IN RE: MATTER JUDITH C. KNIGHT
BBO No. 551896

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

BAR COUNSEL,

Petitioner

vs.

JUDITH C. KNIGHT, ESQ.,

Respondent

B.B.O. File Nos. C6-19-00261789,
C6-20-00263393
C6-21-00267973

HEARING REPORT

On June 30, 2021, bar counsel filed a petition for discipline against the respondent, Judith C. Knight, Esquire.

The four-count petition addressed her conduct in three client matters and charged, among other things, that the respondent failed to keep proper records and did not cooperate with bar counsel's investigation, failed properly to communicate with clients, withdrew her fees from her IOLTA without first delivering invoices to clients, intentionally misused retainer funds three times, once with deprivation, and failed to act with diligence in one matter.

The respondent retained counsel, and he filed her answer on December 31, 2021. An amended answer was filed January 19, 2022, adding that the respondent planned to offer health evidence in mitigation. Counsel withdrew February 17, 2022. Thereafter, the respondent, although urged to accept new counsel, proceeded pro se.

The respondent sought a continuance of the May 3, 2022 Prehearing Conference date "for

a minimum of 30 days from that date." This was allowed; the Prehearing Conference was held remotely on June 29, 2022. Hearing dates were set for November 3, November 4, November 7 and November 8, 2022.

The parties engaged in motion practice. Citing the respondent's failure to follow the prehearing deadlines as to mitigation, her own exhibits, and objections to exhibits, bar counsel filed a motion to preclude the respondent from presenting mitigation evidence; offering exhibits regarding her defenses; and objecting to the exhibits bar counsel had disclosed. The respondent subsequently filed a motion for leave to submit mitigation and other evidence, and a motion to preclude documents or evidence as to any but the two clients who had filed complaints against her.

The Hearing Committee Chair issued orders on the Motions in Limine on October 19, 2022. She denied the respondent's motion to preclude. She allowed in part bar counsel's motion to preclude, permitting the respondent to testify about her alleged health issues and to introduce any mitigation evidence she had previously disclosed to bar counsel, but prohibiting her from objecting to any of bar counsel's previously-disclosed exhibits. As to the respondent's motion for leave, the Chair agreed that the respondent could provide late exhibits to bar counsel, and that bar counsel could object to their admission at the hearing.

On October 28, 2022, the respondent moved to continue the November 7 hearing date that had been set in June, stating that she had recently rescheduled a criminal hearing to that date, and admitting in her motion that she had suggested that date "before realizing that November 7th had been reserved as a hearing date in [this] matter." Bar counsel objected, but the Chair allowed the respondent's motion, and the fourth day of the hearing was scheduled for November 30, 2022.

The hearing was held remotely on November 3, 4, 8, and 30, 2022. Ninety-six exhibits

were admitted, numbered one through ninety-seven (there is no Ex. 90). Four witnesses testified: complainant Howard Katzoff; complainant Mark Driscoll; bar counsel's trust account investigator, Janet Mueller[1]; and the respondent.

The parties' Proposed Findings of Fact and Conclusions of Law (PFCs) were due to be filed on January 30, 2023. On January 18, 2023, the parties filed a joint motion for extension of time, until February 13, 2023, to file the PFCs. On February 8, 2023, the respondent sought a two-week extension, until February 27, 2023. Bar counsel did not object, and the motion was allowed. On February 23, 2023, the respondent again sought additional time, this time a three-week extension to March 20, 2023. Bar counsel did not object. The motion was allowed in part; the parties were given until March 13, 2023 to file, and the Chair wrote that "no further extensions will be allowed."

Bar counsel filed PFCs on March 13, 2023. The respondent did not file anything. On March 16, 2023, when the respondent's PFCs were already past due, she filed an "emergency" motion to file her materials late. The Chair allowed the respondent until March 17, 2023 at 5:00 P.M. to file her materials electronically, writing that if she did not meet that deadline, her PFCs would be rejected. The respondent did not file anything. On March 24, 2023, the respondent filed a further motion for leave to file the PFCs late, this time with the materials attached. The Chair allowed the motion.

[1] Mueller testified largely to accommodate the respondent who, despite the Chair's ruling precluding her from objecting to bar counsel's exhibits, sent a motion at 2:13 A.M. the morning of the first day of trial, objecting to certain IOLTA bank records and a chart of her IOLTA transactions (Ex. 12) that Mueller had prepared. We ordered bar counsel to present Mueller as a witness so that the respondent could cross-examine her on her preparation of the chart.

Findings and Conclusions[2]

General Findings of Fact

1. The respondent, Judith C. Knight, was admitted to the Massachusetts bar on September 21, 1988. The respondent is a solo practitioner who has primarily practiced in the areas of criminal defense, family law, and civil litigation. Ans. ¶ 2.

2. At all times relevant to the petition for discipline, the respondent maintained an IOLTA account ending in *2156 at Lee Bank for the deposit and disbursement of client funds (the "IOLTA Account"). Ans. ¶ 3.

Count 1 - RECORDKEEPING VIOLATIONS AND FAILURE TO COOPERATE

Findings of Fact

3. On October 22 and 28, 2019, bar counsel received notices of dishonored ACH (electronic) withdrawals of funds concerning the respondent's IOLTA account. Exs. 1, 2.

4. As a result of these notices, on November 4, 2019, bar counsel sent a letter to the respondent asking her to provide certain information within twenty days, including particular records and bank statements from her IOLTA account for the last six months. Ex. 2 (OBC005).

5. The respondent failed to respond to the November 4, 2019 letter from bar counsel. Ans. ¶ 7; Tr. 3:14 (Respondent).

[2] The transcript shall be referred to as "Tr. __: __"; the matters admitted in the answer shall be referred to as "Ans. ¶_"; and the hearing exhibits shall be referred to as "Ex. _." 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.

6. On December 5, 2019, bar counsel sent a follow-up inquiry to the respondent seeking a response to the November 4, 2019 letter, and noting in the email that the respondent's phone number was out of service. Ex. 3 (OBC0012). They eventually spoke, and the respondent agreed to provide her materials by December 13. See Ex. 5, ¶ 3 (OBC0023).

7. After she did not do so, bar counsel sent the respondent a letter dated December 26, 2019, stating that she had ten days to respond, and warning her that her failure to do so could result in the entry of an order of administrative suspension of her license to practice law. Ex. 4 (OBC00014).

8. The respondent failed to respond in a timely manner to these follow-up inquiries from bar counsel. Ans. ¶ 9; Tr. 3:17 (Respondent).

9. On January 16, 2020, bar counsel petitioned the Supreme Judicial Court to administratively suspend the respondent for her failure to cooperate with bar counsel's requests for information, seeking an order for monthly IOLTA bank statements, the IOLTA check register, and individual client ledgers for the period of June 1, 2019 through the present, and the most recent reconciliation reports for the IOLTA. Ans. ¶ 10; Ex. 5; Tr. 3:17 (Respondent).

10. We do not credit that the respondent did not understand that administrative suspension "was an actual outcome of not responding as promptly as I should have." Tr. 3:21 (Respondent). Ex. 4 is straightforward, short, and direct, and makes explicit, setting it out in bold typeface, that a failure to respond to bar counsel could result in administrative suspension. By the time she received Ex. 4, the respondent had been ignoring bar counsel for weeks, missing deadline after deadline. It is not credible that she did not realize that bar counsel would not wait indefinitely, and that stronger consequences would follow.

11. On January 31, 2020, the Supreme Judicial Court allowed bar counsel's petition

and entered an order of administrative suspension against the respondent. Ans. ¶ 11.

12. After providing a response to bar counsel's November 4, 2019 letter, the respondent was reinstated from her administrative suspension on February 26, 2020. Ans. ¶ 12; Ex. 8; Ex. 9.

13. Her response recited that she was providing her chronological check register for May 1 through October 31, 2019; individual client ledgers for each client who had funds in the IOLTA for that period; and the most recent three-way reconciliation report for October 31, 2019. Ex. 8.

14. By letter dated November 23, 2020, the respondent provided more documents, through October 2020. Ex. 10. A subpoena to Lee Bank resulted in records from January 1, 2018 through April 2021. Ex. 13; Tr. 3:233-234 (Mueller).

15. The respondent admitted at the hearing that the check registers, client ledgers and three-way reconciliations had not been a part of her file prior to bar counsel's November 4, 2019 letter; rather, she created them in response to bar counsel's request. Tr. 3:72-74 (Respondent).

16. To the extent that the respondent is claiming that her "own method" of recordkeeping was adequate or consistent with what the rules require, we reject this argument.

17. First, the explanation she gave us at the hearing – that she took a copy of every check that she had written for the IOLTA for each client, and put the retainer "on top" of this to make sure she did not "go over"—is not the careful and precise recordkeeping the rules require. Tr. 3:19-20 (Respondent).

18. Even if this were not inadequate, we find that it is a recent fabrication. Asked at her Statement under Oath, taken on May 10, 2021 about how she kept track of client funds and legal fees prior to November 2019, the respondent had no coherent explanation, finally stating

that if she had received a retainer, as opposed to a flat fee, "then I keep my billable hours listed and then I write them up into a bill." Ex. 14 (OBC0311, 0314).

19. She stated that she performed three-way reconciliations "[w]henever I need to." Ex. 14 (OBC0314). She was unable to say when she would update a client ledger in a case where she had received a retainer, and admitted that she would not update the ledger even after she had paid herself. Ex. 14 (OBC3016).

20. The inadequacy of the records is particularly striking because this was not the first time the respondent had been warned about deficiencies in this area. Exs. 77, 78 and 79 reflect that the respondent had agreed in 2016, after bar counsel's receipt of her dishonored check in 2015, that she did not keep records in compliance with Mass. R. Prof. C. 1.15(f)(1)(B) (check register), 1.15(f)(1)(C) (individual client ledger) and 1.15(f)(1)(E) (reconciliation reports). Ex. 77 (OBC0629-30); Tr. 3:207-208 (Respondent).

21. She got her records into compliance at that time, learning about check registers, client ledgers and reconciliation requirements. Tr. 3:205, 213 (Respondent).

22. In a Diversion Agreement dated June 22, 2016, the respondent agreed to take a Trust Account Training Program before December 31, 2016. Ex. 77.

23. She missed this deadline, but certified on June 12, 2017 that she had taken the course on May 4, 2017. Ex. 78; Tr. 3:216 (Respondent). It covered recordkeeping rules related to trust and IOLTA accounts, as well as the difference between trust funds and personal funds. Tr. 3:211-213 (Respondent). The course materials explained that advance payments for fees are trust property. Tr. 3:213 (Respondent).

24. We find that from January 1, 2018 through April 30, 2021, the respondent failed to keep IOLTA records in compliance with Mass. R. Prof. C. 1.15. Specifically, the respondent

failed to prepare and maintain: (i) individual client ledgers for client retainers; (ii) a chronological check register for each transaction in the IOLTA Account; and (iii) ledgers for bank fees and charges.

25. We find that from January 1, 2018 through April 30, 2021, the respondent failed to reconcile her adjusted bank statement balance with her client ledger balances and her check register balance at least every sixty days.

26. We find that at three points during the period of January 1, 2018 through April 30, 2021, the respondent maintained negative balances for at least two different clients (Jamie Goldenberg and Energy Smart), and for her bank fees and charges. Ex. 6 (OBC0038) (Goldenberg); Ex. 8 (OBC0078) (bank fees); Tr. 3:118-119 (Respondent) (Energy Smart).

27. Additionally, the records the respondent prepared for bar counsel as to Goldenberg did not comply fully with Mass. R. Prof. C. 1.15. Specifically, the individual client ledger did not accurately reflect the total amount of funds received, nor all the transactions concerning those funds. Compare Ex. 8 (OBC0074) to Ex. 12 (OBC0110-OBC0111); Tr. 3:50 (Respondent). Additionally, the respondent's reconciliation report did not precisely match the client ledger and, as indicated, had a negative balance for bank fees and charges. Ex. 8 (OBC0072, 0078).

Count 1 - Conclusions of Law

28. Bar counsel charged that by failing to cooperate with bar counsel's investigation, resulting in the entry of an order of administrative suspension, the respondent violated Supreme Judicial Court Rule 4:01 § 3, and Mass. R. Prof. C. 8.1 (do not knowingly fail to respond to lawful demand for information); 8.4 (g) (do not fail without good cause to cooperate with bar counsel); and 8.4(h) (any other conduct that adversely reflects on fitness to practice). Based on

our findings above, we conclude that bar counsel has proved these rule violations.

29. Bar counsel charged that by failing to keep compliant check registers, the respondent violated Mass. R. Prof. C. 1.15(f)(1)(B) (check register recordkeeping requirements). Based on our findings above, we conclude that bar counsel has proved this rule violation.

30. Bar counsel charged that by failing to keep compliant individual client matter ledgers, the respondent violated Mass. R. Prof. C. 1.15(f)(1)(C) (client ledger recordkeeping requirements). Based on our findings above, we conclude that bar counsel has proved this rule violation.

31. Bar counsel charged that by failing to keep a compliant ledger for bank fees and expenses, the respondent violated Mass. R. Prof. C. 1.15(f)(1)(D) (bank fee ledger requirements). Based on our findings above, we conclude that bar counsel has proved this rule violation.

32. Bar counsel charged that by failing to reconcile her adjusted bank statement balance with her client ledger balances and her check register balance at least every sixty days and retain the reconciliation reports, the respondent violated Mass. R. Prof. C. 1.15(f)(1)(E) (reconciliation requirements). Based on our findings above, we conclude that bar counsel has proved this rule violation.

Count 2 - HOWARD KATZOFF

Findings of Fact

33. On September 12, 2019, the respondent agreed to provide a prospective client, Howard Katzoff, with a consultation regarding Katzoff's ongoing divorce. Ans. ¶ 24; see Ex. 17.

34. The respondent and Katzoff agreed to a so-called "full consultation" – one to one-

and-a-half hours at $250 – as opposed to a free half-hour consultation. Ex. 17 (OBC0460-0461).[3]

35. Before the meeting, Katzoff sent the respondent some documents to review. Ex. 18.

36. On September 16, 2019, the respondent conducted the consultation. Ans. ¶ 26; Tr. 3:76-77 (Respondent).

37. At the consultation, Katzoff informed the respondent that his wife had filed for divorce in the Berkshire Probate and Family Court on September 9, 2019, and that she had also filed a motion seeking to compel Katzoff to return $100,000 he had withdrawn from a home equity line of credit. Katzoff explained that a hearing on the motion to compel was scheduled to occur in three days, on September 19, 2019. Ans. ¶ 27; Tr. 3:77-78 (Respondent).

38. By the end of the consultation, the respondent had agreed to represent Katzoff at the September 19, 2019 hearing in the divorce case. Ans. ¶ 28.

39. The respondent and Katzoff orally agreed on an hourly fee arrangement for the representation in the divorce case. Under their oral agreement, the respondent would charge an hourly rate of $300, and would receive an advance retainer from Katzoff in the amount of $3,500. Ans. ¶ 29; Tr. 1:49 (Katzoff); Tr. 3:78 (Respondent).

40. The respondent did not, at any point, provide Katzoff with a writing that communicated the scope of the representation or the basis or rate of the fee to be charged in the divorce case. Tr. 1:49 (Katzoff). The respondent did not tell Katzoff that she expected that the retainer would be exhausted by the upcoming hearing. Tr. 3:79 (Respondent).

[3] Katzoff testified that he saw two options on the respondent's website, for a free consultation of up to thirty minutes, and a $200 in-depth consultation. Tr. 1:43-44 (Katzoff). The respondent claimed that she did not understand that, in asking for an in-depth consultation. Katzoff was using her own term from her website, testifying that she did not know exactly what was on her website. Tr. 3:75 (Respondent). In his January 21, 2020 letter to bar counsel, Katzoff attached what appears to be a printout from the respondent's website, providing: Special Offer: "FREE initial consultation up to 30 minutes. $200 in-depth consultation." Among his complaints against the respondent was that she charged him $750 for an initial consultation, not the $200 he claimed she advertised. Ex. 15 (OBC417, 421).

41. At the consultation on September 16, 2019, Katzoff provided his Chase Bank credit card to the respondent for payment of the $3,500 retainer. Tr. 1:52 (Katzoff). He expected to be charged the $3,500 that he had agreed to pay. Tr. 1:53 (Katzoff).

42. The respondent explained that in addition to the retainer, Katzoff would be responsible for the bank fee, which she estimated at $30. Tr. 1:55 (Katzoff). Although Katzoff found a $30 fee "very excessive," he agreed to pay it. Id.

43. We reject the respondent's testimony that she told Katzoff the bank fee would be $100 to $200. Tr. 3:78, 84 (Respondent). We find Katzoff more credible on this point, and we believe his testimony that he thought $30 was "very excessive."

44. In fact, the credit card processing fee was $126.05. The respondent charged Katzoff $200, adding this to the $3,500 he had agreed to pay. Tr. 3:84 (Respondent).

45. The respondent processed Katzoff's credit card for $3,700 on either September 16 or September 17, 2019, using the credit card processing service Intuit Payment Solutions ("Intuit"). Tr. 3:81 (Respondent); Ans. ¶ 33; Ex.15 (OBC424).

46. Intuit immediately deducted $126.05 as a fee for processing the $3,700 charge, thus depositing $3,573.95 in Katzoff's retainer funds to the IOLTA account. Ans. ¶ 34.

47. On September 18, 2019, the respondent paid herself $3,400 of Katzoff's retainer, by issuing check # 926, made payable to herself, from the IOLTA account. See Ans. ¶ 35; Tr. 3:86 (Respondent); Ex. 20 (OBC465); Ex. 22 (468).

48. At the time the respondent paid herself the $3,400, she did not deliver to Katzoff a writing, itemized bill, or other accounting, showing the services rendered, written notice of the amount and nature of the withdrawal, and a statement of the balance of the client's funds after the withdrawal. See Ans. ¶ 36.

49. We find that part of the reason for this is that at her hourly rate of $300, the respondent would have had to have worked over eleven hours to have earned $3,400. Tr. 3:86 (Respondent). At the time she withdrew these funds, she had not earned them all, and she knew she had not earned them all. Tr. 3:86-87 (Respondent). A later-prepared invoice, discussed in more detail below, shows that when she paid herself $3,400, she had earned a maximum of $2,400 for eight hours of work. Ex. 33.

50. In addition to the invoice, the respondent's own testimony supports our conclusion that she had not earned the $3,400 she took on September 18. She stated that at best, she believed she would have gone through it by the end of the following day, after the September 19 hearing. Tr. 3:86-87 (Knight). In fact, she billed for only one-and-a half hours the day of the hearing, bringing her hours worked up to nine-and-a half, worth $2,850, as of September 19. Ex. 33.

51. The respondent resists the conclusion that her misuse was intentional by arguing, without any citation or explanation, that she "performed the work that she was hired to do and earned the fees in their entirety within a month from being retained." Respondent's PFCs, p. 13.

52. To the extent that this is a claim that she did not know that she could not prepay herself, we reject it, for several reasons. First, the misuse occurred barely two years after the respondent completed bar counsel's trust account class, which teaches about the accounting and recordkeeping rules relating to trust accounts and, presumably, the near-sanctity of client funds, and the scrupulous care to use in dealing with them. See above, ¶ 23.

53. Next, later correspondence with Katzoff, discussed below, shows that the respondent understood that she was obligated to return to him any unearned retainer. This further supports our conclusion that she knew that the retainer money had to be earned to be hers, and

that she knew that it belonged to Katzoff to be paid to her only as earned.

54. Third, the respondent's own sworn testimony supports a conclusion that she understood in general the proper handling of a retainer. In the Statement Under Oath she gave on May 10, 2021, she agreed that she would normally put a retainer in her IOLTA, unless it was payment for work she had already done, and she had already earned it. Ex. 14 (OBC309). That was because a retainer, to the extent unearned, constitutes client funds. Ex. 14 (OBC310). We credit that she explained to Katzoff that she would withdraw money from his retainer as she did the work. Tr. 1:50 (Katzoff). This pledge reflects her understanding that the money was not earned upon receipt. For all of these reasons, we find and conclude that the respondent's misuse was intentional.

55. On September 19, 2019, the respondent filed her appearance in Katzoff's divorce proceeding and appeared at the hearing described above. Ans. ¶ 39.

56. Shortly afterwards, on September 23, 2019, in an email with the subject line STOP THE CLOCK, Katzoff instructed the respondent to stop work on the divorce case, to send him an invoice of her time billed thus far, and, should anything be required of her "this week," to "DELAY, STONEWALL, MAKE EXCUSES." Ex. 21 (emphasis in original).

57. The respondent did not provide an invoice, explaining at the hearing: "I don't do statements." Tr. 3:88 (Respondent).

58. On October 1, 2019, Katzoff terminated the respondent's services by email. He requested a return of the unearned portion of his retainer, and repeated his earlier request for an invoice. Ex. 24. He challenged her billing of his credit card for $3,700 when he had authorized $3,500. Id. He wrote: "Two hours and a Court appearance is all I should be fairly be [sic] charged and will expect to pay." Id. (OBC0471).

59. After the respondent received this email, she did not return any of the disputed portion of the fees to her IOLTA account. Tr. 3:93 (Respondent).

60. Katzoff wrote again on October 3, 2019. Again, he asked for an invoice and a refund of the unused portion of the retainer. He repeated his position that two hours of preparation time and one court appearance "would be amicable on your part." Ex. 25.

61. The respondent replied on October 4, 2019. Ex. 26. She did not provide an invoice. She explained that her preparation had taken longer than Katzoff had allowed for. She also explained that she could not simply stop work and "drop out of a case," but would need to file a motion to withdraw and schedule a hearing. Ex. 26; Tr. 3:94-96 (Respondent). She followed up with an email dated October 7, 2019, where she wrote that she would "prepare [an] invoice for you against the retainer but my time in the case won't be totaled until I am allowed to withdraw from the case by the judge. The soonest that can occur is 10/10/19." Ex. 27.

62. By email dated October 8, 2019, Katzoff told the respondent that he had a new attorney "going forward from any matters dating beyond September 23 – when I informed you to "suspend any work you are doing on this case." Ex. 28 (emphasis in original).

63. The respondent again emailed Katzoff on October 17, 2019. She told him she had been "here in court on your case for over an hour (so far) just waiting for your case to be called so I can withdraw"; that she could not get out of the case until his new attorney "files her appearance with the court and appears in court today"; and that she was sharing this "so you understand why I can't complete your invoice until I am finally let out of the case. That should take place today." Ex. 29.

64. Katzoff did not expect the respondent to charge him for the time she spent waiting in court, and had no conversation with her about that issue. Tr. 1:75 (Katzoff).

65. On October 16, 2019, Katzoff notified Chase Bank that he disputed the respondent's September 17, 2019 charge of $3,700 to his credit card, and requested that the charge be reversed. Tr. 1:77-78 (Katzoff); Ex. 31 (OBC0489).

66. In response to Katzoff's dispute of the respondent's charge, Chase Bank filed with Intuit a "chargeback" of the $3,700 charged by the respondent on September 17, 2019. Accordingly, Intuit attempted to reverse the charge, by trying twice to debit the $3,700 from the respondent's IOLTA account. Each transaction failed, due to insufficient funds in the respondent's IOLTA Account. An investigation by Chase Bank followed. Ans. ¶ 49; Ex. 13 (OBC0217).

67. On October 18, 2019, Intuit informed the respondent that Chase Bank had filed the chargeback in the Katzoff matter and provided instructions for the respondent to dispute the chargeback. Ans. ¶ 50; Ex. 31. She wrote to Katzoff on October 19, 2019, questioning his actions, reminding him that she was planning to "send the final invoice and a check for the unearned portion of the retainer once the judge let[s] me out of the case, telling him she was going to have to contest the chargeback, and warning that she would "have to bill you for the time it takes me to deal with this." Ex. 31.

68. Katzoff responded on October 20, 2019 that he was still waiting for an invoice, and that he objected to paying for anything after September 23, 2019, when he had told her to "stop the clock." Ex. 32.

69. On or about October 25, 2019, in order to dispute the chargeback, the respondent prepared an invoice reflecting her work and time in the Katzoff's case (the "Intuit Invoice") and then submitted it to Intuit. Ex. 34 (OBC488-491); Tr. 3:98-99 (Respondent). This was the first invoice Katzoff had seen. He received the respondent's Intuit Invoice from Chase Bank as part of

the dispute process; the respondent did not send him an invoice directly, despite his multiple requests.

70. In the Intuit Invoice, which differs slightly but not materially from the version of respondent's invoice submitted as Ex. 33, the respondent claimed that she had worked a total of twelve hours between September 17 and October 17, 2019, thereby earning the entirety of the $3,573.95 ($3,700 minus the $126.05 processing fee) in Katzoff retainer funds. She billed Katzoff not only for the $126.05 credit card fee, but also $59.98 that had been charged to her account after Intuit was twice unable to reverse the $3,700 charge, due to insufficient funds in her account. Ex. 34 (OBC0491).

71. In the Intuit Invoice, the respondent charged Katzoff an additional $750 for work performed after he had discharged her on October 1, 2019. Ex. 34 (OBC491).

72. Chase Bank ultimately denied Katzoff's dispute after reviewing the respondent's response to the matter. Tr. 1:86 (Katzoff).

73. Except as to one of the charges for which she billed Katzoff, explained below, bar counsel has not proved that the respondent did not eventually earn the funds Katzoff paid her, including the funds she intentionally misused. While Katzoff complained about paying for any time after September 23, 2019, the date on which he told the respondent to stop work on the case (Ex. 32), and while he did not expect to pay for all of the time it took for the respondent to withdraw (Tr. 1:75 (Katzoff)), bar counsel did not prove that the respondent's work after September 23, 2019 was unnecessary, or that she had not earned the fees she charged.

74. The exception concerns the bill for two-and-a-half hours at the initial meeting at the respondent's full $300/hour rate. We find that at least $200 was unauthorized. The respondent agreed to charge Katzoff an introductory rate of $250 for a consultation of one to one-

and-a-half hours. Assuming as she testified that they in fact met for two-and-a-half hours, he should have been billed at most $550, i.e., $250 plus $300 for an additional hour of her time, not the $750 he was charged.

75. As of November 3, 2022, the date of his testimony before us, Katzoff had not received a refund of any amount from the respondent. Tr. 1:92-93 (Katzoff).

76. Just before the hearing started, the respondent sent Katzoff a letter and a $500 check. Tr. 3:101-102 (Respondent); Ex. 95. She admitted in the letter that she had overcharged him by $200 for the introductory meeting. Ex. 95; see also Tr. 4:76-78 (Respondent). She denied at the hearing that her intent, in making the refund, was to impact his testimony. Tr. 3:107 (Respondent). As of November 8, 2022, the check had not been cashed. Tr. 3:107-108 (Respondent).

77. We find that Katzoff was deprived of $200 of the misused retainer.

Count 2 - Conclusions of Law

78. Bar counsel charged that by failing to communicate to the client in writing the scope of the representation and the basis of the rate or fee and expenses for which the client would be responsible, the respondent violated Mass. R. Prof. C. 1.5(b)(1) (communicate basis and rate of fee in writing). We conclude that bar counsel has proved this rule violation.

79. Bar counsel charged that by failing to inform the client that she would charge her hourly fee for the initial consultation rather than the previously quoted flat fee, the respondent failed to explain the matter to the extent reasonably necessary to permit the client to make informed decisions about the representation, in violation of Mass. R. Prof. C. 1.4(b) (explain a matter to the extent necessary for client to make informed decisions). We conclude that bar counsel has proved this rule violation.

80. Bar counsel charged that by withdrawing fees from her IOLTA account for the purpose of paying herself legal fees without first delivering to Katzoff an itemized bill or other accounting, a written notice of the amount and date of the withdrawal, and a statement of the balance of remaining client funds, the respondent violated Mass. R. Prof. C. 1.15(d)(2) (give client itemized bill on or before date of withdrawal of fees). We conclude that bar counsel has proved this rule violation.

81. Bar counsel charged that by intentionally misusing unearned retainer funds for her own personal and business purposes, with resulting deprivation, and failing to return the unearned fee, the respondent violated Mass. R. Prof. C. 1.15(b)(safeguard trust property and keep separate from lawyer's own); 1.16(d) (upon termination, refund unearned advance payments), and 8.4(c) (conduct involving dishonesty, fraud, deceit, or misrepresentation) and 8.4(h).

82. We conclude that bar counsel has proved these rule violations.

83. As to Rule 8.4(c) and (h), we rely on our findings above, and note in summary: the respondent refused to send Katzoff an invoice despite several requests, and then prepared one only after the credit card company became involved and only to protect her fee; she did not then send it to Katzoff, most likely because, as we found above in ¶ 49, she had not earned the money she took; and while she knew she was not entitled to withdraw fees before they were earned, she did so anyway, in one of many instances, described above and below, where she seems to have decided that the rules do not apply to her.

84. Bar counsel charged that by failing to return the disputed fees to her IOLTA account, the respondent violated Mass. R. Prof. C. 1.15(b)(2)(ii) (return to IOLTA any funds in dispute). We conclude that bar counsel has proved this rule violation.

85. Bar counsel charged that by failing to deliver to the client a full written accounting of the retainer payment upon request, and upon final distribution, the respondent violated Mass. R. Prof. C 1.4(a)(4) (promptly comply with reasonable requests for information) and 1.15(d)(1) (upon client's request, provide full written accounting). We conclude that bar counsel has proved these rule violations.

Count 3 - JAMIE GOLDENBERG
Findings of Fact

86. On or about August 26, 2019, the respondent agreed to represent Jamie Goldenberg in a family law matter. Ans. ¶ 70.

87. The respondent and Goldenberg orally agreed on an hourly fee arrangement. Under their oral agreement, the respondent would receive an advance retainer in the amount of $5,000 from Goldenberg, would charge an hourly rate of $300, and would keep track of her time against the retainer. Ans. ¶ 71; Ex. 35 (OBC518).

88. The respondent did not, at any point, provide Goldenberg with a writing that communicated the scope of the representation or the basis or rate of the fee and expenses to be charged. Their agreement was oral. Ans. ¶ 72; Ex. 35 (OBC518).

89. On August 27, 2019, Goldenberg wired the $5,000 retainer into the respondent's IOLTA account. A wire transfer fee of $8.00 was immediately deducted from the deposit, leaving $4,992 of Goldenberg's funds in the IOLTA account. Ans. ¶ 73; Ex. 13 (OBC207); Tr. 3:52 (Respondent).

90. Between August 27, 2019 and September 23, 2019, the respondent paid herself $5,075 attributed to Goldenberg's case from the IOLTA account. Ex. 12 (OBC110-111); Tr. 3:54

(Respondent).[4] Because the respondent was holding a maximum of $4,992 of Goldenberg's funds in the IOLTA account, this disbursement created a negative balance in the account. This $83.00 overpayment was covered by recently-earned fees in other matters that had not yet but could have been withdrawn by the respondent. Ans. ¶ 74.

91. The respondent withdrew the $5,075 by fourteen checks, payable to herself, drawn on her IOLTA account. Ex. 12 (OBC110-111).

92. For each of the fourteen withdrawals, the respondent failed to deliver to Goldenberg a writing, itemized bill, or other accounting, showing the services rendered, written notice of the amount and nature of the withdrawal, and a statement of the balance of the client's funds after the withdrawal. Ans. ¶ 76; Tr. 3:63 (Respondent).

93. The respondent's own invoice reflects that between August 1, 2019 and October 10, 2019, despite having paid herself $5,075, she had earned a maximum of $3,600 for twelve hours of work. Ex. 35 (OBC519).

94. At the hearing, the respondent tried to explain this by testifying that she worked more than thirty-six hours for Goldenberg, but did not charge for or, apparently, record this extra time anywhere. Tr. 3:57-58 (Respondent).[5] This does not ring true. The respondent was unable to explain why she did not simply record her time and designate it as "no charge," admitting that she sometimes did this. Tr. 3:58-59 (Respondent); Ex. 14 (OBC329-330). Her invoice did not state that she was providing a discount or, with the exception of some text messages, that she had done work for which there would be no charge. Tr. 3:63-64 (Respondent).

[4] Check 909, listed at Ex. 12 (OBC110) which states "J.G." in the memo line, was actually related to another client and is excluded from the $5,075 attributable to Goldenberg. Tr. 3:247-248 (Mueller).

[5] She corrected this mathematical error in her post-hearing brief, claiming to have worked at least 16.5 hours. Respondent's PFCs, ¶¶44, 45.

95. We reject the respondent's claim that she had earned the entire $5,000. We explained above our finding that the respondent knew that a retainer was not hers until it was earned. That reasoning applies here. We find that the respondent knew she was not entitled to the full retainer. We find that she intentionally misused the unearned portion of the retainer for her own personal and business purposes.

96. By early October 2019, Goldenberg terminated the respondent's legal services. Ans. ¶ 79.

97. On or about October 10, 2019, the respondent transferred Goldenberg's file to successor counsel, at Goldenberg's request. Ans. ¶ 80.

98. On October 24, 2019, the respondent returned the $1,400 in unearned fees to Goldenberg. Ex. 14 (OBC330-331); Ex. 37.

Count 3 - Conclusions of Law

99. Bar counsel charged that by failing to communicate to Goldenberg in writing the scope of the representation and the basis of the rate or fee and expenses for which she would be responsible, the respondent violated Mass. R. Prof. C. 1.5(b)(1). We conclude that bar counsel has proved this rule violation.

100. Bar counsel charged that by withdrawing fees from the IOLTA account for the purpose of paying herself legal fees without first delivering to Goldenberg an itemized bill or other accounting, a written notice of the amount and date of the withdrawal, and a statement of the balance of remaining client funds, the respondent violated Mass. R. Prof. C. 1.15(d)(2). We conclude that bar counsel has proved this rule violation.

101. Bar counsel charged that by intentionally misusing unearned retainer funds, without deprivation, for her own personal and business purposes, the respondent violated Mass.

R. Prof. C. 1.15(b) and 8.4(c) and (h).

102. We conclude that bar counsel has proved these violations. Our reasoning above as to Count 2 in ¶ 83 largely drives our reasoning here as to the 8.4(c) and 8.4(h) violations: the respondent knew precisely what she was doing, knew it was wrong, and proceeded nonetheless.

Count 4 – ENERGY SMART
Findings of Fact

103. In late 2017, a dispute arose relating to the construction of Steven and Alison Litvack's[6] residential home in Marlboro, Massachusetts. Ans. ¶ 86. To construct the home, the Litvacks had hired a general contractor, and had hired Energy Smart Building, Inc. ("Energy Smart") to provide foam laminate insulation. Tr. 2:10-11 (Driscoll). Energy Smart then subcontracted a portion of the work to Northtimber Associates, Inc. ("Northtimber"). Tr. 2:13 (Driscoll).

104. A dispute arose between the two subcontractors, and Energy Smart terminated Northtimber in October 2017. On November 7, 2017, Northtimber established a lien on the Litvack property, pursuant to G.L. c. 254, claiming that it had not been paid for the work performed under the contract. Ans. ¶ 86.

The Respondent's Involvement and Fees

105. On or about January 10, 2018, Energy Smart, through its principals Mark Driscoll and James Giroux, retained the respondent to represent it in relation to this dispute with Northtimber Ans. ¶ 87; Ex. 40. Under their written agreement, the respondent required a $5,000 retainer, against which she would bill for her time at the rate of $300 per hour. Ex. 40.

106. At Energy Smart's request, the respondent agreed to pursue removal of the lien

[6] The name is sometimes spelled "Litvak."

on the Litvack property and then to determine whether Northtimber was due any money from Energy Smart. Ans. ¶ 89; Ex. 40; Tr. 2:17-18 (Driscoll).

107. On January 11, 2018, Energy Smart paid the respondent her $5,000 retainer. Ans. ¶ 90. Driscoll testified that the respondent explained that the check was to go into an escrow account. Tr. 2:19 (Driscoll). After the deposit, the balance in the respondent's IOLTA account was $5,030. Ans. ¶ 91; Ex. 13 (OBC113).

108. Between January 18 and 25, 2018, the respondent paid herself $4,875 from Energy Smart's retainer, thereby decreasing the balance of Energy Smart's funds in the IOLTA to $125. Ans. ¶ 92; Ex. 12 (OBC108).

109. For each of the four payments to herself, the respondent failed to deliver to Energy Smart a writing, itemized bill, or other accounting, showing the services rendered, written notice of the amount and nature of the withdrawal, and a statement of the balance of the client's funds after the withdrawal. Ans. ¶ 93; Tr. 3:115-116 (Respondent).

110. Her invoice reflects that by January 25, 2018, when she had paid herself a total of $4,875 from Energy Smart's $5,000 retainer, she had not performed sufficient work to account for such a payment, having spent at most three hours ($900 of time) on the matter. Ex. 50 (OBC557); Tr. 3:115 (Respondent).

111. On or about February 15, 2018, the respondent agreed to represent the Litvacks in discharging the lien, with legal fees to be paid by Energy Smart pursuant to the January 10, 2018 fee agreement with Energy Smart. Ans. ¶ 96; Tr. 2:20-21 (Driscoll); Tr. 3:110 (Respondent).[7]

112. On February 16, 2018, the respondent filed, in Berkshire Superior Court, a verified

[7] We did not receive in evidence a separate writing to this effect.

complaint and application, Docket No. 1876CV00047, to discharge the lien against the Litvacks, arguing in essence that Northtimber's lien was improper because the contract for payment was between Northtimber and Energy Smart, not Northtimber and the Litvacks. Exs. 38, 42.

113. On February 23, 2018, when she was holding only $125 in her IOLTA account for the benefit of Energy Smart, the respondent paid Berkshire Superior Court a $280 filing fee relating to the verified complaint and application to discharge lien. Ex. 12, lns.12, 14, 15, 16, 17, 27.

114. Upon payment of the $280 filing fee, the respondent had disbursed $5,155 from her IOLTA account relating to Energy Smart, exceeding the $5,000 retainer she had received for the representation. Ex. 12, lns.12, 14, 15, 16, 17, 27.

115. The respondent did not notify Energy Smart that its $5,000 retainer had been exhausted through payments to herself and to Berkshire Superior Court. Tr. 2:20, 38-39 (Driscoll); Tr. 3:130-131 (Respondent).

116. On February 23, 2018, Northtimber filed a breach of contract action in Berkshire Superior Court, Docket No. 1876CV00048, naming both Energy Smart and the Litvacks as defendants (the "Berkshire Matter"). Ans. ¶ 98; Exs. 39, 44.

117. Energy Smart's verified complaint was dismissed March 14, 2018, the Court ruling that the lien statute does not require privity of contract, and denying the application to discharge the lien. Ex. 43.

118. On or about June 6, 2018, the respondent, on Energy Smart and the Litvacks' behalf, proposed a "global" settlement offer to Northtimber in which Energy Smart would pay $30,000 to Northtimber to resolve all claims between all parties in the Berkshire Matter. Ans. ¶ 102; Ex. 45 (OBC547-550).

119. Shortly thereafter, on June 13, 2018, the respondent filed answers to the complaint and counterclaims on behalf of the Litvacks and Energy Smart. Ex. 39 (OBC530).

120. Northtimber did not accept the respondent's June 6 settlement offer and instead, on August 9, 2018, made a counteroffer in the amount of $50,000. Ans. ¶ 103; Ex. 46.

121. On September 6, 2018, Driscoll asked the respondent to confirm whether she had billed any amount against the $5,000 retainer and, if so, to provide him with copies of the bills and an accounting of the balance of the retainer funds. Ex. 47 (OBC552). He sent this email because, since hiring the respondent in January 2018, he had not received any bills or invoices, or any notices that she had paid herself from the retainer funds. Tr. 2:32-33 (Driscoll).

122. The respondent did not reply. On September 10, 2018, Driscoll asked the respondent to "please respond." She did not. He repeated this request on September 17. Ex. 47 (OBC552). He received no response.

123. On October 1, 2018, Driscoll emailed the respondent for the fourth time, noting that she seemed to be avoiding his request about the retainer, and asking again whether she had billed against it and, if so, to please send bills. Ex. 47 (OBC553).

124. The respondent answered within two hours, explaining that she was not avoiding Driscoll's request, but was simply "itemizing my time for you." She included no invoice or accounting, but noted that she had gone "well over the retainer." Id.

125. On November 26, 2018, after many weeks had elapsed during which the respondent had failed to provide an invoice or accounting, Driscoll submitted a further request to her by email, again seeking an accounting of the $5,000 retainer. Ex. 49; Tr. 2:39 (Driscoll). She ignored him. See Tr. 3:134 (Respondent).

126. Finally, on December 7, 2018, the respondent provided to Driscoll an invoice covering all legal services rendered from January 10, 2018 through November 30, 2018. Ex. 50. It showed that the respondent had earned a maximum of $900, for 3 hours of work by January 31, 2018, when she had paid herself $4,875 in retainer funds. Ex. 50 (OBC557); Tr. 3:136-137 (Respondent). It also showed that the $5,000 retainer had been exhausted by April 30, 2018, and that Energy Smart owed an additional $2,695 to the respondent for work done thereafter.

127. On January 15, 2019, the respondent requested from Energy Smart a $5,000 payment, explaining that this was to cover the $2,695 for services that she had previously rendered in the Berkshire Matter but had not been paid for, and $2,305 in additional funds as an advance retainer for future work, "to cover some [of] the work I will be doing in the next few weeks in this case . . . ." Ans. ¶ 107; Ex. 51; Tr. 2:42 (Driscoll); Tr. 3:141-142 (Respondent).

128. On or about February 1, 2019, Energy Smart complied with the respondent's request and provided her with a check for $5,000. Ans. ¶ 108; Ex. 52; Tr. 3:142 (Respondent).

129. Upon receipt of the check, the respondent immediately paid herself the full $5,000. She did not deposit the check in her IOLTA account, but instead put it into her operating account. Ex. 88; Tr. 3:142-143 (Respondent).

130. Between January 16, 2019, and February 1, 2019, the respondent did not earn the $2,305 paid as an advance retainer for work in the Berkshire Matter. When she paid herself the unearned portion of the second retainer, she did not provide notice to Energy Smart that she had done so, and in fact never provided an accounting for the second retainer. Tr. 2:43-44 (Driscoll); Tr. 3:142-144 (Respondent).

131. We find that the respondent intentionally misused funds from both of the retainer payments. We rely for this finding on our observations above, about the respondent's knowledge

about trust funds, and note the following in addition.

132. The respondent resists the conclusion that she knew she could only draw on a retainer as it was earned, claiming that there was no intentional misuse of funds because she thought she could take the money when she "committed" to doing the work, i.e., that it was in the nature of a "classic" retainer. Tr. 3:113 (Respondent). We do not credit her claim.

133. The respondent is correct that a classic retainer is "considered earned by the attorney when paid." Matter of Sharif, 459 Mass. 558, 569, 27 Mass. Att'y Disc. R. 809, 822 (2011). But this is because the attorney "'gives up the possibility of being employed by [other parties] in the very matter to which the retainer relates.'" Sharif, id. (citation omitted). See also The Ethics of Charging & Collecting Fees (Nancy E. Kaufman and Constance V. Vecchione; updated 2015), p. 1 (classic retainer "binds the attorney to employment for ongoing services and to the exclusion of adverse parties. The retainer is seen as payment for the establishment of this exclusive relationship.").

134. Nothing in the Fee Agreement (Ex. 40), and no testimony or evidence, supports the argument that the fees the respondent charged constituted a classic retainer, as that term is understood and used in our jurisprudence. There was no exclusivity about the Energy Smart representation. Nor was there any indication that the client made the payments with exclusivity, or insuring the respondent's future services, or any other hallmark of a classic retainer, in mind. See Blair v. Columbian Fireproofing Co., 191 Mass. 333, 335 (1906) ("[t]he mere fact that the plaintiff [attorney] received and credited the several payments as retainers, does not show that the defendant [client] sent them as such. His acts, unknown to the defendant, are not evidence against the defendant.").

135. We find that the respondent's admissions, correspondence and course of conduct

with Energy Smart undermine any argument that she thought these were either classic retainers or monies earned when received. She testified that she deposited the retainer to her IOLTA account because it was "not a flat fee." Tr. 3:112 (Respondent). She told Driscoll that the first retainer check was to go into an escrow account (Tr. 2:19 (Driscoll)), and that the second was to pay for work she had done and to cover work she would be doing. Ex. 51.

136. Energy Smart's repeated requests for invoices, and questions about whether she had billed against the retainer (e.g., Ex. 47 (OBC552, 553)) are not the questions of a client who had paid a classic retainer to ensure a lawyer's continued availability, and would make no sense in a classic retainer situation. The facts that the respondent never so stated, and instead either largely ignored the emails or promised invoices she did not deliver, suggest that the "classic retainer" claim is a recent fabrication. For all of the above-stated reasons, we find that her misuse of the retainer funds was intentional.

137. On January 16, 2020, the respondent approached Energy Smart with an alternative fee arrangement in the Berkshire Matter. She offered to bring the case to a conclusion for a capped flat fee of $7,000, plus expenses, with $3,500 due in ten days and the balance by February 15, explaining that the benefit to Energy Smart was that its expenses would be capped, and the benefit to her was that she would no longer have to keep track "of every minute of my time to bill on this case,"—something we find she had not been doing—and that she and the client would no longer have to "discuss" billing. Ex. 53. She promised to provide the client "with a minimum of biweekly updates as we move forward." Id.

138. On January 28, 2020, Energy Smart agreed to pay $3,500 "now" and the balance "when we wrap it up." Ex. 54. The respondent counteroffered for an immediate payment of $4,500 and $2,500 at wrap up. Id. They ultimately agreed to this latter arrangement. Ans. ¶ 117;

Tr. 2:46 (Driscoll).

139. This flat-fee proposition underscores our conclusion above of intentional misuse. The respondent clearly knew the constraints attendant on a retainer payment. We find that she proposed a flat fee arrangement because she did not want to field the questions Energy Smart was entitled to ask about the status of its retainer. See Tr. 3:147 (Respondent).

140. On or about January 31, 2020, Energy Smart paid the first flat fee installment of $4,500 to the respondent. Ans. ¶ 118; Tr. 2:47 (Driscoll).

The Settlement of the Berkshire Matter

141. Between January 2020 and September 2020, the respondent engaged in further settlement discussions and discovery in the Berkshire Matter. Ans. ¶ 119.

142. On or about September 10, 2020, Northtimber offered to settle the Berkshire Matter for $30,000 paid by Energy Smart, "inclusive of releasing the lien." Ans. ¶ 120; Ex. 57; Ex. 83 (OBC660). This is the amount Energy Smart had offered Northtimber back in 2018, when Northtimber had been insisting on $50,000. Ex. 83 (OBC655); Tr. 4:21-22 (Respondent).

143. On September 11, 2020, the respondent presented the $30,000 settlement offer to Energy Smart, who at that point did not want to pay more than $28,500. The respondent told Driscoll that if Energy Smart agreed to the $30,000 settlement, she would not seek to collect on the second portion of the flat fee (i.e., the $2,500 still due her). Ans. ¶ 121; Tr. 4:25 (Respondent).

144. On September 11, 2020, the parties to the Berkshire Matter agreed to a settlement whereby Energy Smart would pay Northtimber $30,000 to resolve all claims relating to Energy Smart and the Litvacks, and Northtimber would discharge the lien it had recorded against the Litvacks' property. Ans. ¶ 122; Ex. 57; Tr. 3:149 (Respondent).

145. On September 14, 2020, Northtimber reported to the court that the case had been

settled and requested a nisi order of dismissal. The court thereupon entered the requested dismissal nisi and ordered the settlement agreement to be filed by October 7, 2020, a date later extended to October 14, 2020. Ex. 58; Tr. 3:158-159 (Respondent). The respondent reviewed this order but did not tell her clients that the court had set a deadline to file the executed settlement agreement. Tr. 2:49, 51 (Driscoll); Tr. 3:149-150, 158-159 (Respondent).

146. Between September 14, 2020 and October 1, 2020, the respondent and Northtimber's counsel drafted the settlement agreement. Ans. ¶ 124; see Ex. 57.

147. On October 1, 2020, at 10:42 PM, the respondent emailed a copy of what she described as the "final settlement agreement" to Energy Smart for review, approval, and signature. Ans. ¶ 125; Ex. 60. She wrote that her clients should let her know if they had any questions or concerns. Ex. 60. Driscoll understood, from the respondent's email, that he would have the opportunity to review the agreement, send it for review to the Vermont attorney his business used, and make changes to it. Tr. 2:50-51 (Driscoll).

148. Four minutes later, at 10:46 PM, the respondent sent to Northtimber's counsel what she described as "a clean version of the final settlement agreement for you to forward to your client for signature." Ex. 59. She promised she would have "an executed version" to him "asap." Id.

149. By October 1, 2020, Energy Smart had not authorized the respondent to send a settlement agreement to Northtimber for final signature. Tr. 2:51 (Driscoll). Driscoll's entirely reasonable understanding, based on the respondent's October 1 email to him and her failure to state otherwise, was that he would have time to review and, perhaps, question and change, aspects of the agreement. Tr. 2:50-51 (Driscoll); Ex. 60. The respondent did not tell Driscoll that she had sent to Northtimber a "final" version of the agreement for its signature. Tr. 2:51

(Driscoll); Tr. 3:152 (Respondent).

150. Driscoll sent the settlement agreement to his Vermont lawyer for review. Tr. 2:51-52 (Driscoll).

151. On October 6, 2020, Northtimber executed the settlement agreement and sent it to the respondent. Ex. 61. She did not send the executed agreement to Energy Smart, nor did she inform it that the settlement agreement had been signed by Northtimber. Tr. 2:53-54; Tr. 3:157 (Respondent).

152. On October 16, 2020, based on the comments the Vermont lawyer had made, Driscoll asked the respondent to "review her comments" and to "send [it] back [to the Vermont lawyer] for her final review." Ex. 62. He intended for the respondent to make the changes suggested by the Vermont attorney. Tr.2:56 (Driscoll).

153. The respondent did not inform Driscoll that Northtimber had already executed the settlement document and that she had represented to Northtimber that the version it had signed was final. Tr. 2:56 (Driscoll); Tr. 3:161-162 (Respondent). Instead, she agreed with Driscoll that the Vermont lawyer's comments were "all good," and promised to "make the appropriate revisions and get back to you." Ex. 63.

154. The respondent did not promptly provide Northtimber's counsel the revisions to the settlement agreement sought by Energy Smart. Ex. 68; Tr. 3:164 (Respondent).

155. On October 22, 2020, Northtimber's counsel demanded, by email, that the respondent's clients sign and return the settlement agreement Northtimber had signed on October 6, 2020. He stated that if his client did not receive the $30,000 in settlement funds by October 30, 2020, he would move to withdraw the nisi order and to enforce the settlement agreement. Ex. 64.

156. The respondent ignored this email and did not inform her clients about it. Ex. 65

(October 29, 2020 email); Tr. 2:57-58 (Driscoll).

157. On October 29, 2020, Northtimber's counsel informed the respondent for a second time, by email, that he planned to file an emergency motion to withdraw the nisi order and to enforce the settlement if he did not receive the signed settlement agreement that day, along with confirmation that the settlement funds would be sent to his client on October 30, 2020. Ex. 58.

158. The respondent did not contact Northtimber's counsel regarding his October 29, 2020 email and did not inform Energy Smart about it. Ex. 67 (OBC590); Tr. 2:58-59 (Driscoll).

159. On November 2, 2020, Driscoll sent an email on Energy Smart's behalf to the respondent stating that he had not heard from her in two weeks and asking if the Berkshire Matter would be wrapped up soon. Ex. 66.

160. On November 3, 2020, Northtimber filed an Emergency Motion to Enforce Settlement. Ex. 67. It referenced the failure of the respondent's clients to execute the Settlement Agreement and pay Northtimber, noting that counsel for Northtimber had followed up with the respondent at least three times. Northtimber asked the court to enforce the settlement agreement as executed by Northtimber on October 6, 2020, and to award it attorneys' fees. Id. The respondent did not notify her clients about Northtimber's Motion to Enforce. Tr. 2:63, 65 (Driscoll).

161. On November 5, 2020, the respondent, for the first time, informed Northtimber's counsel that Energy Smart had additional revisions to the settlement agreement. Ex. 68. She promised to send the new version that day. Id. She did not do so. See Ex. 69.

162. Minutes later on November 5, in a belated response to Driscoll's November 2 email, the respondent wrote: "Yes. I had to send [the Vermont attorney's] changes to NT's attorney

before I could get them back to you for signature." Ex. 66. She made no mention of the Emergency Motion that Northtimber had filed, or the fact that Northtimber believed it already had a signed final agreement.

163. On November 6, 2020, the Court issued a Notice to Appear on November 16, 2020 for a Motion Hearing on Northtimber's Emergency Motion. Ex. 39 (OBC533).

164. The respondent did not inform Energy Smart of the November 16, 2020 hearing or otherwise inform Energy Smart that Northtimber was seeking to enforce the settlement agreement it had executed on October 6, 2020. Tr. 3:180-181 (Respondent). She did not file an opposition to Northtimber's motion. Ans. ¶ 140; Tr. 2:65 (Driscoll); Tr. 3:170 (Respondent).

165. The respondent testified before us that she was not concerned about the withdrawal of the nisi order or the enforcement of the settlement; that her clients wanted the case dismissed; and that there was no risk to her clients because they were willing to pay the $30,000. Tr. 3:158, 166, 169, 170 (Respondent). See Respondent's PFCs, ¶ 76 (stating that she did not file an opposition because the material terms of the agreement "as written in the October 1, 2020 [sic] remained the same and had been agreed by the parties.").

166. The respondent explained that she "didn't have a valid stance to challenge the motion." Tr. 3:170 (Respondent). We find that this is because she had hidden from both Northtimber's counsel and her own clients that there was *no* final agreement. After she had sent the "final" version to Northtimber without confirming with her clients that they were satisfied, her clients had proposed changes and ordered her to implement them.

167. We do not agree that there was no risk of harm to the respondent's clients from dismissal of the matter. Northtimber had asked for attorney's fees. As noted above, the respondent had counterclaims pending, among them Energy Smart's claim that it had had to pay

close to $20,000 to fix Northtimber's mistakes. Tr. 2:88 (Driscoll). The imposition of the former, and the loss of the latter, were presumably of some significance to Energy Smart. We agree with bar counsel that the respondent should have discussed her "strategy" with her clients, instead of unilaterally deciding to keep them in the dark about the case's status and their options. See Bar Counsel's PFCs, ¶ 145 at 35.

168. On November 12, 2020, the respondent, for the first time, sent to Northtimber's counsel Energy Smart's revisions to the settlement agreement. Ex. 69.

169. On November 16, 2020, the hearing on Northtimber's Motion to Enforce was held via Zoom. Ex. 39 (OBC533); Ex. 70. The respondent did not appear. The court's docket sheet noted as follows: "Attorney Knight was not present via Zoom – the Clerk's office made several attempts to contact Attorney Knight by phone and email, but there was no response back - Attorney Knight did receive notice via mail and a notice via email for the hearing date and time." Ex. 39 (OBC533).

170. Despite the respondent's absence, the court allowed Northtimber's Motion to Enforce the settlement agreement as executed by Northtimber on October 6, 2020, finding it valid and enforceable. Exs. 39 (OBC533), 70. The court ordered the parties to finalize and execute any attendant release documents and to exchange the settlement funds within seven days.

171. The respondent did not timely inform Energy Smart that a hearing had taken place on November 16, 2020 or that an order had been issued which required it to pay $30,000 to Northtimber within seven days under the terms of the October 6, 2020 settlement agreement. Tr. 3:182-183 (Respondent).

172. We do not credit that the respondent did not tell the clients about the Zoom

hearing because they were away and she could not reach them. Tr. 3:180 (Respondent). Driscoll agreed that he and his partner were on a hunting trip in November, but we credit his testimony that he had gone to the same place before, had his cell phone, and had reception. Tr. 2:73 (Driscoll). The respondent claimed that she took "at his word" the prediction of someone from Driscoll's office that she would not be able to get through to him on his cell phone, while admitting that she did not even try to do so, having concluded that it was not an emergency. Tr. 3:183-184 (Respondent).

173. The respondent admitted that she did not try to reach the clients through their Vermont attorney, testifying, inaccurately, that that attorney "wasn't really involved in this case" and that she had not spoken to the Vermont attorney since January 2018. Tr. 3:187 (Respondent). Both statements are untrue. The respondent knew that her clients had sent the Vermont attorney the settlement agreement to review, so she knew the attorney was still involved. Ex. 62. Her own invoice reflects that she had had contact with the Vermont attorney at the beginning of the case, and again in April 2018. Ex. 50.

174. On November 25, 2020, the respondent filed a motion to extend the deadline for Energy Smart's settlement payment of $30,000 to December 2, 2020. Ex. 71. The respondent's motion was allowed. Ans. ¶ 148.

175. On November 30, 2020, the respondent informed Driscoll and Giroux for the first time: (1) that Energy Smart was required to pay $30,000 to Northtimber by December 2, 2020 to settle the Berkshire Matter; and (2) that they needed to sign the version of the settlement agreement that she had sent them on October 1, 2020, which did not contain their requested changes. Ans. ¶ 149; Ex. 84 (OBC0675); Tr. 3:182 (Respondent).

176. The respondent did not include with her email the court's order on the motion to enforce. We find that she did this because she did not want her clients to know that she had missed the hearing, and had filed nothing in opposition to Northtimber's motion. We do not credit her testimony that she told Driscoll about the missed hearing (Tr. 3:190 (Respondent)), and instead credit Driscoll's testimony that she never disclosed it. Tr. 2:70 (Driscoll).

177. We find that the respondent lied to her clients and the Vermont attorney about the chronology of events. She was able to do this because she had not kept the clients updated about their matter.

178. In a November 30, 2020 email to the clients that was forwarded to the respondent, the Vermont attorney wrote: "I do not understand the court motions . . . Northtimbers [sic] is saying you need to sign this Settlement Agreement because you already accepted these terms?" Ex. 86 (OBC692).

179. Although the respondent had already accepted the terms, she wrote: "The motion to enforce the settlement agreement was an overreaction by NT's lawyer when I sent him the Settlement Agreement with your suggested changes. It was absurd but I couldn't reason w[ith] him." Id. In fact, the motion to enforce was filed because the respondent repeatedly ignored Northtimber's requests for information, and refused to send the signed agreement. She did not alert Northtimber's attorney about any proposed changes until November 5, and did not send him the actual proposed changes until November 12, 2020, significantly after November 3, when he filed his motion to enforce.

180. On December 2, 2020, Driscoll wired the $30,000 settlement to Northtimber on Energy Smart's behalf. Ans. ¶ 150.

181. On January 19, 2021, Driscoll asked to respondent to provide him with an

accounting of services for her work in the Berkshire Matter. Ex. 73. While the respondent had already provided an invoice for her work through November 30, 2018 (Ex. 50), we find that the respondent never provided Energy Smart with an invoice for the services that she rendered on its behalf between December 2018 and January 2020, at least part of which had been performed pursuant to an hourly fee agreement. Tr. 2:43-44 (Driscoll), Tr. 3:143-144 (Respondent).

182. On April 5, 2021, after Northtimber complied with its agreement to discharge its lien on the Litvacks' property, the respondent filed a joint motion to dismiss the Berkshire Matter. Ans. ¶ 153; Exs. 39 (OBC534), 75.

183. On April 16, 2021, the court dismissed the Berkshire Matter. Ans. ¶ 154; Exs. 39 (OBC534), 76.

184. By the close of the representation, the respondent had earned the $14,500 (i.e., two $5,000 payments under the retainer agreement and one $4,500 flat fee payment) that she had paid herself from funds provided to her by Energy Smart. Ans. ¶ 155.

Count 4 - Conclusions of Law

185. Bar counsel charged that by withdrawing fees from the IOLTA account for the purpose of paying herself legal fees without first delivering to Energy Smart an itemized bill or other accounting, a written notice of the amount and date of the withdrawal, and a statement of the balance of remaining client funds, the respondent violated Mass. R. Prof. C. 1.15(d)(2). We conclude that bar counsel has proved this charge.

186. Bar counsel charged that by intentionally misusing unearned retainer funds for her own personal and business purposes, without deprivation, the respondent violated Mass. R. Prof. C. 1.15(b) and 8.4(c) and (h). We conclude that bar counsel has proved these charges.

187. Bar counsel charged that by failing to deliver to the client a full written accounting of the retainer payments upon request, and upon final distribution, the respondent violated Mass. R. Prof. C. 1.4(a)(4) and 1.15(d)(1). We conclude that bar counsel has proved these charges.

188. Bar counsel charged that by failing to keep the client reasonably informed about the status of the matter relating to the settlement and the motion to enforce the settlement, the respondent violated Mass. R. Prof. C. 1.4(a)(3) (keep client reasonably informed about status). We conclude that bar counsel has proved this charge.

189. Bar counsel charged that by failing to act with reasonable diligence and promptness, relating to the settlement and the motion to enforce the settlement, the respondent violated Mass. R. Prof. C. 1.3 (act with reasonable diligence and promptness). We conclude that bar counsel has proved this charge.

Matters in Mitigation and Aggravation

Mitigation

190. The respondent argued in mitigation that she was being treated for major depressive disorder between August 2019 and February 2020. Respondent's PFCs, pp. 1-2, 12-13, 14.

191. A medical condition or disability can be mitigating, but only if it caused the lawyer's misconduct. Matter of Haese, 468 Mass. 1002, 1007, 30 Mass. Att'y Disc. R. 197, 206 (2014) (finding medical condition did not cause intentional misconduct); Matter of Schoepfer, 426 Mass. 183, 188, 13 Mass. Att'y Disc. R. 679, 685 (1997). The burden is on the respondent to prove causation. BBO Rules, Sec. 3.28.

192. The respondent testified that she lost a race for district attorney in 2018, after which she "just kind of fell apart." Tr. 4:98-99 (Respondent). She was not doing well as of January 2019 and, when she did not bounce back, sought help in August 2019. Tr. 4:99-100 (Respondent). Her physician put her on Buspirone [sic], which did not work, and then, in October 2019, on Wellbutrin, which caused side effects. Tr. 4:102, 104 (Respondent). She did not tolerate Effexor. Tr. 4:104 (Respondent). She was put on Prozac in late December 2019, and this seemed to work. Tr. 4:104-105 (Respondent). She felt better by January 2020. Tr. 4:107-108 (Respondent); Respondent's PFCs, ¶ 5.

193. The respondent submitted fourteen pages of medical records, among them a record dated October 17, 2019, noting "Depressive disorder," below which is written "major depressive disorder, single episode, unspecified"; a second record from December 5, 2019 with the same notation; and a third dated December 27, 2019, also with the same notation. Ex. 85, pp. 4, 7, 12. A medical expenses report from August 1, 2019 to March 31, 2020 shows that she was prescribed medication in August and October 2019. Ex. 85, pp. 13-14.

194. We received no evidence connecting the respondent's alleged depression with any of the charged misconduct. She did not prove, to our satisfaction, that her alleged depression caused her repeatedly to ignore client requests, prepare inadequate bills, or miss deadlines. Moreover, the respondent's misconduct in the Energy Smart matter preceded and followed the period of depression she has identified. In addition, the practice lapses we observed during the course of our hearing occurred significantly after early 2020, when she claims she was effectively treated for depression. See infra, ¶ 201. As to her intentional conduct, it is certainly not obvious or intuitive that her alleged depression caused her to intentionally misuse funds. Cf. Matter of Johnson, 452 Mass. 1010, 1011, 24 Mass. Att'y Disc. R. 379, 383 (2008) (Court notes

that "`methodical and systematic'" misuse of funds for personal purposes is inconsistent with any conclusion that the respondent was operating under a cognitive disability."). We conclude that the respondent has failed to prove a causal connection between her alleged medical condition and her misconduct.

195. The respondent argues in mitigation that she was not aware of language in Mass. R. Prof. C. 1.5(d)(2) requiring her to provide a client with a bill before withdrawing her fees. Respondent's PFCs, ¶¶ 33-35 and p. 13.

196. This is not a factor in mitigation, and we reject it. Lawyers are expected to know the rules of professional conduct; ignorance of them is not a defense. See generally Matter of the Discipline of an Attorney, 392 Mass. 827, 835, 4 Mass. Att'y Disc. R. 155, 165 (1984); Matter of Burnbaum, 28 Mass. Att'y Disc. R. 80, 89-90 (2012). Additionally, just two years earlier, as part of her previous Diversion Agreement, the respondent had completed bar counsel's trust account class, which teaches about the accounting and recordkeeping rules relating to trust accounts and the near-sanctity of client funds, and the scrupulous care to use in dealing with them.

Aggravation

197. Bar counsel argues in aggravation that the respondent has substantial experience in the practice of law. This is a recognized factor in aggravation, and we so find. Matter of Luongo, 416 Mass. 308, 311-12, 9 Mass. Att'y Disc. R. 199, 203 (1993).

198. Bar counsel argues in aggravation that the respondent committed multiple violations of multiple rules of professional conduct. This is a recognized factor in aggravation, and we so find. E.g., Matter of Grayer, 483 Mass. 1013, 1018-19, 35 Mass. Att'y Disc. R. 231, 240 (2019); Matter of Strauss, 479 Mass. 294, 302, 34 Mass. Att'y Disc. R. 522, 531 (2018).

199. We find that the respondent displayed a lack of insight into or appreciation of her basic ethical obligations, and has not acknowledged the nature, effects, or implications of her misconduct, established factors in aggravation. See generally Matter of Clooney, 403 Mass. 654, 657, 5 Mass. Att'y Disc. R. 59, 63 (1988) ("respondent's persistent assertions that he did nothing wrong in the handling of either matter demonstrated that he 'continues to be unmindful of certain basic ethical precepts of the legal profession.'").

200. In similar fashion, the respondent appears to have learned nothing about recordkeeping, despite her relatively recent involvement with bar counsel on this issue. She explained away her refusal to respond to client inquiries by telling us she had nothing to report. Tr. 3:126, 146 (Respondent). She defended her refusal to provide an invoice to Katzoff by telling us that she does not "do statements." Tr. 3:88 (Respondent). Comments like these suggest to us that the respondent disregards the most basic obligations a lawyer owes her client, among them the need to respond to client inquiries, to communicate fully about the status of a matter, and to account scrupulously for funds taken as an advance retainer.

201. Moreover, the respondent routinely missed deadlines and did not follow our rules and orders, suggesting that she believes the rules do not apply to her. Many examples of this were given above, in the beginning of our report, at pp. 2-3 and n.1. This behavior bookended our hearing; as described, it began during the parties' prehearing exchange of documents, and continued through the parties' submission of their post-hearing briefs (March 2023). See generally Matter of Hunt, 31 Mass. Att'y Disc. R. 304, 311 (2015) ("[t]here can be no real question that it is necessary for the board to adopt and enforce procedural rules to govern the disciplinary process, and the time requirements contained in the board's rules are reasonable . . . ."). We conclude that this lack of insight is a further factor in aggravation.

Recommended Disposition

Bar counsel recommends a three-year suspension. The respondent recommends a private reprimand (admonition). We recommend a two year suspension.

The leading case discussing the misuse of retainer funds is Matter of Sharif, supra. In Sharif, the Court discussed the differences between retainer funds and ordinary client trust funds, and rejected the use of presumptive sanctions in the retainer context in favor of a more individualized approach. Sharif herself was suspended for three years, with the third year stayed on conditions, for varied and serious misconduct in two matters, including misuse of an advance fee resulting in actual deprivation, neglect of multiple client matters, and numerous intentional misrepresentations to bar counsel. Sharif, 459 Mass. at 570, 27 Mass. Att'y Disc. R. at 824. At least some of Sharif's misconduct was mitigated by depression, which was exacerbated by the deaths of several people close to her. Among the conditions of the stay of the third year of suspension was continued treatment for depression.

We have reviewed recent cases discussing the misuse of retainer funds, among them Matter of Yalovenko, 38 Mass. Att'y Disc. R __ (2022) (stipulation to three-year suspension, last six months stayed on conditions, for misconduct in three matters, including intentional misuse of a client retainer, failure to remit bills before taking fees, late but eventual refund of unearned fees; recordkeeping violations and failure to communicate with client, in violation of Rules 1.15(b)(1) and (3), 8.4(c) and (h), 1.15(d)(2) and 1.16(d), 1.1, 1.3, 1.4(a) and (b)); Matter of Blais, 38 Mass. Att'y Disc. R __ (2022) (suspension for six months and a day with reinstatement hearing for misconduct in one matter, including failure to deposit retainer into IOLTA, failure to send bill upon request, and misuse of client funds, with aggravation, including failure to

participate fully in the disciplinary process, in violation of Rules 1.15(b)(1), 1.15(d)(1); 8.4(c) and (h)); and Matter of Mahlowitz, 37 Mass. Att'y Disc. R. 402 (2021) (six-month suspension, last three months stayed for one year on conditions, for intentional misuse of unearned retainer funds without deprivation and other misconduct, with aggravation, in violation of Rules 1.5(b)(1), 1.15(b), (b)(1), (b)(3) and (b)(4)).

Other relevant cases are Matter of Wagner, 36 Mass. Att'y Disc. R. 460 (2020) (year-and-a-day suspension after default for misconduct in two matters, including charging and collecting an excessive fee; failure to deliver accounting to client; intentional misuse of unearned portion of retainer and failure to return it; failure to comply with bar counsel's several requests for information and failure to comply with Court's order of administrative suspension, in violation of Rules 1.5(a); 1.15(d)(1) and (2); 1.15(b)(1); 3.4(c); 8.1(b); 8.4(c),(d), (g) and (h); and 1.16(d)); Matter of Carmel-Montes, 35 Mass. Att'y Disc. R. 35 (2019) (six-month suspension for intentional misuse of retainer (1.15(b)); dishonesty in violation of Rule 8.4(c); conduct adversely reflecting fitness to practice in violation of Rule 8.4(h); and recordkeeping violations, aggravated by prior discipline, experience and attempt to blame others); Matter of Weisman, 30 Mass. Att'y Disc. R. 440 (2014) (one-year suspension for intentional misuse of retainer, with deprivation; illegal business deal with client; and other misconduct, in violation of Rules 1.15 (b); 8.4(c); 8.4(h); 1.4(b); 1.16(d); and 1.8(a)(1), (2), and (3), with aggravation); Matter of Sheldon, 32 Mass. Att'y Disc. R. 509 (2016) (three-year suspension, after default, for wide-ranging and extensive misconduct in three matters, including intentional misuse of two retainers and a flat fee; failure to return unearned funds; violation of a court order; failure to cooperate with bar counsel and failure to comply with order of administrative suspension, in violation of Rules 1.1, 1.2, 1.3, 1.4(a) and (b), 1.5(b)(1), 1.15(b)(1), 1.16(d), 3.4(c), 8.4(c), (d), (g) and (h)); Matter of

Sanders, 27 Mass. Att'y Disc. R. 766 (2011) (three-year suspension, with one year stayed on conditions, for misconduct in two matters, including one instance of intentional misuse of a retainer with deprivation, misrepresentations to courts and clients, and other misconduct, in violation of Rules 1.1, 1.2(a), 1.3, 1.4(a) and (b), 1.5(a), 1.15(b), 1.16(e), 3.1, 3.3(a)(1), 8.4(c) and (d), with mitigation (inexperience) and aggravation); Matter of Hopwood, 24 Mass. Att'y Disc. R. 354 (2008) (one-year suspension, with restitution ordered, for varied misconduct in one matter including failure to refund unearned retainer and render an accounting on demand; intentional misuse of retainer before it was earned; false representations to client; and intentional failure to cooperate with bar counsel's investigation, with aggravation including failure to appear at disciplinary hearing, in violation of Rules 1.15(b), 8.4(c), (d), (g) and (h), 1.16(d), and 8.1(b)).[8]

We are guided in our sanction recommendation by a few overriding principles. First, each case must be "`decided on its own merits and every offending attorney must receive the disposition most appropriate in the circumstances.'" Matter of Murray, 455 Mass. 872, 883, 26 Mass. Att'y Disc. R. 402, 418 (2010) (citation omitted). Next, sanctions for violations of the ethical rules should not be markedly disparate from sanctions handed out in comparable cases. Matter of Strauss, 479 Mass. 294, 300, 34 Mass. Att'y Disc. R. 517, 529 (2018). Finally, the overall purpose of disciplinary action is to protect the public and maintain its confidence in the integrity of the bar, as well as to deter others. Matter of Curry, 450 Mass. 503, 520, 24 Mass. Att'y Disc. R. 188, 223 (2008).

[8] The respondent's recordkeeping violations and lack of diligence in her representation of Energy Smart, where she exposed her clients to considerable risk would, without more, each merit a public reprimand. E.g., Matter of Keaveny, 35 Mass. Att'y Disc. R. 320 (2019); Matter of Castillo, 35 Mass. Att'y Disc. R. 61 (2019); Matter of Kane, 13 Mass. Att'y Disc. R. 321, 327-328 (1997).

While this is an inexact science, we think Sharif and Yalovenko are the closest, factually, to this case. Sharif's misconduct included numerous intentional misrepresentations to bar counsel, a feature not present here. The mitigation in Sharif is also not present here. Yalovenko is harder to compare, because we do not have any real analysis or factual description; the case was resolved by stipulation. Most of the other cases cited above featured less misconduct, or less serious misconduct, and do not provide a close match.

We do not think anything would be achieved by staying part of the suspension. See generally Matter of O'Neill, 30 Mass. Att'y Disc. R. 289, 295 (2014) (stay is appropriate "as an incentive or deterrent, as the case may be, to encourage or discourage certain conduct.").

For the foregoing reasons, we recommend a suspension of two years. This sanction is not markedly different from the cases we have analyzed above, with the same types of misconduct as we have found, and is sufficiently heavy to take into account the significant aggravating factors we have found, and to further our duty to protect the public.

Respectfully submitted,

By the Hearing Committee,

Amanda Phillips
Amanda Phillips, Esq., Chair

Matthew A. Kane
Matthew A. Kane, Esq., Member

Daniel P. Taylor
Daniel P. Taylor, Member