In re Stephen Erhard Eberhardt
Respondent-Appellant

Commission No. 2022PR00079

Synopsis of Review Board Report and Recommendation
(November 2024)

The Administrator brought a one-count disciplinary Complaint against Respondent, charging him with filing frivolous pleadings, which had no substantial purpose other than to embarrass or burden others, in violation of Rules 3.1(a) and 4.4(a) of the Illinois Rules of Professional Conduct (2010). The Complaint alleged that Respondent sued the Village of Tinley Park and individuals associated with it, based on frivolous claims, without a good faith basis, in order to embarrass and burden the Village of Tinley Park and others.

The Hearing Board found that Respondent committed the charged misconduct and recommended that Respondent be suspended for six months, and until he completes the ARDC Professionalism Seminar, and pays all monetary sanctions imposed in the underlying matter that are upheld on appeal.

Respondent appealed, challenging the Hearing Board's sanction recommendation, and arguing that he should be reprimanded, censured, or suspended for a period of less than six months, and that the sanction should not include a condition requiring payment of the monetary sanction.

The Review Board recommended that Respondent be suspended for five months, and until he completes the ARDC Professionalism Seminar, and pays any monetary sanction imposed in the underlying matter that becomes a final and enforceable judgment.

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

FILED
November 19, 2024
ARDC CLERK

In the Matter of:

STEPHEN ERHARD EBERHARDT,

Respondent-Appellant,

No. 6181963.

Commission No. 2022PR00079

REPORT AND RECOMMENDATION OF THE REVIEW BOARD

SUMMARY

The Administrator brought a one-count disciplinary Complaint against Respondent, charging him with filing frivolous pleadings, which had no substantial purpose other than to embarrass or burden others, in violation of Rules 3.1 and 4.4(a) of the Illinois Rules of Professional Conduct (2010). The Complaint alleged that Respondent sued the Village of Tinley Park ("the Village") and individuals associated with it, based on frivolous claims, without a good faith basis, in order to embarrass and burden the Village and others.

The disciplinary hearing was held over a three-day period, October 3-5, 2023. Respondent was represented by counsel at the hearing, and continues to be represented by the same attorney on appeal. The Administrator presented seven witnesses, and thirty-nine exhibits, which were admitted. Respondent testified on his own behalf, and presented one witness. He also presented twenty-three exhibits that were admitted. In his Answer to the Complaint, and at the disciplinary hearing Respondent admitted many of the factual allegations, but denied that his pleadings were frivolous, or that the pleadings were intended to embarrass or burden anyone.

The Hearing Board found that Respondent committed the charged misconduct and recommended that Respondent be suspended for six months, and until he completes the ARDC

Professionalism Seminar, and pays all monetary sanctions imposed in the underlying matter that are upheld on appeal.

Respondent appealed, challenging the Hearing Board's sanction recommendation as being too harsh. Respondent argues that he should be reprimanded, censured, or suspended for a period of less than six months, and that the sanction should not include a condition requiring payment of the court ordered monetary sanction. Respondent does not challenge the Hearing Board's findings that he engaged in the charged misconduct. The Administrator argues that the Hearing Board's recommendation is appropriate. Oral argument concerning the appeal was held in August 2024.

For the reasons that follow, we recommend that Respondent be suspended for five months (instead of six months), and until he completes the ARDC Professionalism Seminar, and pays any monetary sanction imposed in the underlying matter that becomes a final and enforceable judgment.

FACTS

Respondent

Respondent was admitted to practice law in Illinois in 1982. He is a former police officer, and he was an assistant Cook County State's Attorney. In 1992, he started his own law practice, focused on criminal defense work. In 1993, he was appointed to the Federal Defender Panel for the Northern District of Illinois. At the disciplinary hearing, Respondent testified that he was voluntarily leaving the practice of law; he was 85% retired; and he did not intend to renew his license. In January 2024, he changed his registration status from active to retired. Respondent has no prior discipline.

Respondent is a former resident of the Village of Tinley Park. He moved to Florida in November 2021. Respondent was involved in the politics of the Village beginning in

approximately 2009. Respondent ran for mayor of the Village in 2013, but lost the election. Respondent participated in the activities of the Village's Emergency Management Agency from 2012 through 2016, which included performing legal work relating to that agency. In 2017, Respondent was appointed to be the Coordinator for the Emergency Management Agency, but the appointment was rescinded, and he did not become the Coordinator.

Respondent's Misconduct

Respondent's misconduct is described in detail in the Hearing Board's Report. (*See* Hearing Bd. Report at 3-13.) The facts in this matter are not in dispute, and Respondent does not challenge the Hearing Board's findings that he engaged in the charged misconduct, which involved filing frivolous pleadings in order to burden and harass others. The only issue on appeal is the appropriate sanction.

Overview: In 2020, Respondent filed two federal lawsuits (*Eberhardt I* and *Eberhardt II*) against the Village and individuals associated with the Village. Respondent was the *pro se* plaintiff in both cases. Both cases were eventually dismissed. The issues in this matter primarily concern those two cases.

In *Eberhardt I*, the federal judge found that Respondent filed frivolous claims; acted in bad faith; and filed claims to harass the Village and the other defendants. The Hearing Board agreed with that analysis and, based on its own review of the matter, concluded that Respondent had filed baseless, frivolous claims that had no merit.

Respondent filed *Eberhardt II* in federal court, five months after he filed *Eberhardt I*, which was still pending in the same court. *Eberhardt II* was almost identical to the pending case, and was dismissed for being duplicative. The Hearing Board found that there was no legitimate

reason for Respondent to have filed *Eberhardt II*, and that Respondent filed both cases, *Eberhardt I and II*, in order to harass and burden the Village, and others associated with the Village.

Eberhardt I: Respondent filed the first case, *Eberhardt I*, in February 2020, and the case was assigned to Judge Charles H. Norgle. Respondent subsequently filed an amended complaint in February 2021. The case was dismissed in September 2021. (*See* Adm. Exs. 4, 7, 10, 14.)

In *Eberhardt I*, Respondent sued the Village, and a number of individuals associated with the Village, including the Village Mayor; the Clerk; the Village Manager; two Village attorneys; the Freedom of Information Act compliance coordinator; the Village's outside counsel; and other individuals. Respondent objected to a variety of actions by the Village and the other defendants. Respondent alleged, *inter alia*, that the Village's outside counsel had been unlawfully appointed; and there had been violations of the laws protecting freedom of speech, the right of assembly, due process, and equal protection, as well as violations of the Freedom of Information Act. Respondent sought declaratory and injunctive relief, and requested millions of dollars in punitive damages.

Judge Norgle concluded that Respondent's lawsuit had no merit and dismissed the case. (*See* Judge Norgle's Opinions, Adm. Exs. 10 and 14.) The judge found that Respondent's federal claims failed to state any plausible claim for relief, and Respondent lacked standing. The judge also concluded that Respondent's state law claims had no ties to the federal claims, so there was no supplemental jurisdiction and Respondent lacked standing to assert those claims. (*Id*.) Judge Norgle stated, "Eberhardt lacked good faith, bringing his claims for the improper purpose of being a nuisance to the Village and its officials." (Ex. 14 at 1.) Respondent did not appeal the dismissal of the *Eberhardt I* case.

As part of *Eberhardt 1*, Respondent sued Patrick J. Walsh ("Walsh"). His law firm had been hired as outside counsel to represent the Village in response to Respondent's lawsuits.

Respondent claimed that the Village Manager had unlawfully hired Walsh's law firm. Respondent requested that Walsh be prohibited from representing the Village. Respondent also sought punitive damages of $250,000, and reimbursement of the legal fees paid to Walsh and his law firm.

In fact, the Village's Purchasing Ordinance authorized the Village Manager to hire attorneys for matters not exceeding $20,000. Respondent ignored that Ordinance, although he had been given notice of the Ordinance on at least three occasions. Judge Norgle stated, "The Purchasing Ordinance is not complex, it is not open to interpretation, and its applicability is obvious. If there is a good-faith argument for its inapplicability or modification, Eberhardt has not presented it." (Opinion, Adm. Ex. 14. at 7.) The judge also concluded that third parties were responsible for appointing Walsh's law firm, and Walsh had nothing to do with that appointment. Judge Norgle stated, "Eberhardt sued Walsh … without any good faith basis for Walsh's liability." (*Id*. at 8.)

Monetary Sanction: After *Eberhardt I* was dismissed, Walsh filed a motion for a monetary sanction to pay for attorney's fees, and Judge Norgle granted that motion. (Opinion, Adm. Ex. 14.) Judge Norgle found that Respondent's claims against Walsh were frivolous, and ordered Respondent to pay Walsh $26,951 for attorney's fees.

Respondent filed a motion for reconsideration of the monetary sanction, and that motion was denied by Judge Rebecca R. Pallmeyer. (See Opinion, Adm. Ex. 17.) She concluded that Judge Norgle's ruling was amply justified, stating, "Stephen Eberhardt filed meritless claims against Patrick Walsh, and persisted even after being advised of the infirmities in his allegations." (*Id*. at 3.)

Respondent filed an appeal with the Seventh Circuit Court of Appeals, challenging the monetary sanction. That appeal was still pending at the time that this Report was prepared.

Eberhardt II: Respondent filed the second case, *Eberhardt II*, in June 2020, five months after he filed *Eberhardt I*, which was still pending. Respondent sued the Village, and seven individuals associated with the Village, objecting to a variety of actions by the Village and its representatives, essentially reiterating the claims set forth in *Eberhardt I*. (Adm. Ex. 20.)

Judge Gary Feinerman, who presided over the case, dismissed *Eberhardt II* because it was duplicative of *Eberhardt I*, which was still pending in the same federal court. (*See* Opinion, Adm. Ex. 24.) The judge stated, "[T]he two suits share significant overlap as to (1) the named defendants, (2) the alleged facts, (3) the asserted legal rights, and (4) the requested relief." (*Id*. at 4.)

The Hearing Board found that Respondent had no sufficient reason to file *Eberhardt II*, and it was an unnecessary lawsuit that Respondent filed in bad faith. (Hearing Bd. Report at 16.)[1]

HEARING BOARD'S FINDINGS AND SANCTION RECOMMENDATION

Misconduct Findings

The Hearing Board concluded that Respondent's conduct violated Rules 3.1 and 4.4(a), as charged in the disciplinary Complaint. On appeal, Respondent does not challenge the Hearing Board's findings of misconduct.

Rule 3.1: The Hearing Board found that Respondent violated Rule 3.1 by filing frivolous claims against Patrick J. Walsh in *Eberhardt I*. (Hearing Bd. Report at 13-15.) Rule 3.1 states, "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." The Comments to Rule 3.1 state: "The advocate has a duty … not to abuse legal procedure …. [and lawyers must] 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 …. The action is frivolous … if the

lawyer is unable either to make a good-faith argument on the merits of the action taken or to support the action taken by a good-faith argument for an extension, modification or reversal of existing law." The Hearing Board concluded that "there was no factual or legal basis for Respondent's claims against Walsh." (*Id*. at 13.)

Rule 4.4 (a): The Hearing Board also found that Respondent violated Rule 4.4(a), which states, "In representing a client, a lawyer shall not use means that have no substantial purpose other than to embarrass, delay, or burden a third person." The Hearing Board found that Respondent acted in bad faith by filing *Eberhardt 1 and II*, and he used that litigation to embarrass, burden, and harass the Village and the individual defendants, in violation of Rule 4.4(a). (*Id*. at 15-17.)

Findings Regarding Mitigation and Aggravation

In terms of mitigation, the Hearing Board found that Respondent had practiced law since 1982, without any prior discipline. He represented indigent criminal defendants in federal court, as a member of the Federal Defender Panel. He had also been appointed to represent defendants in federal capital habeas corpus cases in four states, and he had been a member of the Tinley Park police department's crime prevention committee. He also cooperated in the disciplinary proceedings. (*Id*. at 18, 20.)

In terms of aggravation, the Hearing Board found that Respondent failed to accept responsibility, express remorse, or acknowledge that he acted unethically; he improperly consumed judicial resources by filing meritless claims; he failed to identify any significant changes he would make as a result of Judge Norgle's sanction order; and his misconduct harmed a number of individuals, who suffered emotional or professional harm. (*Id*. at 17-19.)

Recommendation

The Hearing Board recommended that Respondent be suspended for six months, and until

he completes the ARDC Professionalism Seminar, and pays all sanctions imposed in *Eberhardt I* that are upheld on appeal. (*Id*. at 22-23.)

SANCTION RECOMMENDATION

The only issue on appeal is the appropriate sanction for Respondent's misconduct. Respondent argues that the appropriate sanction is a reprimand, a censure, or a suspension of less than six months, and that the sanction should not include a condition requiring payment of the monetary sanction. The Administrator argues that the Hearing Board's recommendation is appropriate.

We review the Hearing Board's sanction recommendation based on a *de novo* standard. *See In re Storment*, 2018PR00032 (Review Bd., Jan. 23, 2020) at 15, *petition for leave to file exceptions denied*, M.R. 030336 (June 8, 2020). In making our recommendation, we consider the nature of the proved misconduct, and any aggravating and mitigating circumstances shown by the evidence, *see In re Gorecki*, 208 Ill. 2d 350, 360-61, 802 N.E.2d 1194 (2003), while keeping in mind that the purpose of discipline is not to punish but rather to protect the public, maintain the integrity of the legal profession, deter other misconduct, and protect the administration of justice from reproach. *See In re Discipio*, 163 Ill. 2d 515, 528, 645 N.E.2d 906 (1994). We defer to the Hearing Board's findings concerning witnesses' credibility because the Hearing Board is able to observe the witnesses, assess their demeanor and credibility, and resolve conflicting testimony. *See In re Timpone*, 157 Ill. 2d 178, 196, 623 N.E.2d 300 (1993).

For the reasons set forth below, we recommend that Respondent be suspended for five months, and until he completes the ARDC Professionalism Seminar, and pays any monetary sanction ordered in *Eberhardt I* that becomes a final and enforceable judgment. We agree with the

Hearing Board's recommendation, except we recommend that Respondent be suspended for five months, instead of six months.

Supreme Court Rule 764

We are recommending that Respondent be suspended for five months, rather than six months, because a six-month period of suspension triggers the obligation to comply with Supreme Court Rule 764, which sets forth stringent conditions that must be met by attorneys who are suspended for six months or more.[2] We believe that requiring Respondent to comply with Rule 764 is unnecessary here, because Respondent is retired, and is no longer practicing law at this time. In January 2024, he changed his registration status from active to retired. In our opinion, requiring compliance with Rule 764 would serve no purpose, and would be unduly harsh. We conclude that a five-month suspension in this case satisfies the disciplinary goals to the same extent a six-month suspension does, given the facts and circumstances of this case.

We note that Respondent could come out of retirement at any time and begin practicing law again. Thus, we believe that a five-month suspension is needed to impress on Respondent and other attorneys the seriousness of the misconduct, and to protect the public by preventing Respondent from practicing law while the suspension is in place.

Serious Nature of Respondent's Misconduct

Respondent argues that a minimal sanction is appropriate here. We disagree given the serious nature of the misconduct and the aggravating factors in this case.

Respondent filed frivolous and duplicative lawsuits, in bad faith. He made baseless claims against the Village and a substantial number of individuals in *Eberhardt I and II*, and he continued to litigate that case for eighteen months, until it was dismissed. He also made unreasonable demands, asking for millions of dollars in punitive damages.

Judge Norgle stated, "Eberhardt's claims against Walsh were (a) not brought with a reasonable inquiry into both fact and law; (b) not objectively warranted by existing law or a good faith argument for its extension; and (c) maintained after [he was] informed of their false and frivolous nature. His claims were objectively frivolous." (*Id*. at 9.) The Hearing Board stated, "Respondent used the law to harass others and demonstrated disrespect for the legal system by burdening the courts with meritless lawsuits. Instead of upholding the legal process, he abused it because of personal grievances he had with the Village." (Hearing Bd. Report at 19.) We agree.

We conclude that Respondent's misconduct was serious, and it warrants more than a minimal sanction.

Aggravating Factors

There are also aggravating factors in this case, which weigh against imposing a minimal sanction. We have taken those factors into account in recommending a five-month suspension.

Significantly, Respondent failed to accept responsibility or express remorse. The Hearing Board stated, "Respondent is not remorseful and appears to be unwilling or unable to acknowledge that he acted unethically." (Hearing Bd. Report at 19.) It is concerning that he was unwilling to admit or recognize the wrongfulness of his actions, especially in light of the earlier findings made by three federal judges, which provided clear explanations of why his actions were wrong.

Additionally, Respondent ignored the warnings made by a Cook County judge, in a prior case that Respondent filed in 2017. In that case, the judge stated, "[T]his court puts Eberhardt on notice. Eberhardt had a duty before filing this complaint to investigate the substantive law and determine whether it supported his claims …. Should Eberhardt continue his frequent-filer status in state and federal courts without appreciating the need for substantive legal support for his claims, he runs that very real risk that this or other courts may … [impose] sanctions next time."

(*See* Opinion, Adm. Ex. 2 at 19-20.) Despite that warning, Respondent filed the two frivolous cases at issue here, with no legal support for his claims.

Respondent also caused extensive harm by filing frivolous, baseless, and duplicative claims. The Hearing Board stated, "Several witnesses spoke to the emotional or professional harm they suffered as a result of Respondent's lawsuits, and we find their testimony credible." (Hearing Bd. Report at 19.) Respondent also caused the Village and the other defendants to expend significant time, effort, and resources to defend against baseless claims. The Village's funds could have been better used to benefit the residents of the Village. Additionally, Respondent caused the court to unnecessarily adjudicate *Eberhardt I and II.* Judge Norgle stated, "Eberhardt, … in pursuing these baseless claims, has also forced the Court to divert its scarce time and resources from litigants with serious disputes needing resolution." We also note that Respondent's misuse of the legal system reflects badly on attorneys, and may diminish the public's confidence in the legal profession.

Mitigating Factors

Respondent argues that a minimal sanction is warranted based on the mitigating factors in this case. We disagree. We believe that a five-month suspension properly balances the serious misconduct and the aggravating factors with the mitigating evidence.

In making our recommendation, we have given careful consideration to the mitigating evidence in this case, including the evidence identified by the Hearing Board. We give significant weight to the fact that Respondent had a lengthy and unblemished legal career, with no prior discipline, since he was admitted to the practice of law in 1982. It appears that after practicing law for many years without substantial problems, Respondent essentially lost his bearings and made

bad choices. We believe that the recommended sanction will help him re-focus and make better choices.

Respondent also participated in community service and community activities, including acting as a member of the Village's crime prevention committee, and he cooperated in the disciplinary proceedings. Additionally, he was a member of the Federal Defender Panel, and he represented indigent defendants in criminal cases. We also note that the testimony of Respondent's witness indicated that she respected Respondent.

In our opinion, the mitigating factors here are insufficient to warrant a minimal sanction. We believe, however, that the mitigation in this case weighs against a suspension of more than five months, because it demonstrates that Respondent has the ability to act responsibly, if he elects to do so.

ARDC Professionalism Seminar

We agree with the Hearing Board that Respondent should complete the ARDC Professionalism Seminar. We believe that doing so will help convince Respondent that he must practice law ethically and responsibly. The Seminar focuses on the Rules of Professional Conduct and the ethical obligations of lawyers, as well as the practical day-to-day application of the rules in resolving common ethical dilemmas. We believe that the Seminar will help Respondent recognize his ethical obligations.

Monetary Sanction

Respondent argues the sanction should not include a requirement that he pay the court-ordered sanction of $26,951, and including it would be punitive. We reject that argument.

Judge Norgle imposed the monetary sanction in order to deter Respondent. (*See* Judge Norgle's Opinion, Adm. Ex. 14 at 14) ("[T]he Court sanctions Eberhardt to deter future frivolous

pleadings by awarding … attorneys' fees to Walsh …. [and] to deter Eberhardt from future conduct of this nature."). We agree that Respondent needs to be deterred and that the monetary sanction will help to deter him.

The monetary sanction was designed to cover reasonable attorney fees for the time that Walsh's attorney spent defending Walsh against Respondent's baseless claims in *Eberhardt I*. Although Walsh's law partner may have defended Walsh without being paid, Judge Norgle concluded that the attorney was entitled to payment for his services, based on the hours he spent representing Walsh, and that Respondent should be responsible for paying for those hours.

We also note the sanction is not so large that payment is unrealistic, or that it creates an insurmountable burden. Additionally, Respondent has had ample time to save sufficient funds, given that the sanction was imposed in 2022.

Moreover, requiring Respondent to pay the monetary sanction is not punitive. If the monetary sanction imposed by Judge Norgle, or any part of it, becomes a final and enforceable judgment, Respondent will have an obligation as an attorney to pay that judgment. Requiring Respondent to pay the monetary sanction will give Respondent an incentive to pay that money promptly, rather than trying to delay or avoid paying the money through bankruptcy or other litigation, if he wishes to resume practicing law.

Relevant Legal Authority

We have considered the cases cited by the Hearing Board and both parties, and we conclude that a five-month suspension is consistent with discipline that has been imposed for comparable misconduct.

In support of his argument that a minimal sanction is appropriate, Respondent cites two cases, *Balog* and *Bercos*, in which the attorneys filed frivolous claims, and were given minimal

sanctions. We find those cases unpersuasive because the mitigating evidence in both of those cases far exceeded the mitigation in the instant case. *See In re Balog*, 1998PR00080 (Hearing Bd., June 8, 2000) (the attorney was reprimanded for filing three frivolous appeals in the same proceeding; the Hearing Board found that there were no aggravating factors and the mitigation was very compelling and highly commendable, which included Balog's significant contributions to community organizations and the legal community, his *pro bono* work on behalf of indigent clients, and testimony from a judge concerning Balog's honesty and integrity; the Hearing Board also found that Balog did not pose any future threat to the public or his clients); *In re Bercos*, 1997PR00097, *petition to impose discipline on consent allowed*, M.R. 14713 (May 27, 1998) (the attorney was suspended for 30 days for filing a number of frivolous pleadings in an effort to assist his client in avoiding child support obligations, and for advising his client to disregard the ruling of a tribunal; in mitigation, he accepted responsibility; he had practiced law for 24 years with no prior discipline; he provided a significant amount of *pro bono* representation; he cooperated; and he agreed to discipline on consent.)

The Hearing Board in the present case considered *Balog* and *Bercos*, but found that those cases were distinguishable, stating, "Balog demonstrated an impressive record of service to the bar and the community and presented positive character testimony from a judge …. [and] Bercos acknowledged that he committed the charged misconduct by entering into a consent agreement. Respondent, in contrast, did not present any character witnesses, did not acknowledge or take responsibility for his actions, and did not express genuine remorse." (Hearing Bd. Report at 22.) We agree with that analysis.

In making its recommendation, the Hearing Board cited *Stolfo* and *Martin*, discussed below, in which the attorneys filed frivolous pleadings and were suspended for six months. We agree that those cases provide guidance here.

In *In re Stolfo*, 2016PR00133 (Review Bd., March 20, 2018), *petition for leave to filed exceptions denied*, M.R. 029728 (April 9, 2019), the attorney was suspended for six months, and until he paid $205,224 of court ordered sanctions, and completed the ARDC Professionalism Seminar. Stolfo filed frivolous motions during litigation relating to a defamation suit that he filed on behalf of a client, and during subsequent proceedings brought to enforce sanctions against him. Stolfo continued to pursue defamation claims after his client's deposition showed that those claims had no merit. He also filed numerous frivolous motions and appeals seeking to avoid payment of the court ordered sanctions against him. In aggravation, he failed to accept responsibility or acknowledge that he engaged in any wrongdoing. In mitigation, he had no prior discipline.

In *In re Martin*, 2011PR00048 (Review Bd., Dec. 31, 2013), *approved and confirmed*, M.R. 26610 (June 6, 2014), the attorney was suspended for six months and until he paid monetary sanctions of $25,471, and completed the ARDC Professional Seminar. Martin filed three frivolous lawsuits relating to his termination from his job. He also threatened another attorney with disciplinary action, communicated with represented parties, and threatened to disclose confidential information. In aggravation, he failed to acknowledge most of his misconduct. In mitigation, Martin's sister died, which affected his ability to deal with people. He was also involved in bar association activities, and he had no prior discipline. *See also*, *In re Hess*, 2010PR00047 (Review Bd., June 28, 2012), *petition for leave to file exceptions denied,* M.R. 25481 (Oct. 8, 2012), (Hess was suspended for six months, and another attorney, Bruce Carr, who worked on the case at issue, was suspended for nine months because he was the driving force behind the misconduct; they filed

a meritless lawsuit and made frivolous claims against two individuals, whom Hess had previously represented; they also filed three baseless attorney's liens in connection with a fee dispute, and they filed frivolous appeals; Hess and Carr failed to accept responsibility or express remorse, and the Review Board found there was a risk that they would repeat their misconduct in the future. In mitigation, Hess had no prior discipline, and he had served in the military; Carr had been a pastor and worked as a missionary, and he had no prior discipline).

In our view, *Stolfo, Martin*, and *Hess*, provide a good starting point for the sanction here. Like Respondent in this case, the attorneys in *Stolfo*, *Martin*, and *Hess*, filed frivolous claims. We believe that a five-month suspension is consistent with the sanctions imposed in *Stolfo*, *Martin,* and *Hess* because the misconduct in the instant case is slightly less serious than the misconduct in those cases. Significantly, in *Stolfo* and *Martin*, the attorneys were ordered to pay the outstanding monetary sanctions, and to complete the ARDC Professional Seminar, before they could resume practicing law, as recommended here.

Additionally, we believe that *Holman* and *Dore*, discussed below, provide guidance concerning the appropriate sanction. Those cases involved similar misconduct and resulted in five-month suspensions.

In *In re Holman*, 1996PR00679, *petition for discipline on consent allowed*, M.R. 12939 (Nov. 26, 1996), the attorney was suspended for five months for filing a frivolous lawsuit and concealing a medical report. Holman filed a baseless lawsuit, falsely alleging that his client had been terminated in retaliation for submitting a worker's compensation claim, and also falsely alleging that his client had developed a respiratory illness from an occupational exposure. Holman failed to disclose a doctor's a report stating that the client was not suffering from a respiratory illness, and Holman made false statements to opposing counsel concerning the report. The court

ordered Holman to pay attorney's fees and costs. In mitigation, Holman self-reported his misconduct; he took responsibility and proceeded by consent; and he paid the monetary sanctions.

In *In re Dore*, 2007PR00122 (Review Bd., Feb. 25, 2011), *petition for leave to file exceptions denied*, M.R. 24566 (Nov. 16, 2011), the attorney was suspended for five months, and until he completed the ARDC Professionalism Seminar. Dore asserted frivolous objections on behalf of a client in a federal case. He also filed a frivolous defamation action on his own behalf, and he made unfounded accusations against a judge's integrity. In mitigation, he did charitable work for his church; he had no prior discipline; he gained some understanding of his misconduct; and he presented positive character testimony from three witnesses.

In sum, we conclude that a five-month suspension falls within the range of discipline imposed in similar cases.

CONCLUSION

For the foregoing reasons, we recommend that Respondent be suspended for five months, and until he completes the ARDC Professionalism Seminar, and pays any monetary sanction ordered in *Eberhardt I* that becomes a final and enforceable judgment. We believe that the recommended sanction is commensurate with Respondent's misconduct, and it is sufficient to serve the goals of attorney discipline, including protecting the public, preserving public confidence in the legal profession, and deterring Respondent and other attorneys from committing similar misconduct.

Respectfully submitted,

George E. Marron III
Esther J. Seitz
Pamela E. Hill Veal

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 Review Board, approved by each Panel member, entered in the above entitled cause of record filed in my office on November 19, 2024.

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

[1] Between 2014 and 2022, Respondent filed at least 26 lawsuits in state and federal courts against the Village and others associated with the Village. Respondent was the only plaintiff in several of those cases. He also filed approximately 150 requests for the Village to produce records under the Freedom of Information Act. Additionally, he filed multiple requests that the ARDC investigate attorneys involved with the Village, all of which were closed following an investigation of Respondent's allegations. (*See* Resp. Answer at ¶2, Common Law Record at 22.) Additionally, in May and August 2021, shortly before *Eberhardt I* was dismissed, Respondent filed two new lawsuits in state court against the Village, and certain individuals associated with the Village, asserting claims similar to the claims in *Eberhardt I*. Both cases were dismissed. (*See* Adm. Exs. 25-38; Adm. Motion to Take Judicial Notice, Ex. 1.) Those actions provide background and context for *Eberhardt I and II*. Our analysis and recommendation, however, focus on Respondent's conduct relating to *Eberhardt I and II*.

[2] Pursuant to Supreme Court Rule 764, attorneys who are suspended for six months or more must take certain actions. Those attorneys are required to provide notice of their discipline to any clients they represent at the time of the order of discipline, as well as courts, opposing counsel in all pending matters, attorneys with whom they are associated on the date of the discipline, all jurisdictions in which they are licensed to practice law, all governmental agencies where they are entitled to represent individuals, and others. They are also required to notify clients that their files are available to them. Those attorneys are prohibited from having a law office, and they are required to maintain certain files, documents, financial materials, and other records. They must also file a list and an affidavit with the Illinois Supreme Court and the Administrator, identifying the clients whom they represented on the date of the discipline, or during the year prior to the discipline, and describing the actions taken to comply with the order of discipline and Rule 764.

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

In the Matter of: **STEPHEN ERHARD EBERHARDT,** Respondent-Appellant, No. 6181963.	Commission No. 2022PR00079

PROOF OF SERVICE
OF THE REPORT AND RECOMMENDATION
OF THE REVIEW BOARD

I, Michelle M. Thome, hereby certify that I served a copy of the Report and Recommendation of the Review Board on the parties listed at the addresses shown below by e-mail and regular mail, by depositing it with proper postage prepaid, by causing the same to be deposited in the U.S. Mailbox at One Prudential Plaza, 130 East Randolph Drive, Chicago, Illinois 60601 on November 19, 2024, at or before 5:00 p.m. At the same time, a copy was sent to Counsel for the Administrator-Appellee by e-mail service.

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Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that she verily believes the same to be true.

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