¶ 36). The committee wrote, "It borders on the absurd to claim that lay observation, coupled with undergraduate coursework and unidentified scientific literature, provided objective support for the respondent's accusations. We find no objective basis to support his audacious claims." (HCR ¶ 37). At the hearing in this case, the respondent admitted that the letter was "completely inexcusable and not something I would do anymore" but that there were objective facts supporting his accusations against the judge. (HCR ¶ 39).

Count Three

In February 2022, Lori Peperato-Smith lived in an apartment owned by James Graham. Apparently, she was not a tenant on the lease. When the actual tenant moved out, Peperato-

Smith remained. Graham filed *pro se* in the Central Housing Court a request for a temporary restraining order that Peperato-Smith cease and desist from "remaining unauthorized on the property."

Peperato-Smith hired the respondent.

Pursuant to a "Hybrid-Contingent Fee" [sic] agreement, the respondent agreed to represent Peperato-Smith at a hearing on February 17, 2022 in Housing Court; file suit against a driver who apparently had crashed into the property on February 12, 2022; and to prosecute "through settlement." (HCR ¶ 46). The agreement addressed payment for the respondent's services as follows: "Attorney will charge Client for the legal services provided under this agreement at the respective total sum of **the greater of any award of attorney's fees or one-quarter (25%) of any settlement amount or damages award**, with any award of attorney's fees offsetting a larger 25%, not inclusive of costs expended by Attorney pursuant to this agreement, plus: **$500 for attorney's fees, which is earned on receipt**" (HCR ¶ 47) (emphasis in original).

Smith paid the respondent $500 in cash, a payment deemed "earned on receipt."

On February 17, 2022, the respondent and Smith attended mediation with Graham and entered into a stipulation, which provided that Smith would vacate the premises by May 31, 2022; would pay utilities from the date of the settlement through the move-out date; and would pay use and occupancy of $600 by April 20, 2022, and $200 by May 20, 2022. Graham agreed to waive use and occupancy charges for February and March 2022, and was explicitly permitted to file a motion for possession to enter and request execution should Smith fail to comply with terms of the stipulation.

After the case settled, the respondent informed Smith that she owed him an additional $600 in attorney's fees pursuant to the fee agreement, "in consideration of the rent that was waived." (HCR ¶ 51). He based this demand on his fee agreement, which provided that he was entitled to twenty five percent (25%) "of any settlement award or damages award." The committee found that it was unreasonable to apply this language to money purportedly saved by the client, as contrasted with an amount obtained through settlement on the client's affirmative claim against the landlord.[3] Smith paid the respondent no more money. Instead, on May 26, 2022, several days before she was due to vacate, she filed a pro se, handwritten Motion to Stay Execution, claiming that she needed additional time to find housing for herself and her disabled daughter who resided with her. She explained that she was filing "on her own" because the respondent had tried to charge her more than $500 on the day of the mediation, threatening that if she did not pay him $700 more, "then he would come looking for me." (HCR ¶ 52).

In response, the respondent filed a Motion to Withdraw and Affidavit. The affidavit included information about the fee agreement, the settlement of Smith's case, Smith's failure to pay the respondent the $600 he claimed he was owed, and a conversation with Smith. The respondent attacked his client's credibility, writing that Smith's assertions "do not seem to reconcile with the facts as I know them," and that "[m]y belief is that her story is a social construction to avoid her obligations to me under our contract for legal services." (HCR ¶ 53). The judge (again, Judge Diana Horan) "may have mentioned" that he had revealed privileged information in his motion to withdraw, and she asked him if he was sure he wanted to include the fee agreement as part of the filing. He told her he wanted to proceed.

[3] As discussed above, the respondent's fee agreement contemplated several actions, including filing a lawsuit against a driver who had crashed a car into the house where the client lived. (HCR ¶ 46).

Before the hearing committee, the respondent admitted that he had revealed client confidences, arguing that he was entitled to defend himself, and was entitled to alert the court that there was a "fraud" being committed by his client. (HCR ¶ 57).

Count Four

On February 4, 2022, Princewill Daniells retained the respondent to represent him in a summary process action filed against him by his landlord. They signed a "Hybrid-Contingent" [sic] fee agreement similar to the agreement with Peperato-Smith on Count Three. The legal services to be provided were "(1) File Answer and Discovery in SP case [and] (2) Represent Client in mediation, motions & trial through settlement or judgment." (HCR ¶ 75).

In March 2022, the respondent and Daniells attended a hearing together, during which Daniells rejected a settlement offer. The respondent told Daniells he planned to move to withdraw. Daniells said he would oppose this.

On April 13, 2022, the respondent filed a motion to withdraw that included an affidavit signed by him. After noting in the motion an irretrievable breakdown in the attorney/client relationship, the respondent cited Rule 1.16(b)(1)-(7), and wrote that the client insisted on "taking action that the lawyer considers repugnant or with which the lawyer has a fundamental disagreement"; cited Rule 1.2(a) and wrote: "Lawyer shall seek the lawful objectives of his or her client through reasonably available means permitted by law and these Rules . . ."; and cited Rule 1.4(a)(5) and wrote: "limitations on attorney's behavior where client expects assistance not permitted by the Rules or other law." He attached an affidavit where he wrote, among other things, that the client "has engaged in a campaign of vitriolic communication that have [sic] made effective communication regarding the case impossible." (HCR ¶ 79). The respondent

attached to his motion seventy-two pages of email communications between himself and Daniells.

On May 6, 2022, the court held a hearing on the Motion to Withdraw. The presiding judge remarked that he was troubled by the content and attachments to the respondent's motion, since they included confidential communications and legal strategy. Ultimately, the respondent's opposing counsel moved *sua sponte* as an officer of the court to impound the documents, "because [counsel] was so disturbed that [the respondent] had disclosed those to him." (HCR ¶ 83).

Procedural History

Bar counsel filed a Petition for Discipline against the respondent on June 28, 2023. In his *pro se* Answer, the respondent raised several factors in mitigation including with relevance here a recent diagnosis of Type II diabetes. He hired counsel. A prehearing conference took place on August 19, 2024. Having raised a medical issue in mitigation, the respondent was given until October 11, 2024 to disclose each medical or psychological condition he claimed had affected his professional conduct. The respondent did not disclose any condition, but on October 21, 2024, he provided releases allowing bar counsel to obtain medical records from June 2024 through that date. On November 8, 2024, bar counsel filed a motion in limine to, *inter alia*, preclude the respondent from introducing evidence of an alleged psychological condition, the respondent having notified bar counsel that he suffered from an alleged "mood disorder." In response, the respondent argued that he would have a lay witness (rather than an expert) testify about his alleged mood. The respondent did not identify an expert witness.

On November 25, 2024, the hearing committee chair issued an order deferring a ruling about medical evidence and witnesses until the hearing. In the same order, he ruled that the

respondent would be prohibited from introducing medical records that had not been provided to bar counsel by the date of the order. Subsequently, the committee ruled that the respondent had waived any argument that his alleged diabetes mitigated his misconduct. However, he was allowed to present evidence that he suffered from a Mood Disorder.

On the first day of the hearing, the committee took argument concerning the proposed testimony of Raphael Bibiu, a licensed psychiatric nurse-practitioner, who had treated the respondent beginning on September 26, 2024. Since the respondent had not identified Bibiu as an expert witness, the committee considered whether he could testify as a fact witness about his interactions with the respondent as of September 2024. Deferring a ruling until after the respondent testified, the committee chair ultimately precluded Bibiu's testimony. He reasoned that, since Bibiu could not testify as an expert witness, he would only be able to testify as to the facts of the case. This testimony would be immaterial, since the respondent had discussed his condition and its impact on his life during his direct examination. (HCR ¶ 99).[4] In addition, the chair precluded, but later allowed, introduction of medical records from the period starting in 2024. (HCR ¶¶ 100-101).

Ultimately, the hearing committee rejected the respondent's argument in mitigation as a result of mental health issues. It found that the respondent had presented no evidence that he had a condition in the period 2020-2022 (the time of the misconduct) that was causally related to the misconduct. (HCR ¶ 106).

The hearing committee found several aggravating factors, including the respondent's experience at the bar, the multiplicity of rules violations the respondent's lack of candor in his testimony, lack of appreciation of his misconduct, and the harm caused by his behavior.

[4] The hearing committee inferred that the respondent was trying to elicit expert testimony about causation through a fact witness. (HCR ¶ 99).

The committee concluded that bar counsel had carried his burden to prove violations of the Rules of Professional Conduct on all four counts. On Count One, the committee concluded that the respondent's threat of presenting criminal charges solely to gain an advantage in a civil matter violated Mass. R. Prof. C. 3.4(h) (do not present … or threaten to present criminal charges solely to obtain an advantage in a private civil matter). Based on the language in his letter to the landlord, the hearing committee concluded that the respondent violated Mass. R. Prof. C. 4.4(a) (in representing a client, do not use means that have no substantial purpose other than to embarrass, delay, or burden a third person) and 8.4(h) (conduct that adversely reflects on lawyer's fitness to practice law).

On Count Two, the committee concluded that the respondent had violated Mass. R. Prof. C. 8.2 (do not make statement lawyers knows to be false or with reckless disregard as to its truth of falsity about the qualifications or integrity of a judge) and 8.4(h).

On Count Three, the respondent violated, according to the committee, Mass. R. Prof. C. 1.6 (do not reveal confidential information relating to the representation of a client), rejecting his argument that disclosure was permitted under Rule 1.6(b)(2) to prevent a fraudulent act; Rule 1.6(b)(3) to prevent, mitigate or rectify a substantial injury to property, financial or other significant interests of another that is reasonably certain to result or has resulted form the client's commission of a crime or fraud in furtherance of which the client has used the lawyer's services; or Rule 1.6(b)(5) to establish a claim or defense on behalf of the lawyer in a controversy between the lawyer and the client. Also on Count Three, the hearing committee concluded that the respondent violated Mass. R. Prof. C. 1.5(b)(1) and 1.5(c)(4) based on the vague language of his fee agreement. The basis of the conclusion was the respondent's self-serving position that the fee agreement entitled him to a percentage of money that the landlord waived. The Rule

1.6(c)(4) violation arose from the failure to communicate in writing whether and to what extent the client would be liable to pay other than from amounts collected for her by the lawyer.

On Count Four, the hearing committee concluded that the respondent's disclosure of confidential client information violated Rule 1.6.

The hearing committee recommended a license suspension of nine months, with the final three months stayed on the condition that the respondent continue with therapy and counseling for anger management throughout the license suspension. In arriving at the sanction, the committee wrote that the Rule 8.2 violation (the derogatory comments about a judge) was the most consequential; other cases under the rule had resulted in suspensions of more than one year (albeit when combined with other misconduct). Violations of Rules 1.6, 3.4(h) and 4.4(a) typically result in admonitions or public reprimands. Single violations of Rule 8.4(h) often result in admonitions or public reprimands, although such violations rarely occur in isolation.

The respondent appealed.

Discussion

The respondent appeals only the sanction, including the decision by the hearing committee chair to preclude Nurse Bibiu's testimony regarding his mitigation defense. He takes no issue with the committee's fact finding or legal analysis. Although the respondent has not appealed the findings and conclusions, we have reviewed them under our plenary authority pursuant to Section 3.52 of the Rules of the Board of Bar Overseers. There was no error and adopt them in their entirety.

Focusing on the issues raised on appeal, the hearing committee properly excluded Bibiu's testimony. Contrary to the respondent's argument on appeal, the exclusion of the testimony did

not deprive the respondent of his "basic due process rights." (Respondent's Brief on Appeal, p. 14).[5]

Bar discipline hearings, including the standards for admissibility of evidence, operate under the Rules of Administrative Procedure, Mass. G.L. c. 30A. The Administrative Procedure Act gives to the administrative agency great discretion in determining matters of evidence. Similarly, in judicial matters, the decision to exclude evidence, including whether to exclude expert testimony, rests with the discretion of the trial judge. "The standard of review on appeal is whether the trial judge abused his wide discretion to exclude expert testimony." Commonwealth v. Ramirez, 44 Mass. App. Ct. 799, 802 (1998). We must ask whether the exclusion of Bibiu's testimony "prejudiced the [respondent] by weakening the defense in some significant way." Id. (internal citations omitted). "It is not surprising, therefore, that appellate courts have given great deference to the rulings of trial judges in this area of the law of evidence." Commonwealth v. Francis, 390 Mass. 89, 99 (1983); *see also* Commonwealth v. Damigella, 70 Mass. App. Ct. 1116 (2007) (unpublished).

Under this indulgent standard, we find no error.

In appropriate cases, we may consider in mitigation a respondent's mental health. Matter of MacDonald, 23 Mass. Att'y Disc. R. 411 (2007); Matter of Patch, 20 Mass. Att'y Disc. R. 445 (2004). The mental health issue must be causally related to the misconduct, Matter of Johnson, 444 Mass. 1002, 21 Mass. Att'y Disc. R. 355 (2005), and the respondent bears the burden of

[5] In bar discipline cases, respondents are entitled to some, but not all, of the procedural rights afforded criminal defendants. These include notice and the opportunity to be heard. Matter of Eisenhauer, 426 Mass. 448, 454, cert. denied 524 U.S. 519 (1998). Other than a conclusory assertion, the respondent does not explain how the exclusion of Bibiu's testimony deprived him of due process. To the extent he argues an error by the committee in excluding the evidence, as we explain below, there was no error.

proving this defense. Id. Here, the only relevance of Bibiu's testimony would have been to support such a defense by connecting the misconduct to an underlying mental health issue.

As discussed above, the respondent did not produce Bibiu as an expert witness, nor could he, since Bibiu had not been so designated.[6] Instead, Bibiu was offered to testify as a fact witness based on his treatment of the respondent starting in September 2024, more than two years after the most recent misconduct (which occurred between 2020 and 2022). This testimony would have been immaterial to a mitigation defense, since it would not have supported the assertion that the respondent suffered a mental illness at the relevant time and that there was a causal link between the respondent's mental health and the misconduct.

On appeal, the respondent argues that Nurse Bibiu should have been allowed to testify as a fact witness about the medical records he prepared. (Respondent's Brief on Appeal, p. 13). As he acknowledges, the committee admitted the respondent's medical records from the fall of 2024, the period about which Bibiu would have testified.[7] Thus, the committee had evidence about the respondent's mental health. In addition to the medical records, the hearing committee permitted the respondent himself to testify about his mental health history. He testified that he had received treatment from high school through law school; the treatment had "tapered" in 2016 and resumed in 2024 when he received a diagnosis of a mental health condition. (Hearing Transcript, Vol. II, Dec. 10, 2024, p. 16-17). Bibiu's evidence would have added nothing to the

[6] In a colloquy during the hearing, the respondent's lawyer argued that, "Expert testimony is where I would ask the expert for some opinion. I'm not asking for any opinion. I'm asking just what did you treat? What did you diagnose? What medical issues were there? What medications did you provide? And some of the background to the medical treatment. That's why this is a fact witness and not an expert witness." (Hearing Transcript, Vol, I, Dec. 9, 2024, page 18). We agree that those types of questions would be appropriate to ask a fact witness. The problem for the respondent is that the answers to the questions would have been irrelevant. They also would have been redundant in light of the admission of the documents and the respondent's testimony.

[7] The records, Exhibits 14 and 15, were impounded. Without disclosing the substance of the records or straying beyond the public record, we note that the exhibits indicate that the respondent sought treatment in the fall of 2024.

medical records or the respondent's testimony. It would have been duplicative. Its exclusion was of no significance. In sum, any perceived error would have been harmless.

Because there was no evidence that connected the respondent's mental health to the misconduct, we adopt the hearing committee's finding that the respondent failed to prove his mitigation defense. The medical records and the respondent's testimony (which, as mentioned, were admitted into evidence) indicate that he had a mental health issue. The condition existed in 2024 but there was no evidence it existed at the time of the events in this case, particularly the correspondence underlying Counts One and Two. On the record before us, we are unable to connect the condition to the misconduct. There was no evidence that the respondent suffered from a mental health condition in 2020-2021, how the condition may manifest in a person such as the respondent, and – most critically -- that it caused his misconduct (*i.e.* that it caused him to write the letters in Counts One and Two, caused him to reveal confidential client information in Counts Three and Four, and other misconduct). In the absence of such evidence, we are left to guess and speculate. Cf. Matter of Balliro, 25 Mass. Att'y Disc. R. 35 (2009) (respondent offered expert testimony that she "was not cognizant of engaging in unethical behavior"); Matter of Brett, 22 Mass. Att'y Disc. R. 102 (2006) (evidence showed that respondent's ADHD caused him to be impulsive and impaired his judgment); *see also* Matter of Newton, Board Memorandum, BBO No. 673560 (July 10, 2023), pp. 8-9 and n.6, *aff'd* SJC-BD-2023-71 (November 17, 2023) (Kafker, J). (rejecting claim of causation between gambling and theft of funds, where therapist was not offered as expert and could not have testified, based on her post-misconduct treatment of the respondent, that gambling had caused misconduct, and nothing in her treatment records so reflected); Matter of Ablitt, 486 Mass. 1011, 1018, 37 Mass. Att'y Dis. R. 1, 15 (2021) (medical conditions not mitigating where respondent offered no proof that

conditions caused misconduct); Matter of Gonick, 15 Mass. Att'y Disc. R. 230 (1999) (rejecting mitigation argument due to lack of evidence to demonstrate impairment). In sum, the respondent failed to carry his burden of proof that his misconduct was caused by a mental health condition.

Sanction Recommendation

Finding no error in the exclusion of the respondent's mitigation evidence, we turn now to the question of the appropriate sanction. In this, we are guided by a few important principles. We aim to recommend a sanction that is not markedly disparate from similar situations, giving due deference to the individual circumstances of each case and respondent. Matter of Foley, 439 Mass. 324, 333, 19 Mass. Att'y Disc. R. 141 (2003); Matter of the Discipline of an Attorney, 392 Mass. 827 (1984). Our primary focus is "the effect upon, and perception of, the public and the bar." Matter of Finnerty, 418 Mass. 821 829, 10 Mass. Att'y Disc. R. 86, 95 (1994) *citing* Matter of the Discipline of an Attorney, *supra*. "The primary purpose of the disciplinary rules and accompanying proceedings is to protect the public and maintain its confidence in the integrity of the bar and the fairness and impartiality of our legal system." Matter of Foster et al., 492 Mass. 724, 746; 39 Mass. Att'y Disc. R. ____ (2023). "The appropriate level of discipline is that which is necessary to deter other attorneys and to protect the public." Matter of Curry, 450 Mass. 503, 520-521, 24 Mass. Att'y Disc. R. 188, 223 (2008).

The most serious misconduct was the scurrilous letter about Judge Horan, which violated Rule 8.2 (Count Two). Lawyers have received lengthy suspensions for similar behavior, albeit when combined with other infractions. Matter of Belanger, 37 Mass. Att'y Disc. R. 25 (2021) (two-year suspension for varied misconduct, including false statements and accusations about numerous judges; violation of court orders; other conduct involving dishonesty, and Rule 8.4(d) and (h) violations, with aggravation); Matter of Wilson, 32 Mass. Att'y Disc. R. 617 (2016)

(year-and-a-day suspension for multiple rule violations, among them repeatedly making rude, intemperate and insulting comments about and to the presiding judge, with aggravation); Matter of Harrington, 27 Mass. Att'y Disc. R. 432 (2011) (year-and-a-day suspension for accusing the judge presiding over his post-divorce proceedings of acting corruptly and dishonestly, and accusing a second judge of conspiring with the divorce judge to subvert the legal process, with aggravation); Matter of Kurker, 18 Mass. Att'y Disc. R. 353 (2002) (year-and-a-day suspension for intemperate conduct towards and accusations about judges presiding in sprawling family dispute involving the lawyer's family, with five lawsuits and twelve appeals, with other misconduct); *see also* Matter of Cobb, 445 Mass. 452, 472, 21 Mass. Att'y Disc. R. 93, 116 (2005) (lawyer disbarred for varied misconduct, including conversion of client funds, baseless accusations of misconduct against judges and opposing counsel, and misrepresentations to the court; Cobb was not charged as a Rule 8.2 case but, as noted, featured critical statements about a judge in a pending case).

While no case has arisen solely under Rule 8.2, based on how the violation was discussed in prior cases, we are confident that the respondent's letter would merit a license suspension of no less than six months. Not only did the letter contain unsupported and derogatory accusations, the respondent's language was intemperate, offensive, and insulting. In addition to violating Rule 8.2, it reflected adversely on his fitness to practice law. Mass. R. Prof. C. 8.4(h).

Running a close second is the letter to Yan Cindy Wu on behalf of the respondent's client as set forth in Count One. Like the letter about Judge Horan, the language was insulting and offensive, unbecoming a member of the bar. Among other outrages, the respondent made derogatory remarks about Ms. Wu's ethnicity. As the hearing committee observed, "the language was abhorrent and indefensible," displaying an "appalling lack of judgment and …

demeaning and offensive insults." (HCR ¶ 20).[8] The presumed sanction for a violation of Rule 4.4(a) would be a public reprimand. Matter of Lipis, 18 Mass. Att'y Disc. R. 369 (2002), although the respondent's language in this case was far more incendiary and vulgar than Lipis. In addition, the letter baselessly threatened to bring criminal charges solely to gain an advantage in a private matter, violating Rule 3.4(h), which typically is sanctioned by an admonition. Ad 20-16, 36 Mass. Att'y Disc. R. 511 (violation of Rules 3.1 (frivolous claim) and 3.4(h) with aggravation); Ad. 15-20, 31 Mass. Att'y Disc. R. 782 (admonition and CLE for violation of Rule 3.1(frivolous claim) and 3.4(h)); Ad. 01-12, 17 Mass. Att'y Disc. R. 657 (violation of Rules 1.6(a), 1.8(e), 3.4(h), 8.4(c) and 8.4(h), with mitigation (lawyer retracted threat promptly) and aggravation (prior admonition)).

Looking only, then, at Counts One and Two, we would have difficulty recommending a sanction less than one year. Each letter would, on its own, merit a suspension of at least six months. The additional misconduct on those counts would increase the penalty. But, we're not done.

On Counts Three and Four, the respondent violated Rule 1.6 when he heedlessly disclosed confidential client information during a fee dispute. Sanctions for breaching client confidentiality range from admonitions (for minor transgressions, Ad. 18-13, 34 Mass. Att'y Disc. R. 599 ((2018) (affidavit in support of motion to withdraw was more extensive than necessary)), to public reprimands, Matter of Frank Arthur Smith, 34 Mass. Att'y Disc. R. 554 (2019), to suspensions, Matter of Pepe, 31 Mass. Att'y Disc. R. 527 (2015) (stipulation to six-month suspension and reinstatement hearing for disclosing confidential information for lawyer's

[8] To be clear, aggressive language in a demand letter is not necessarily a violation of Rule 4.4(a). Zealous advocacy may require it. There is a difference, however, between zealously advocating on behalf of a client on the one hand and engaging in ad hominem insults on the other.

own advantage, aggravated by prior discipline and mitigated by attorney's substance use disorder).

In this case, the disclosure of confidential information was not a minor transgression, nor was it a situation where the lawyer inadvertently or mistakenly revealed more information than necessary. To the contrary, on Count Three the respondent filed an affidavit in which he disclosed information about the fee agreement, conversations with the client, the settlement of the underlying case, and the client's failure to pay him amounts he claimed were owed. (HCR ¶ 53). He even attacked his own client's credibility. (Id). On Count Four, the respondent attached to a motion to withdraw 72 pages of client emails. (HCR ¶ 81 88).[9] As with Count Three, he attacked his own client's credibility, writing that he found the client's conduct in the underlying case "repugnant." (HCR ¶ 78). The disclosure was sufficiently disturbing that the respondent's opposing counsel moved for their impoundment. In our view, the two violations of Rule 1.6 would merit no less than a public reprimand.

On Count Three, the hearing committee concluded that the respondent's engagement letter violated Rule 1.5(b)(1) and 1.5(c)(4). We rarely impose discipline for failing to provide a clear and transparent fee agreement and when we do, it typically involves other misconduct. On its own, we would impose an admonition for the respondent's confusing fee agreement.

All of the misconduct reflected adversely on the respondent's fitness to practice law. Mass. R. Prof. C. 8.4(h). Typically, violations of the rule do not stand in isolation. Our cases suggest that a public reprimand would be appropriate. Matter of Cerulli, 495 Mass. 1002, 1005-1006 (2024).

[9] Although bar counsel did not charge the respondent with a rules violation specifically tied to the emails, the respondent admitted he disclosed the emails, and we may appropriately take notice of this behavior in fashioning a recommended sanction. In the end, we have not increased the sanction based on the disclosure of the emails.

On top of the rules violations, we adopt the hearing committee's findings in aggravation. The respondent is an experienced lawyer. He violated multiple rules of professional conduct in four different matters for four different clients. He showed little to no compunction or understanding of his ethical duties, although we acknowledge that the hearing committee noted an expression of "limited remorse for these actions." (HCR page 35). He blamed others for his misconduct. He attempted to deceive the committee. While respondents are entitled to mount a defense at a disciplinary hearing, they are not entitled to lie, dissemble, or ignore clear facts. The hearing committee was troubled by the respondent's refusal to have his memory refreshed by transcripts of court hearings in which he made representations to courts and an email he wrote to his client. (HCR ¶ 109). This is a standard approach to eliciting testimony. Like the committee, we are dumbstruck by the obstinance and needless obstruction of the proceedings. It reflects poorly on the respondent's fitness to practice law.

Based on all of the above, we recommend that the Supreme Judicial Court suspend the respondent's law license for one year and one day. If the Court reduces the sanction to one year or less, we respectfully suggest that the respondent be required to undergo a reinstatement hearing to demonstrate, *inter alia*, that he has the moral qualifications to resume practice. We recognize that our recommendation exceeds that proposed by bar counsel at the hearing (six months) or recommended by the hearing committee (nine months with the final three months stayed on conditions). We have great respect for both bar counsel and the hearing committee, and their recommendations are entitled to deference (although not the level of deference we give to a hearing committee's factual findings). However, looking at the wide range of misconduct and mindful of our duty to protect the public and educate the bar, anything less than a suspension of one year and one day would be insufficient.

Conclusion

For all of the foregoing reasons, an Information shall be filed in the County Court recommended the suspension of the respondent's law license for one year and one day.

/s/ Frank Hill

Frank Hill, Secretary

Dated: December 8, 2025