In re Mark Steven Lenz
Attorney-Respondent

Commission No. 2022PR00029

Synopsis of Hearing Board Report and Recommendation
(October 2023)

The Administrator charged Respondent in a single-count complaint with filing frivolous pleadings in violation of Rule 3.1 and knowingly making false statements of law to a court in violation of Rule 3.3(a)(1), in connection with four lawsuits he brought on behalf of a client in the Circuit Court of Cook County and statements he made in documents filed with the court in those proceedings. The Hearing Board found that the Administrator proved by clear and convincing evidence that Respondent filed frivolous pleadings in violation of Rule 3.1, but failed to prove by clear and convincing evidence that Respondent knowingly made false statements to a court. The Hearing Board recommended that Respondent be reprimanded for his misconduct.

BEFORE THE HEARING BOARD
OF THE
ILLINOIS ATTORNEY REGISTRATION
AND
DISCIPLINARY COMMISSION

In the Matter of:

MARK STEVEN LENZ,

Attorney-Respondent,

No. 6192658.

Commission No. 2022PR00029

REPORT AND RECOMMENDATION OF THE HEARING BOARD

SUMMARY OF THE REPORT

The Administrator charged Respondent in a single-count complaint with filing frivolous pleadings in violation of Rule 3.1 and knowingly making false statements of law to a court in violation of Rule 3.3(a)(1), in connection with four lawsuits he brought on behalf of a client in the Circuit Court of Cook County and statements he made in documents filed with the court in those proceedings. The Hearing Board found that the Administrator proved by clear and convincing evidence that Respondent filed frivolous pleadings in violation of Rule 3.1, but failed to prove by clear and convincing evidence that Respondent knowingly made false statements to a court. The Hearing Board recommended that Respondent be reprimanded for his misconduct.

INTRODUCTION

The hearing in this matter was held remotely by videoconference on February 15 and February 16, 2023, before a panel of the Hearing Board consisting of Carol A. Hogan, Chair, Shelbie J. Luna, and Michael J. Friduss. Richard C. Gleason, II and Evette L. Ocasio represented the Administrator. Respondent was present and represented by Stephanie L. Stewart and Daniel S. Klapman.

PLEADINGS AND MISCONDUCT ALLEGED

On June 28, 2022, the Administrator filed a single-count complaint against Respondent, charging him with bringing a proceeding without a basis in law and fact, in violation of Illinois Rule of Professional Conduct 3.1, and knowingly making a false statement of law to a tribunal, in violation of Illinois Rule of Professional Conduct 3.3(a)(1), based upon his bringing four slander of title lawsuits that were precluded under established Illinois law, and misstating legal precedent in the four complaints and in his brief in response to motions to dismiss the complaints.

In his Answer, Respondent admitted some factual allegations and denied others, and denied the charges of misconduct.

EVIDENCE

The Administrator called Respondent as an adverse witness. Administrator's Exhibits 6, 7, 8, 9, 18, and 25 were admitted into evidence in their entirety. Administrator's Exhibits 1 and 11 were admitted in part, as follows: pages 15-16, 17-22, and 52 of Administrator's Exhibit 1 were admitted; and pages 177-179, 183-189, 191-195, 236-244, 248-249, and 401-419 of Administrator's Exhibit 11 were admitted. (Tr. 208, 453-54.)

Respondent testified on his own behalf. He presented the testimony of Allen Shapiro as a fact witness. He also presented the testimony of five character witnesses. Respondent's Exhibits 1 and 2 were admitted into evidence. (Tr. 390.)

FINDINGS OF FACT AND CONCLUSIONS OF LAW

In attorney disciplinary proceedings, the Administrator has the burden of proving the charges of misconduct by clear and convincing evidence. In re Winthrop, 219 Ill. 2d 526, 542, 848 N.E.2d 961 (2006). Clear and convincing evidence requires a high level of certainty, which is greater than a preponderance of the evidence but less stringent than proof beyond a reasonable

doubt. In re Santilli, 2012PR00029, M.R. 26572 (May 16, 2014) (Hearing Bd. at 3) (citing People v. Williams, 143 Ill. 2d 477, 484-85, 577 N.E.2d 762 (1991)). In determining whether the Administrator has met that burden, it is the responsibility of this hearing panel to determine the credibility of witnesses, weigh and resolve conflicting testimony, draw inferences from the evidence, and make factual findings based upon all of the evidence. In re Edmonds, 2014 IL 117696, ¶ 35; Winthrop, 219 Ill. 2d at 542-43; In re Timpone, 157 Ill. 2d 178, 196, 623 N.E.2d 300 (1993).

The Administrator charged Respondent with bringing or defending a proceeding without a basis in law and fact, based upon his filing of four slander of title claims that were not permissible under Illinois law, and with knowingly making a false statement of law to a tribunal, based upon his mischaracterization of precedent in court filings.

A. Summary

The Administrator proved that Respondent violated Rule 3.1 by filing the four slander of title claims without a basis in law and fact to do so. However, the Administrator failed to prove that Respondent knowingly made false statements to a court and therefore failed to prove that he violated Rule 3.3(a)(1).

B. Admitted Facts and Evidence Considered

Respondent was licensed to practice law in Illinois in 1986, and in Michigan in 2005. (Ans. at 1, §A.) During the time period relevant to this matter, he was an associate attorney at the law firm Fisher Cohen Waldman Shapiro[1] in Glenview, Illinois, and practiced primarily in the area of real estate law. (Ans. at par. 1.)

Edan Gelt/Harlem Irving Plaza Litigation

In February 2016, Harlem Irving Plaza ("HIP") filed a complaint in Cook County Circuit Court against its former employee, Edan Gelt, alleging that Gelt violated her fiduciary duties to HIP by conduct including diverting HIP funds to limited liability companies she controlled,

submitting false expense reports to HIP, and using the proceeds of those activities to obtain four parcels of real estate. On the same day, HIP filed *lis pendens*[2] notices as to the four properties that HIP alleged were funded by Gelt's activities. (Ans. at par. 2.)

Respondent's law firm filed its appearance on behalf of Gelt in 2016. In or about January 2017, Respondent and Gelt agreed that Respondent would represent Gelt on behalf of the firm in matters relating to the defense of HIP's lawsuit against her. Daniel Mathless represented HIP in the lawsuit. (Ans. at par. 3.)

In June 2017, Respondent filed in Cook County Circuit Court's Chancery Division four separate complaints against HIP as well as Mathless personally regarding the four *lis pendens*. In each of the four complaints, Respondent alleged that HIP and Mathless slandered the title of the subject property based upon HIP's filing of the *lis pendens*. (Ans. at par. 4.)

In Ringier America Inc. v. Enviro-Technics, Ltd., 284 Ill. App. 3d 1002, 673 N.E.2d 444 (1996), the Illinois Appellate Court held that the filing of a *lis pendens* is absolutely privileged as to a claim of slander of title. About a week after Respondent filed the four slander of title actions, Mathless emailed Respondent and, citing the Ringier case, informed him that a party to a lawsuit had an absolute privilege to file a *lis pendens* whenever there was a lawsuit pending concerning the property at issue, and that the *lis pendens* filer was immune from a claim of slander of title. Mathless asked Respondent, in light of the Ringier case, to voluntarily dismiss the four complaints within ten days. Respondent received Mathless' email but did not respond to it or procure a dismissal of the complaints. Consequently, in August 2017, HIP and Mathless filed motions to dismiss the slander of title actions, citing the holding in Ringier. *(*Ans. at pars. 5-7.)

In September 2017, Respondent filed combined responses to HIP's and Mathless's motions to dismiss in each of the four cases. In each of the responses, Respondent cited the case of Kurtz v. Hubbard, 2012 IL App. (1st) 111360, 973 N.E.2d 924 (2012). (Ans. at pars. 8-9.)

In paragraph three of the responses to the motions to dismiss, Respondent wrote:

> Defendants allege that Plaintiff's Complaint fails to state a cause of action as the recording of a *lis pendens* notice is subject to an "absolute privilege" under Illinois law, citing the case of [*Ringier*]. Defendants, however, ignore more recent Illinois law. 16 years after the *Ringier America* case, in *Kurtz v. Hubbard*, 2012 IL App (1st) 111360 (1996), the Court found that "Illinois courts have long held that the act of *maliciously* recording a document **...** that clouds title to real estate is sufficient to support a claim of slander of title..." and that "Proof of malice *will* defeat an **absolute** privilege."

(Ans. at par. 10; see also Adm. Ex. 7 at 188) (bold emphasis added).)

However, Kurtz did not actually state what Respondent represented. Rather, the court in Kurtz reiterated its holding in Ringier, stating: "In [Ringier], … we held, as a matter of first impression, that the absolute privilege afforded statements contained in judicial pleadings extended to the filing of an associated *lis pendens* notice, where the underlying complaint made allegations affecting an ownership interest in the subject property." (Ans. at par. 11 (quoting Kurtz, 2012 IL App. (1st) 111360, at 14).)

The court in Kurtz further stated:

> Illinois courts have long held that the act of maliciously recording a document, **such as a lien**, that clouds title to real estate is sufficient to support a claim for slander of title. This precedent provides the basis for our holding that statements in a lien must be conditionally rather than absolutely privileged. As defendants acknowledge, if an absolute privilege were accorded to statements made in a lien, a showing of malice would be insufficient to defeat this privilege. ([A]n absolute privilege provides a complete immunity from civil action even though statements are made with malice.) On the other hand, proof of malice will defeat a **qualified privilege**. Therefore, implicit in the requirement that malice must be shown in an action for disparagement of title based on a lien is the existence of a qualified privilege for statements made in the lien.

(Ans. at par. 9 (quoting Kurtz, 2012 IL App. (1st) 111360, at 19) (emphasis added).)

In paragraph three of the responses to the motions to dismiss, Respondent omitted "such as a lien" and changed "qualified" to "absolute" privilege, thereby misquoting Kurtz. (See Ans. at par. 10; Adm. Ex. 7 at 188.) In addition, in paragraph 24 of the combined responses, Respondent again misquoted Kurtz by stating that a *lis pendens* was to be accorded a qualified and not an absolute privilege, and that, "as discussed above, 'proof of malice' will defeat an absolute privilege." (Ans. at par. 12; Adm. Ex. 7 at 193.)

HIP and Mathless filed replies in support of their motions to dismiss. Each of those replies pointed out Respondent's mischaracterization of the holding in Kurtz. (Ans. at par. 14; see also, e.g., Adm. Ex. 7 at 207-13, 215-20.)

On November 15, 2017, Judge Neil Cohen granted HIP's and Mathless's motions to dismiss with prejudice in case number 2017 CH 08229. On November 30, 2017, Judge Thomas Allen and Judge Sanjay Tailor granted HIP's and Mathless's motions to dismiss with prejudice in case number 2017CH08230 and 2017CH08232, respectively. On December 18, 2017, Judge Raymond Mitchell granted HIP's and Mathless's motions to dismiss with prejudice in case number 2017CH08235. (Ans. at par. 16.)

After their motions to dismiss were granted, HIP and Mathless sought sanctions against Respondent pursuant to Illinois Supreme Court Rule 137. Judge Allen and Judge Mitchell denied the motions for sanctions, and Judge Cohen and Judge Tailor granted the motions for sanctions. (Ans. at pars. 17-19.)

Testimony of Respondent

Respondent testified that, after he graduated from law school, he was an associate in a Chicago real estate boutique firm, handling real estate transactions. He never handled litigation while at that firm. After a few years, he went to work for the City of Chicago's Office of Corporation Counsel in the real estate and land use division, where he remained for almost 19

years. In that role, he represented the City of Chicago in complex real estate transactions relating to affordable housing. He was not a litigator for the City of Chicago; in his almost-19 years with the City, he filed an appearance in a litigation matter one or two times, in matters that involved building code violations. (Tr. 344-49.)

After Respondent left the city in 2005, he worked for several law firms at which he represented clients in complex real estate transactions. He was not a litigator at the firms, but would help litigation attorneys on real estate issues, and occasionally would go to court on behalf of clients who had building code violations. (Tr. 349-52.)

In 2014, Respondent began working for his current firm, where he continues to handle complex real estate transactions. He was asked to help firm partner Allen Shapiro with the Gelt matter because the firm was short-staffed; its only litigation attorney did not have the capacity to assist Shapiro. (Tr. 352-53.)

Respondent testified that, prior to filing the four slander of title actions, he spent about 20 hours conducting legal research on slander of title actions, looking to other jurisdictions as well as Illinois. He believed he identified current Illinois law to support the slander of title actions, particularly Kurtz v. Hubbard, and that he had a good faith basis in both fact and law for filing the lawsuits. (Tr. 353-54.)

Respondent testified that, in discussing the Kurtz opinion in his responses to the motions to dismiss, he used ellipses to omit language that had to do with liens as opposed to *lis pendens*, the latter of which was at issue in the Gelt/HIP matter. He acknowledged that he changed "qualified" to "absolute." He testified that he "got it wrong," "made a mistake," and "misquoted the case." (Tr. 114-118.)

Respondent testified that he read the Ringier case at some point, but does not recall if he read it before or after filing the four slander of title actions. He testified that, when he was conducting legal research in order to respond to the motions to dismiss the slander of title actions, he focused on the Kurtz case because it was the most recent case addressing *lis pendens*. He read the Kurtz case prior to filing the slander of title actions. (Tr. 53-54, 57.)

When shown a printout of the Kurtz opinion from the firm's files, he acknowledged that he made notations on the printout, including a checkmark next to a citation from the Ringier case and underlining of multiple passages in the opinion. However, he testified that he did not know when he made those notations, and he could have made the notations after it was pointed out that he had misquoted the case. (Tr. 58-59, 62-63; see also Adm. Ex. 11 at 186.)

Regarding additional cases from the firm's files, Respondent testified that he did not know when he reviewed each of the cases or when he made notations on them. He noticed that some of the cases had print dates on them, and that none of the cases had a print date earlier than June 2017, when the slander of title actions were filed. (Tr. 193; see also generally Adm. Ex. 11.)

Respondent testified that, after he received the email from Mathless citing the Ringier opinion and demanding that he dismiss the slander of title actions, he was shocked, because Mathless had only cited Ringier and not Kurtz. He went to his office and looked at his notes, and, according to his notes, it seemed like Kurtz had overruled Ringier and was the current case law. He thought that whatever Ringier said, it must have been modified by Kurtz. (Tr. 194, 356, 386.)

Respondent consulted with Paul Fisher, who was then the general counsel for the law firm. He told Fisher that he believed he had a legal and factual basis for the slander of title actions, and Fisher instructed him to proceed on them and let the courts decide. (Tr. 356.) Respondent explained that he went to Fisher because Fisher was the firm's general counsel and Respondent

felt he needed to be aware of Mathless's email. In addition, Respondent sought Fisher's advice because Fisher was a very experienced and good attorney and Respondent relied on his judgment. (Tr. 356-57.)

After Respondent talked with Fisher, he also showed Allen Shapiro the email from Mathless. He told Shapiro that he double-checked his notes and thought that they had a solid legal and factual basis to bring the actions. Shapiro told Respondent to proceed with the actions. (Tr. 357.)

Respondent testified that, in talking with Fisher and Shapiro, he was trying to make sure he was doing the right thing. He was not trying to mislead Shapiro and Fisher, who were not only his colleagues at the firm but also his personal friends for many years. He testified that he "would not ever intend to lie to them or try to deceive them." (Tr. 357-58.)

HIP and Mathless filed their motions to dismiss, and Respondent prepared and filed the responses to the motions to dismiss in which he misquoted Kurtz. HIP and Mathless then filed replies in support of their motions to dismiss. (Tr. 358, 360.)

After reading the replies, Respondent re-read Kurtz and realized that HIP and Mathless were correct that he had mischaracterized the Kurtz holding in his responses. When he realized his mistake, he felt horrible, and that he had let down the firm and his client. (Tr. 360-61.) He talked to Shapiro, Fisher, and another firm colleague and told them what had happened. He acknowledged to them that he had miscited Kurtz, and they discussed what the next step should be, given that all four cases were fully briefed. They decided to "shift gears" and advocate for a change in the law. (Tr. 118-19, 122, 360-62.)

Respondent acknowledged that he never filed a motion to withdraw the misquotes or the argument that Kurtz supported his position. He also acknowledged that he did not argue for a

change in the existing law in any of his written responses to the motions to dismiss, because he was not aware of his misinterpretation of the law until after the reply briefs were filed. (Tr. 123, 125.)

In two of the slander of title cases – before Judge Allen and Judge Tailor – the courts allowed oral argument on the motions to dismiss. Respondent's colleague Allen Shapiro handled the principle oral argument and Respondent was there as backup. At oral argument, they acknowledged the error in Respondent's cite of Kurtz, and then argued for a change in existing law based upon the law in other jurisdictions and the practical implications of *lis pendens*. In a third case, before Judge Cohen, Respondent and Shapiro made those same arguments during oral argument on their motion to reconsider. (Tr. 125-26, 128, 173-74, 197-98, 363.) There was no oral argument in the fourth case, before Judge Mitchell. (Tr. 141.)

After all four judges granted the motions to dismiss, HIP and Mathless filed motions for sanctions. In oral arguments on the motions for sanctions, Respondent and Shapiro acknowledged and apologized for the erroneous quote of Kurtz, and discussed why they were advocating for a change in the law. (Tr. 365-67.)

Respondent testified that he has never held himself out to be an expert in litigation. He cited case law in the slander of title complaints because, at that time, he did not know that it was unusual to cite a case in a complaint and he thought that doing so bolstered his argument that he had a basis in fact and law for the complaint. When he filed the lawsuits, he believed he had a good faith basis in fact and law for doing so. He testified that he now understands that he was incorrect about the law in Illinois, but he never intended to deceive the courts. (Tr. 190-92, 198.)

Respondent testified that, with the benefit of hindsight, he knows he should not have filed four separate slander of title lawsuits and should not have named Mathless as a defendant in those

actions. Instead, he should have filed a motion with the judge overseeing the underlying litigation. He further testified that, in misciting Kurtz, he was "absolutely not" trying to trick all four judges, Mathless, or counsel for Mathless and HIP. (Tr. 195-96.)

Respondent testified that it was "stressful" for him to be involved in the Gelt matter because it was a complex litigation matter and he had "practically no experience" in complex litigation. He was not trying to deceive or defraud anyone at any time during the case, and would never lie to help a client. (Tr. 371.)

Testimony of Allen Shapiro

Allen Shapiro is a partner in Respondent's law firm. He testified that he took over representation of Eden Gelt and her husband in the HIP lawsuit from another law firm. (Tr. 279-80.) He initially sought assistance with the case from another partner who was the primary litigator at the firm, but that attorney was not able to help because he was too busy with other matters. Shapiro then asked Respondent to help with the case, and Respondent agreed. (Tr. 282-83.)

Shapiro testified that his firm filed the slander of title lawsuits in order to free up collateral so that they could settle the matter with HIP. (Tr. 289.) He testified that Respondent conducted legal research in preparing the slander of title cases, and his understanding of Respondent's research was that there was a case that indicated that there was a narrow exception to the privilege afforded *lis pendens* that would allow the firm's client to remove the *lis pendens* as to the four properties. He did not review Respondent's research prior to the filing of the slander of title actions. (Tr. 289-90.)

Shapiro testified that, after the four lawsuits were filed, Respondent told him that Respondent had received an email from Daniel Mathless, HIP's counsel and a named defendant in the slander of title actions, demanding dismissal of the four cases and threatening sanctions. Shapiro asked Respondent if the position taken by Mathless was correct; Respondent told him no,

and that he had a recent case – the Kurtz case – that contradicted Mathless' position. Shapiro did not review the Kurtz case at that time, but relied on Respondent's representations about the status of the law. Neither Shapiro nor Respondent withdrew the slander of title lawsuits because they felt the law was on their side. (Tr. 290-93.)

HIP and Mathless filed motions to dismiss in all four matters, and Respondent prepared responses to the motions to dismiss. Shapiro read the responses but did not check the cases cited in them. His understanding at the time was that the firm had a good faith basis in law and fact for filing the slander of title cases. (Tr. 293-95.)

HIP and Mathless filed replies in support of their motions to dismiss, arguing that the response briefs had misstated the Kurtz case and that the filing of the *lis pendens* was subject to an absolute privilege, not a qualified privilege as the response briefs claimed. Shapiro then read the Kurtz case and realized that it was misquoted in the response briefs and that his understanding of the law was incorrect. That realization impacted his strategy with respect to the slander of title lawsuits. His clients still needed to remove the *lis pendens* in order to utilize the properties to raise money for a potential settlement with HIP, so Shapiro and his colleagues argued that it was time for a change in the law regarding the filing of a *lis pendens*. (Tr. 295-96.)

Shapiro testified that the motions to dismiss were fully briefed at the time he and his colleagues discovered the misquote of the Kurtz case. Consequently, they did not raise the argument for a change of law in the response briefs because, at the time the response briefs were filed, they believed the law was in their favor. When they found out the law did not support their initial position, their strategy shifted to arguing for a change in Illinois law, based upon the law in other jurisdictions where the recording of a *lis pendens* is protected by a qualified privilege rather than an absolute privilege. (Tr. 297-99.)

Shapiro testified that neither he nor Respondent formally withdrew the misquote of the Kurtz case in the response briefs because, until the replies came in, he was not aware of the misstatement. However, they had an opportunity to argue for a change in the law before Judge Tailor and Judge Allen, both of whom allowed oral argument on the motions to dismiss, and before Judge Cohen, who allowed oral argument on a motion to reconsider. Shapiro primarily handled the oral argument before all three judges. In those oral arguments, he acknowledged the mistaken cite to the Kurtz case and argued for a change in Illinois law regarding the type of privilege that is afforded to *lis pendens*. (Tr. 301-304, 309.)

Shapiro testified that the slander of title cases were not brought to harass HIP or Mathless, to increase the cost of litigation for HIP or Mathless, to bring pressure on HIP to gain some type of tactical advantage in the Gelt matter, or for any other improper purpose. Rather, they were brought for the purpose of raising money to meet HIP's settlement demands, and his firm believed it had a good faith basis to file them. (Tr. 304.) He explained that he was involved in the decision to file four separate slander of title actions, and that the reasoning behind the strategy was that each of the entities was separately owned, had an independent cause of action as an injured titleholder with respect to the effect of the *lis pendens*, and had an independent issue regarding liens, among other things. (Tr. 332-33.)

C. Analysis and Conclusions

Rule 3.1

Rule 3.1 provides that "[a] lawyer shall not bring or defend a proceeding, or assert or controvert an issue therein, unless there is a basis in law and fact for doing so that is not frivolous, which includes a good-faith argument for an extension, modification or reversal of existing law." Ill. R. Prof'l Cond. 3.1. Based on the evidence presented at hearing, we find that the Administrator proved that Respondent violated Rule 3.1.

A pleading, or a position asserted in a proceeding, is frivolous where there is no objectively reasonable basis in law or fact for the pleading or position at the time of filing. In re Stolfo, 2016PR00133, M.R. 29728 (Mar. 19, 2019) (Hearing Bd. at 10) (citation omitted). In applying this objective standard in determining whether a pleading or position is frivolous, we ask what was reasonable for an attorney to believe under the circumstances at the time of the filing. In re Greanias, 01 CH 117, M.R. 19079 (Jan. 20, 2004) (Hearing Bd. at 44). A pleading or position will be found to be frivolous if a reasonably prudent attorney acting in good faith would not have brought the action or asserted the position. Stolfo, 2016PR00133 (Hearing Bd. at 10); In re Balog, 98 CH 80 (Hearing Bd. (reprimand), Apr. 26, 2000, at 11). An attorney does not have sufficient grounds to file a pleading or assert a position simply because the attorney "honestly believed" the case was well-grounded in fact and law. Greanias, 01 CH 117 (Hearing Bd. at 44) (citations omitted).

Based upon the foregoing standards, we find that, whether he intended to or not, Respondent brought proceedings, and asserted and controverted issues within those proceedings, that had no basis in law that was not frivolous, because the slander of title complaints were clearly barred by established Illinois law.

Comment 2 to Rule 3.1 requires lawyers to "inform themselves about the facts of their clients' cases and the applicable law and determine that they can make good-faith arguments in support of their clients' positions." Respondent testified that he researched slander of title actions prior to filing the slander of title lawsuits, and he cited to Kurtz in the complaints. However, we believe that any reasonably prudent attorney would have realized, even from a cursory reading of Kurtz, that *lis pendens* are accorded an absolute privilege in Illinois, and therefore that the slander of title actions had no basis in law.

Respondent then had an opportunity to rectify his mistake after Mathless sent him an email informing him about the Ringier case, which provides that *lis pendens* are absolutely privileged in Illinois and demanding that he dismiss the slander of title actions. We believe that, at that point, a reasonably prudent attorney at the very least would have read the Ringier case to determine whether Mathless's argument had any merit. But, according to Respondent, he did not do so. Instead, he merely reviewed his notes on the Kurtz case – apparently, based on his testimony, he did not even re-read the case itself – and told his law firm partners that his research supported their position. We find this course of conduct to be objectively unreasonable, particularly given that the Kurtz case cited to Ringier and a re-reading of it would have demonstrated to Respondent and his colleagues that Mathless was correct that the slander of title actions were, in fact, without legal basis.

That Respondent's firm eventually argued for a modification of existing Illinois law does not change our analysis. Respondent and his colleagues did not raise that argument until after the motions to dismiss were fully briefed, which strikes us as too little, too late in the context of Rule 3.1, pursuant to which we consider what was reasonable for an attorney to believe under the circumstances ***at the time of filing***. See, e.g., Greanias, 01 CH 117 (Hearing Bd. at 44); In re Ribbeck, 2014PR00092 (Review Bd., April 19, 2016) at 12; Stolfo, 2016PR00133 (Hearing Bd. at 10); In re Yu, 2016PR00104 (Hearing Bd. at 14) (Feb. 22, 2018).

As discussed above, we find that, at the time Respondent filed the slander of title complaints, and surely by the time he drafted responses to the motions to dismiss, a reasonably prudent attorney would have informed himself about the applicable law and determined that Illinois law was well-settled, and unequivocally barred the slander of title actions. Cf. Ribbeck, 2014PR00092 (Review Bd. at 12) (stating that "Rule 3.1 … requires us to judge [the attorney's]

conduct based on the law in effect at the time of filing, and to take into account that the law … was ambiguous and in flux at that time;" and holding that "it was objectively reasonable" for the attorney to file her pleading, either because controlling law allowed her to do so or as a good-faith argument for the extension, modification, or reversal of the existing law).

Accordingly, we conclude that, under the circumstances that existed at the time Respondent filed the slander of title actions, and later when he filed the response briefs to the motions to dismiss, it was objectively unreasonable for him to believe that he had a basis in law for the slander of title actions, and that a reasonably prudent attorney acting in good faith would not have brought or maintained the slander of title actions. We therefore find that he violated Rule 3.1.

Rule 3.3(a)(1)

Rule 3.3(a)(1) provides that "[a] lawyer shall not ***knowingly*** … make a false statement of fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer." Ill. R. Prof'l Cond. 3.3(a)(1) (emphasis added). We find that the Administrator failed to prove that Respondent violated Rule 3.3(a)(1).

The "real issue" in determining whether or not an attorney violated Rule 3.3(a)(1) is the intent with which the attorney made the purportedly false statement. In re Quade, 2014PR00076 (Hearing Bd. Oct. 28, 2015) at 13. "Rule 3.3(a)(1) includes a specific mental statement requirement, *i.e.*, the attorney must act knowingly," where "knowingly" means "actual knowledge of the fact in question." Id. Noting that the Administrator bore the burden of proving the charges by clear and convincing evidence, the Hearing Board in Quade found that the Administrator did not meet his burden of proving that the attorney acted with the intent required to violate Rule 3.3(a)(1). The Hearing Board reasoned that, based on its review of all of the evidence, the attorney's statement "impressed us as an error, a mistake an experienced [attorney] such as Respondent should not have made, but did make, unintentionally." Id. The Hearing Board thus

found that the evidence "did not clearly and convincingly show Respondent knowingly made a false statement or acted with any intent to deceive." Id. at 14.

We accept as credible Respondent's testimony that, while he made a serious mistake by misstating a case in his pleadings and response brief, it was not intentional, and he did not realize his mistake until the defendants in the slander of title matters filed their replies in support of their motions to dismiss. We also note that Allen Shapiro's testimony corroborated Respondent's testimony that Respondent made a serious but unintentional error.

We also accept as credible Respondent's testimony that he was inexperienced in litigation, and that the only litigation he had handled in the past involved building code violations. Moreover, we find it clear from the evidence that Respondent lacked oversight from his firm. Both Respondent and his firm should have recognized that he was not sufficiently experienced in litigation to represent clients in a complex and hotly contested litigation matter. But their error in judgment does not render Respondent's erroneous cites to Kurtz knowingly false.

We acknowledge the Administrator's overarching theory of the case that Respondent, on behalf of his client, knowingly filed frivolous pleadings and knowingly misrepresented relevant law regarding the privilege afforded to *lis pendens* in order to pressure HIP to settle the underlying litigation with his client. However, we find that, other than broad and conclusory arguments regarding Respondent's nefarious motives, the Administrator presented virtually no evidence to support his theory. "[S]uspicious circumstances do not satisfy the Administrator's burden of proof." In re McNabola, 2018PR00083, M.R. 31257 (Sept. 21, 2022) (Hearing Bd. at 13) (citing Winthrop, 219 Ill. 2d at 550).

Moreover, this panel is charged with, among other things, drawing inferences from the evidence. Timpone, 157 Ill. 2d at 196. Based upon the evidence presented to us, we find that it

defies common sense, and is contrary to human nature, to believe that Respondent thought he could pull the wool over the eyes of his highly experienced and skilled opposing counsel as well as four different judges, not to mention his law partners. It is not plausible that Respondent knew that he was misrepresenting the law but did so anyway. Rather, the more reasonable inference – which is supported by the evidence – is that he was wrong in his initial reading of the Kurtz case, and then overly cavalier about Mathless's contention that the slander of title actions were precluded under established Illinois law. We do not condone Respondent's carelessness, but neither do we find that it amounts to dishonesty.

Accordingly, we find that the Administrator failed to prove by clear and convincing evidence that Respondent's misstatement of the law was knowing, and therefore failed to prove that Respondent violated Rule 3.3(a)(1).

EVIDENCE IN MITIGATION AND AGGRAVATION

Mitigation

Respondent has no prior discipline.

Regarding his misrepresentation of the law in Illinois regarding whether a *lis pendens* is accorded an absolute or a qualified privilege, Respondent testified that he regrets his "embarrassing" error and is remorseful for his mistake. He also "absolutely" and "immensely" regrets filing the four separate slander of title lawsuits, and acknowledges that he should have brought a motion before the judge in the underlying litigation. (Tr. 126, 150, 192, 350.)

Respondent has engaged in community service and volunteer work since he was in college, including serving as a Big Brother to a child with special needs while in college; working with a job training program based in Detroit, with which he has been involved since 1978; working on immigration-related social justice issues while in law school; and engaging in fundraising for

Doctors Without Borders and the March of Dimes. He testified that it has been important to him to be involved in social justice issues and volunteer work through his life because he is a practicing Catholic and, according to the Gospel, doing such work is important. (Tr. 336-44.)

Respondent presented the testimony of five character witnesses, as follows:

Steven McKenzie has worked at the City of Chicago Department of Law, Building and License Enforcement Division, for the past 17 years as a supervising corporation counsel. He met Respondent early in his career, and has worked with Respondent on 20 or more matters. McKenzie believes Respondent is a good lawyer who approaches his work with the best interest of the client in mind. He finds Respondent to be trustworthy, and believes that Respondent's reputation in the legal community for truthfulness is "very high." (Tr. 219-26.)

Rodney Seyffert is an attorney licensed to practice law in Canada. He met Respondent in the late 1990s. Seyffert found Respondent to be "a man of his word" and trustworthy in his dealings with Seyffert, never had reason to doubt Respondent's integrity, and never heard anything negative about Respondent's honesty. (Tr. 229- 235.)

Miluska Novota met Respondent in 2000, when she started working as an assistant corporation counsel with the City of Chicago in the finance department and Respondent was a senior attorney in real estate. They frequently worked on projects together. She testified that had no reason to doubt his word or his integrity and believes that he has the "highest and most honorable character." (Tr. 241-45.)

George Heartwell has known Respondent since 2004, when Heartwell was serving in his first year as mayor of Grand Rapids, Michigan and Respondent was working at the Grand Rapids office of the law firm that the city hired to be the city's legislative affairs counsel. Heartwell and

Respondent remained friends after Respondent left the firm and moved back to Chicago. Heartwell testified that he believes Respondent to be trustworthy and "a person of integrity." (Tr. 249-52.)

Gratia Shiffrin met Respondent in 1995, when she worked in the finance division of the City of Chicago Law Department, and she and Respondent, who was in the real estate division, had clients in common. She also worked with him later, when she was an attorney with Catholic Charities and hired Respondent as outside counsel on an affordable housing project. She testified that Respondent has an excellent reputation for truthfulness among the lawyers she knows, and that there has never been any doubt or question about his honesty. (Tr. 257-264.)

Aggravation

In his written opinion granting the motions for sanctions against Respondent, Judge Tailor stated:

> [P]laintiff's argument that sanctions are not warranted because it had a good faith basis to argue for a change to existing law does not stave off Rule 137 sanctions because no such argument was advanced in response to defendants' motion to dismiss. Instead, plaintiff argued that *Kurtz* supported its claim, even though it clearly didn't.

(Ans. at par. 19; Adm. Ex. 8 at 439.)

RECOMMENDATION

A. Summary

Based upon the nature of Respondent's misconduct, and taking into account the mitigating and aggravating factors, the Hearing Board recommends that Respondent be reprimanded.

B. Analysis and Conclusions

In determining appropriate discipline, we are mindful that the purpose of these proceedings is not to punish the attorney but rather to safeguard the public, maintain the integrity of the profession, and protect the administration of justice from reproach. In re Edmonds, 2014 IL 117696, ¶ 90. We also consider the deterrent value of attorney discipline and "the need to impress

upon others the significant repercussions of errors such as those committed by" Respondent. In re Discipio, 163 Ill. 2d 515, 528, 645 N.E.2d 906 (1994) (citing In re Imming, 131 Ill. 2d 239, 261, 545 N.E.2d 715 (1989)). Finally, we seek to recommend a sanction that is consistent with sanctions imposed in similar cases, In re Timpone, 157 Ill. 2d 178, 197, 623 N.E.2d 300 (1993), while also recognizing that each case is unique and must be decided on its own facts. In re Mulroe, 2011 IL 111378, ¶ 25.

In arriving at our recommendation, we consider those circumstances that may mitigate or aggravate the misconduct. In re Gorecki, 208 Ill. 2d 350, 802 N.E.2d 1194 (2003). In mitigation, Respondent has no prior discipline in 37 years of practice. He cooperated fully in his disciplinary proceedings, and demonstrated genuine remorse for his actions that led to the disciplinary proceedings against him. He has engaged in extensive volunteer work and community service throughout his entire adult life, and, during his career at an attorney, focused much of his work on social justice issues such as affordable housing. Five witnesses testified credibly about Respondent's good character, integrity, trustworthiness, and professionalism. In short, until this disciplinary proceeding, Respondent has led an exemplary personal and professional life. We have no concern whatsoever that he will engage in misconduct again; we feel certain that he will not.

The Administrator contends that there are numerous aggravating factors involved in this matter. However, we find that the evidence fails to support the aggravation argued by the Administrator, and therefore that the Administrator did not meet his burden of proof on the alleged aggravating factors.

For example, we find insufficient evidence to support the Administrator's allegation that Respondent testified falsely at his hearing about the oral arguments on the motions to dismiss. It is true that, in his written opinion granting the motions for sanctions, Judge Tailor stated that no

argument for a change in existing law was advanced in response to the motions to dismiss. However, we do not find this one sentence sufficient to overcome Respondent's testimony that, in oral argument before Judge Tailor, Judge Allen, and Judge Cohen, he and Shapiro argued for a change in existing Illinois law regarding the privilege afforded to *lis pendens*. It is possible that, in drafting his opinion, Judge Tailor referred to the written briefs on the motions to dismiss, which Respondent acknowledged did not contain any arguments for a change in existing law. Notably, the Administrator produced no transcripts from any of the oral arguments that would support his contention or refute Respondent's testimony. We therefore decline to find that Respondent testified dishonestly at his hearing.

The Administrator also argued that Respondent demonstrated a lack of remorse and a failure to recognize the wrongfulness of his actions by continuing to claim that he had a good-faith basis for his claims and that his mischaracterization of Kurtz was inadvertent. We disagree, and find, instead, that Respondent was simply defending himself against the misconduct charges by testifying about his actions. We do not regard his legitimate defense of himself in these disciplinary proceedings as demonstrating a lack of remorse or failure to recognize the wrongfulness of his actions.

The Administrator further alleges in aggravation that Respondent harbored a dishonest motive for filing the four slander of title actions, and that the sole purpose of the lawsuits was to pressure HIP to settle the underlying litigation with his client. However, there is no evidence – much less clear and convincing evidence – that Respondent had an ulterior motive in filing the lawsuits. Moreover, as discussed above, we accept as credible his testimony regarding the circumstances surrounding the filing of the slander of title actions. For this same reason, we decline to find that Respondent engaged in a pattern of intentional misconduct, because we find that the

evidence established that his actions were born out of inexperience and errors rather than nefarious intent.

Finally, the Administrator contends that we should consider in aggravation that Respondent was an experienced practitioner. We disagree. The undisputed evidence established that Respondent, while experienced in complex real estate transactions, had very little litigation experience, and that the only litigation he had previously handled related to building code violations. By his own admission, Respondent was not qualified to handle the Gelt litigation. The sanctions in the Gelt litigation and these disciplinary proceedings are the unfortunate result of his inexperience and insufficient oversight by his firm.

The Administrator requested that Respondent be suspended for six months, based on the presumption that Respondent engaged in all of the charged misconduct and that his conduct was aggravated by numerous factors. Having found that Respondent violated Rule 3.1 but not Rule 3.3(a)(1), and taking into account the extensive mitigation and absence of aggravation involved in this matter, we do not believe that a suspension is necessary or warranted. We believe that a reprimand is appropriate for Respondent's limited misconduct, and also supported by precedent. See, e.g., In re Yu, 2016PR00104 (Hearing Bd.) (attorney reprimanded for filing frivolous pleadings in two separate client matters); In re Balog, 98 CH 80 (Hearing Bd.) (attorney reprimanded for filing three frivolous appeals and asserting an unwarranted claim in another appeal); In re Fitzgibbons, 96 CH 496, M.R. 12712 (Sept. 24, 1996) (in reciprocal discipline matter, attorney censured for threatening to file and eventually filing frivolous lawsuit, as well as engaging in dishonesty and other misconduct); In re Bercos, 97 CH 97, M.R. 14713 (May 27, 1998) (attorney suspended for 30 days for filing numerous frivolous pleadings over an extended period of time and advising his client to disregard ruling of a tribunal).

Of the foregoing cases, we find Yu to be particularly instructive. Not only is it a relatively recent case, but it involved circumstances similar to those here. In Yu, the attorney filed a motion and an appellate brief that lacked a valid legal basis. The Hearing Board found that, "[w]hile Respondent did not intend to file frivolous pleadings, he now recognizes the deficiencies in his arguments." Yu, 2016PR00104 (Hearing Bd. at 14.) In recommending a reprimand, the Hearing Board noted that the sanctionable conduct consisted of filing pleadings without a meritorious basis in two matters. It found the proven conduct "not particularly egregious," noting that it was not intentional, and that it believed that the attorney was "putting forth a good faith effort to represent his clients well." Id. at 21. It found no factors in aggravation and considerable mitigating evidence, including that the attorney was genuinely remorseful and took his disciplinary proceedings seriously. It also found mitigating the attorney's inexperience combined with the complexity of the area of law in which he was practicing. Id. at 22.

Similarly, in Balog, as in this matter, there was compelling mitigation and no aggravation. In recommending that the attorney be reprimanded rather than suspended, the Hearing Board found that the attorney's continued practice of law did not pose any future threat to the public, stating that it had "no reason to believe, based upon the record in this case, that Balog's present or future clients will be in any jeopardy as a result of his representation." Id. at 16.

Bercos and Fitzgibbons also provide support for a reprimand in this matter. In Bercos, the attorney agreed to a 30-day suspension for misconduct that included filing numerous frivolous pleadings before multiple tribunals over the course of seven years in order to help his client avoid court-ordered child support obligations. In Fitzgibbons, the attorney was censured for filing frivolous pleadings and engaging in additional misconduct that was not present in this matter,

including dishonesty. Given that Respondent's misconduct in this matter is less extensive than the misconduct in both of those matters, it would follow that a lesser sanction is warranted.

Having considered the nature of Respondent's misconduct, the compelling mitigation and lack of aggravation, and relevant precedent, we conclude that a reprimand is an appropriate sanction. Respondent is a conscientious attorney who practiced for 37 years without discipline, and is genuinely remorseful for his misconduct. We do not believe that his continued practice of law poses any risk to the public or legal profession, and therefore find that a suspension is neither necessary nor appropriate. We find a reprimand to be sufficient to protect the public, maintain the integrity of the legal profession, and protect the administration of justice from reproach. Timpone, 157 Ill. 2d at 197.

We therefore recommend that Respondent, Mark Steven Lenz, be reprimanded for his misconduct. Our proposed reprimand is attached to this Report and Recommendation.

Respectfully submitted,

Carol A. Hogan
Shelbie J. Luna
Michael J. Friduss

CERTIFICATION

I, Michelle M. Thome, Clerk of the Attorney Registration and Disciplinary Commission of the Supreme Court of Illinois and keeper of the records, hereby certifies that the foregoing is a true copy of the Report and Recommendation of the Hearing Board, approved by each Panel member, entered in the above entitled cause of record filed in my office on October 5, 2023.

/s/ Michelle M. Thome
Michelle M. Thome, Clerk of the
Attorney Registration and Disciplinary
Commission of the Supreme Court of Illinois

[1] Since the complaint was filed against Respondent, his law firm has undergone a name change and is now known as SWK. (Tr. 14, 273.)

[2] Under the *lis pendens* doctrine, anyone who obtains an interest in property during the pendency of litigation affecting that property is bound by the result of the litigation. Accordingly, the filing of a *lis pendens* provides notice of pending litigation about a subject property. LLC 1 05333303020 v. Gil, 2020 IL App. (1st) 191225, *20-22, 186 N.E.3d 904 (1st Dist. 2020) (citations omitted).

BEFORE THE HEARING BOARD
OF THE
ILLINOIS ATTORNEY REGISTRATION
AND
DISCIPLINARY COMMISSION

In the Matter of: **MARK STEVEN LENZ,** Attorney-Respondent, No. 6192658.	Commission No. 2022PR00029

PROPOSED REPRIMAND

To: Mark Steven Lenz

You are being reprimanded by the Hearing Board of the Illinois Attorney Registration and Disciplinary Commission as follows:

1. As detailed in the Hearing Board Report and Recommendation, in litigation that you were handling on behalf of your client, Edan Gelt, you filed pleadings that were without a basis in law, and therefore were frivolous.

2. Your conduct violated Rule 3.1 of the 2010 Illinois Rules of Professional Conduct.

3. You have not been previously disciplined; you did not engage in any dishonest conduct; and you fully cooperated in these proceedings. Based on the favorable character testimony you presented, we believe your conduct in the Gelt litigation is not consistent with your usual manner of practicing law and that you will not repeat your mistakes.

4. Your conduct, however, was improper and cannot be condoned. The Hearing Board has authority, pursuant to Supreme Court Rule 753(c) and Commission Rule 282, to administer a reprimand to an attorney in lieu of recommending disciplinary action by the Court, and the Hearing Board has determined such action is appropriate in this case.

5. Therefore, you are hereby reprimanded and admonished not to repeat or engage in conduct similar to the misconduct outlined in the Report and Recommendation.

6. You are further advised that, while this reprimand is not formally presented to the Supreme Court, it is not to be taken lightly. This reprimand is a matter

of public record and is on file with the Attorney Registration and Disciplinary Commission. It may be admitted into evidence in any future disciplinary proceedings against you.

Respectfully submitted,

Carol A. Hogan
Shelbie J. Luna
Michael J. Friduss

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