In re Thomas Gordon Maag
Attorney-Respondent

Commission No. 2023PR00054

Synopsis of Hearing Board Report and Recommendation
(September 2024)

The Administrator filed a three-count complaint against Respondent that charged him with: (1) failure to diligently represent clients in three matters, reasonably communicate with the clients about those matters, and return the clients' files in violation of Rules 1.3, 1.4(a)(3), 1.4(a)(4), and 1.16(d); (2) dishonest conduct including backdating a client letter containing a false statement, causing the letter to be deposited in the client's mailbox in fabricated U.S. Postal Service packaging, and repeating the false statement to the Administrator in violation of Rules 8.1(a) and 8.4(c); and (3) failure to cooperate with a subpoena for computer equipment in violation of Rule 8.1(b). The Hearing Board found that the Administrator proved by clear and convincing evidence that Respondent violated each of these Rules. The Hearing Board recommended a suspension for two years and until further order of the Court due to Respondent's serious Rule violations, several substantial factors in aggravation, minimal mitigation, and relevant case law.

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

FILED

September 30, 2024

ARDC CLERK

In the Matter of:

THOMAS GORDON MAAG,

Attorney-Respondent,

No. 6272640.

Commission No. 2023PR00054

REPORT AND RECOMMENDATION OF THE HEARING BOARD

SUMMARY OF THE REPORT

The Administrator charged Respondent with neglecting three client matters, covering up his neglect with a course of dishonest conduct, and not complying with a subpoena during this disciplinary proceeding. The Hearing Board found that the Administrator proved all of the charged misconduct by clear and convincing evidence. Considering the serious misconduct, substantial aggravation, minimal mitigation, and applicable case law, the Hearing Board recommended a suspension for two years and until further order of the Court.

INTRODUCTION

The hearing in this matter was held in person on March 21 and 22, 2024, and by video conference on April 5, 2024, before a panel of the Hearing Board consisting of Rebecca J. McDade, Laura K. Beasley, and Brian Russell. Rachel Miller represented the Administrator, and Respondent was present and represented himself.

PLEADINGS AND MISCONDUCT ALLEGED

On August 16, 2023, the Administrator filed a three-count Complaint charging Respondent with violating Rules 1.3, 1.4(a)(3), 1.4(a)(4), and 1.16(d) of the Illinois Rules of Professional

Conduct (2010) by failing to diligently represent Michael and Laura Ambrose, keep the clients reasonably informed, comply with the clients' reasonable requests for information, and surrender the client files (Count I); violating Rules 8.1(a) and 8.4(c) by falsely stating to the Administrator that he mailed Michael the client files on December 20, 2022, knowingly fabricating and backdating a letter to Michael which falsely represented that he sent Michael the client files on December 20, 2022, and fabricating packaging to make the letter appear to have been delivered by the U.S. Postal Service (Count II); and violating Rule 8.1(b) by failing to provide the computer equipment subpoenaed by the Administrator (Count III). On September 22, 2023, Respondent filed an Answer in which he admitted some of the factual allegations, denied some of the factual allegations, and denied misconduct.

EVIDENCE

The Administrator presented testimony from Respondent as an adverse witness and seven other witnesses. Administrator's Exhibits 1-15 were admitted. Respondent testified on his own behalf and presented testimony from seven additional witnesses. Respondent's Exhibits A, A-1, A-2, B-2, B-3, B-4, C, C-1, C-2, C-3, D-1, G, L, N, P-1, Q, Y, Z, AH, AI, AJ, AK, AM, and AN were admitted, and Respondent's Exhibits E, O, and AL were admitted and later stricken.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Administrator bears the burden of proving the charges of misconduct by clear and convincing evidence. In re Thomas, 2012 IL 113035, ¶ 56; Ill. S.Ct. R. 753(c)(6). Clear and convincing evidence constitutes a high level of certainty, which is greater than a preponderance of the evidence but less stringent than proof beyond a reasonable doubt. People v. Williams, 143 Ill. 2d 477, 484-85, 577 N.E.2d 762 (1991). In determining whether the Administrator has met that

burden, the Hearing Board assesses witness credibility, resolves conflicting testimony, and makes factual findings. In re Winthrop, 219 Ill. 2d 526, 542-43, 848 N.E.2d 961 (2006).

I. Respondent is charged with failing to provide diligent representation in three legal matters, to reasonably communicate with the clients, and to return the clients' files.

A. Summary

We find that the Administrator proved by clear and convincing evidence that Respondent failed to act with reasonable diligence and promptness in representing Michael and Laura Ambrose in their three legal matters, failed to reasonably communicate with the Ambroses, and failed to return their client files. We find that Respondent's conduct violated Rules 1.3, 1.4(a)(3) and (a)(4), and 1.16(d).

B. Admitted Facts and Evidence Considered

Michael and Laura Ambrose testified that they met with Respondent on or about September 20, 2019, and signed a retainer agreement for his representation in three legal matters: seeking redress for a faulty hot tub and related concrete damage, a dispute with a jewelry store about a diamond ring, and a dispute with a financial services company about a variable universal life insurance policy. (Tr. 33-36, 40-43, 88, 92-94). Michael paid $1,545 for filing and service fees, with a 33% contingent arrangement for Respondent's fees. (Ans. at par. 3; Tr. 34, 36-37, 43). Michael understood that Respondent was going to send demand letters to all three companies. (Tr. 38, 43). Respondent requested the ring appraisal, which Laura sent right after the meeting, and details about the life insurance policy, which Michael emailed to Respondent on March 6 and 12, 2020. (Tr. 36, 94, 236; Adm. Exs. 3-4). Laura had also emailed Respondent a week before the meeting with a list of the hot tub issues, which included the damaged concrete. (Tr. 31-33; Adm. Ex. 2). Respondent did not recall receiving any of these emails. (Tr. 231, 234, 236-37). According

to the Ambroses, Respondent never asked for more information about the three matters. (Tr. 38, 40, 94-95).

Respondent testified that he sent a letter to the hot tub company before March 2020, demanding that they fix the hot tub or be sued. He could not recall whether he mentioned the damaged concrete, and he sent the only copy of that letter to Michael in December 2022. (Tr. 231-33, 432). Michael testified that he never received a copy of any demand letters, and the hot tub was replaced because of the Ambroses' numerous communications with the hot tub company. (Tr. 43-44). When Michael informed Respondent in early 2020 that the hot tub had been replaced, Michael emphasized that the concrete damage was still unresolved. (Tr. 38). In contrast, Respondent testified that the hot tub's replacement satisfied Michael, so there was no further action to take. (Tr. 231-33, 241, 432-33).

Regarding the diamond ring, Respondent testified that he conducted internet searches in 2020 about the corporate name and location of the jewelry company, which he and Michael discussed may have changed names. (Tr. 40-43, 71-72, 234-45, 433-34). Respondent did not keep any search records, send a demand letter, or continue to pursue this issue because he found no liable party during his internet investigation. (Tr. 235, 240-42). Respondent and Michael's testimony conflicted about whether they discussed in 2020 that the jewelry store or company had gone out of business. (Tr. 84-85, 234, 433-35). The Administrator admitted that "the jewelry store at issue went out of business in 2020." (Adm. Response to Req. to Admit, ¶ 30). Michael testified that the jewelry company was still operating as of March 2024 under a different name. (Tr. 84-85).

As for the life insurance policy, Respondent testified that he did not send a demand letter because he never received authority to settle for a specific amount. After initially claiming that the COVID pandemic prevented him from communicating with Michael about this, he later conceded

that he could have called or emailed Michael but did not. (Tr. 237-40, 435-36). Also, Respondent did not work on this matter in the first six months of 2022 because of his poor emotional state due to family members' medical issues and his father's death in May 2022. (Tr. 244-47, 437-40). After Michael terminated the representation in December 2022, Respondent wrote in his closing letter that he did not file a lawsuit because Michael did not provide the requested paperwork. (Adm. Ex. 11). However, Michael had emailed it to Respondent in March 2020. (Tr. 36, 72-73; Adm. Exs. 3-4). Respondent believed Missouri's five-year statute of limitations would expire in September 2024, still allowing the Ambroses to pursue this claim, but he admitted that he never communicated this to them. (Tr. 241-44, 436-37).

Michael testified to requesting numerous status updates by phone, email, and mail during the more than three years that Respondent represented the Ambroses, most of which Respondent said he did not receive or was unable to respond to because of "personal matters" (Ans. at pars. 6-7, 9-12; Tr. 231, 234, 236-37, 252-54; Adm. Exs. 3, 5-9). Michael testified that, between March 2020 and April 2022, he was unable to reach Respondent other than three brief phone calls: one in early 2020 about the replaced hot tub; one in May 2021, in which Respondent told Michael that no one responded to the demand letters, so he filed lawsuits on all three cases (although Respondent admitted in his Answer that he filed no such lawsuits); and another between May 2021 and April 2022 "where nothing was resolved." (Ans. at par. 5; Tr. 37-38, 45-46, 48).

After the third call, Michael went to the Madison County courthouse and checked Missouri court records. When he found no cases filed under his name, he thought the matters had been forgotten. (Tr. 46-47). On April 11, 2022, Michael left a message with Respondent's office staff. Michael sent a follow-up email on April 18, requesting his complete files and stating, "I have not heard from anybody in well over a year regarding these cases and have not received any updates.

I am also unable to reach anybody at your office with significant number of attempts to get a hold of somebody." (Tr. 48-49; Adm. Ex. 6). Respondent testified that he did not recall seeing the April 18 email. (Tr. 252-53).

Respondent testified that he spoke with Michael and then contemporaneously wrote a Memo to File at 10:16 a.m. on April 28, 2022. (Tr. 255-57, 421-22; Adm. Ex. 13 at 8). The memo summarized that Michael was satisfied by the hot tub replacement, the jewelry company was out of business and could not be sued, and Michael never provided the ring appraisal that Respondent requested. Although the memo mentioned a letter to follow, Respondent admitted that he never sent one. (Tr. 422). In contrast, Michael testified that had not heard from Respondent by April 28, so he sent a certified letter at 10:39 a.m. that day, reiterating his request for the case files. (Tr. 50-53; Adm. Exs. 7-8). Despite confirmation from the U.S. Postal Service that the certified letter was delivered to Respondent's office, Respondent said he never received it, so he did not know that Michael was requesting his files at that time. (Tr. 53-54, 97-99, 254, 444; Adm. Exs. 7-8). Respondent insisted that he did not fabricate or backdate the April 28 memo. (Tr. 257).

After receiving no response to his certified letter, Michael spoke with another attorney, who assisted him in drafting a second certified letter. The second letter, which was delivered to Respondent's office on December 12, 2022, terminated Respondent and said, "please have my files ready to be picked up December 19th and please advise what time I can pick them up on that date." (Tr. 57-59; Adm. Ex. 9). Respondent received the letter but did not reply. He did not have the files ready when Michael came to the office on December 19, claiming that he did not have enough notice. (Tr. 59, 265, 444-45). Respondent and Michael agreed that one of the Ambroses would come back the next day to pick up the files, but their testimony conflicted as to whether they had a set appointment time. (Tr. 59-60, 87-88, 445-46, 500-502). When Michael returned on

December 20, Respondent was not present, and Michael spoke briefly with Shari Murphy, an attorney who rented office space in the building. Their testimony conflicted as to whether she asked him to return later that day. (Tr. 61-63, 88, 523-30, 446, 502).

Respondent testified that Ms. Murphy told him around 2:00 p.m. on December 20 that Michael came by, and he waited until 4:00 p.m. to see if Michael would return. Respondent testified that he then wrote Michael a letter explaining the outcome of all three legal matters, which he placed in a manila envelope along with the client files. (Tr. 259-266, 446-50, 502-504, 529; Adm. Ex. 11; Resp. Ex. C). The Ambroses' complete files were comprised of a paper copy of Respondent's letter to the hot tub company; Michael's December 2022 certified letter; a contract and other miscellaneous documents; and a CD containing the April 28, 2022, Memo to File, Respondent's December 20, 2022, letter to Michael, and a scan of the December 20, 2022, envelope. (Tr. 260-62, 272-76). Respondent's December 20 letter stated that he was not keeping a copy of the paper documents, "as this file pre-dates out [*sic*] current scanning protocol." (Adm. Ex. 11). Respondent testified that he should have scanned in everything, as it was not a thick file, but his firm had not yet implemented a scanning protocol, and he was rushing to return the files before the Christmas holiday to avoid a complaint about the delay. (Tr. 262-65, 504). Respondent testified that, between 4:37 and 4:51 p.m., he drove from his office to the nearby Wood River post office and deposited the manila envelope in the blue collection box. (Tr. 266, 504-505). Then he called his mother at 4:51 p.m. from Wood River, as reflected on his cell phone records. (Tr. 505; Resp. Ex. Y at 11).

Soon after, the Ambroses submitted a request for investigation to the Attorney Registration and Disciplinary Commission (ARDC). Counsel for the Administrator sent Respondent a letter on December 28, 2022, informing him of a disciplinary investigation (Tr. 63-64, 266-67). The

Ambroses did not hear from Respondent again until January 14, 2023, when Laura found in their mailbox a U.S. Postal Service "We Care" plastic bag containing Respondent's December 20, 2022, letter and manila envelope, both of which had been torn across the top. The envelope, which was not postmarked, also contained a broken rubber band, some paper clips, and a claw clip but no other documents or CD. (Tr. 63-67, 96, 101-102; Adm. Exs. 10-11).

On January 17, 2023, Respondent submitted his response to the disciplinary investigation, along with a copy of the December 20, 2022, letter and the few digital documents he retained from the Ambroses' files. (Tr. 267-68; Adm. Ex. 1). That day, he also mailed the Ambroses a check for $1,545 to fully refund the filing fees that he had kept in his client trust account since their representation began in September 2019. (Tr. 242, 268-72; Adm. Ex. 13). Within a few days, the Ambroses received a postmarked envelope containing the refund check, which they cashed. (Tr. 75-77, 104, 111-12).

C. Analysis and Conclusions

We begin our analysis with our findings that Michael and Laura Ambrose were highly credible. In re Smith, 168 Ill. 2d 269, 283, 659 N.E.2d 896 (1995) (the Hearing Board is in the best position to determine the credibility of witnesses). Their testimony was supported by a paper trail, including five emails between September 2019 and April 2022 and two certified letters in April and December 2022. We find that Respondent, on the other hand, was not a credible witness. Specifically, we do not find credible his claims that he did not receive or was unable to respond to most of the Ambroses' communications, including the April 2022 certified letter that the U.S. Postal Service reported as delivered to his office. Respondent also demonstrated his untruthfulness in other ways during this proceeding, including by falsely testifying that an email was a true and correct copy of the original when it was not, causing his admitted exhibit to be later stricken. (Tr. 416-19, 462, 518-21).

Moreover, we find that Respondent's purported conversation with Michael on April 28, 2022, did not occur, and Respondent fabricated and backdated the related Memo to File.[1] We find credible Michael's testimony that he did not receive a call from Respondent on April 28 and that he would not have sent Respondent a certified letter the same day if they had just satisfactorily discussed the pending matters. The memo contained other inconsistencies, such as stating that Michael never sent him a jewelry appraisal, when Laura credibly testified that she emailed it to Respondent in September 2019. Respondent made a similar false claim in his December 20, 2022, letter that Michael never gave him the life insurance policy paperwork, when Michael sent it by email in March 2020. Finally, Respondent's admission that he did not send the follow-up letter mentioned in the memo further bolsters our conclusion that Respondent fabricated the conversation and related memo.

Rule 1.4

Rule 1.4 requires a lawyer to keep clients reasonably informed about the status of their matters and promptly comply with reasonable requests for information. Ill. R. Prof'l Cond. R. 1.4(a)(3)-(4). The Administrator charged Respondent with violating this Rule by failing to communicate the status of the Ambroses' matters to them and by failing to respond to Michael's repeated requests for information and for the client files. We find that the Administrator proved by clear and convincing evidence that Respondent violated Rules 1.4(a)(3) and (4).

Respondent did not rebut the Ambroses' testimony that he only briefly communicated with them a handful of times in the more than three years that he represented them, and he admitted that he did not respond to some of their emails and certified letters. We find that Respondent repeatedly ignored the Ambroses' reasonable requests for information. We do not find credible Respondent's testimony that he was unaware of Michael's calls and emails requesting status updates and the client files, as the documentary evidence demonstrated that Respondent received several of these

communications. Even if Respondent were unaware of the Ambroses' attempts to reach him, a lawyer has an affirmative duty to keep his clients reasonably informed about their matters, which Respondent failed to do. Although we are sympathetic to the challenges faced by Respondent during his representation of the Ambroses, including family members' medical issues, his father's death, and the COVID pandemic, that does not excuse his inadequate client communication during a period of more than three years. Further, we believe Michael's testimony that Respondent falsely told Michael that no one replied to his demand letters, so he filed lawsuits on all three matters. Not only did Respondent's minimal communication efforts fail to satisfy his obligation to keep the Ambroses reasonably informed, but, when he did communicate with them, he misrepresented the status of their matters to hide that he had done little to no work since he was retained.[2] Overall, we find that Respondent's absent, delayed, and misleading communication with his clients violated Rules 1.4(a)(3) and (4).

Rule 1.3

Rule 1.3 requires a lawyer to act with reasonable diligence and promptness in representing a client. Ill. R. Prof'l Cond. R. 1.3. The Administrator charged Respondent with violating this Rule by conduct including failing to file any lawsuits on behalf of Michael and Laura. We find that the Administrator proved by clear and convincing evidence that Respondent violated Rule 1.3.

Respondent admitted that he did not file any lawsuits for the Ambroses, and the evidence showed that he did little to no work on their matters. Respondent admitted that he did not send demand letters regarding the diamond ring and the life insurance policy. We do not believe that he sent a demand letter about the hot tub, based on the Ambroses' credible testimony that their direct advocacy with the hot tub company resulted in its replacement and that they never received a copy of any demand letters. In fact, the only evidence that Respondent did any work on the Ambroses'

matters is his own explanatory letters and testimony, which we find to be generally untruthful and, in the case of the hot tub demand letter, specifically fabricated to cover up his lack of actual work.

Likewise, we are not convinced by Respondent's insistence that the hot tub's replacement resolved that matter when he knew from the beginning that one of the Ambroses' issues was the related concrete damage. This was enumerated in Laura's September 13, 2019, email, discussed at their in-person meeting the next week, and emphasized when Michael informed Respondent about the hot tub replacement in early 2020. Michael continued to seek status updates about the hot tub matter in three emails and two certified letters throughout 2020 to 2022, which belies Respondent's claim that he could not sue the hot tub company because he believed it was fully resolved.

Respondent's explanation that he did not file a lawsuit about the diamond ring because he could not find a liable party is also not credible. Although Respondent claimed to have conducted an internet search on the corporation in 2020, we have only Respondent's word without any corroboration. Moreover, Michael credibly testified that the jewelry company was still operating under a different name as of March 2024. Respondent argued that the Administrator's admission that "the jewelry store at issue went out of business in 2020" established there was no one to sue, but this argument erroneously conflates the jewelry *store* with the jewelry *company*. Respondent was aware that the store may have changed names despite remaining the same company, which is why he was retained to research the corporation and figure out who to sue.

As for the life insurance policy, we find credible Michael's testimony that he provided Respondent the necessary information to begin pursuing this matter in March 2020. Respondent admitted that he never contacted Michael to discuss settlement, and his excuses for failing to take action are not persuasive. While Respondent testified about difficult circumstances that led to his

poor emotional state in the first half of 2022, that accounts for only six months out of the more than three years he represented the Ambroses. It is unacceptable that Respondent had no plan to address the life insurance policy matter, which languished until the Ambroses terminated his representation in December 2022. To make matters worse, Respondent admitted that he failed to inform the Ambroses about the five-year statute of limitations, which is a major omission from the advice that an attorney must provide when a client has a time-sensitive claim.

Overall, the evidence demonstrated that Respondent did not perform the work the Ambroses retained him to do. His inaction constitutes a violation of his duty under Rule 1.3 to act with reasonable diligence and promptness in representing a client.

Rule 1.16(d)

Rule 1.16(d) requires a lawyer to take steps to the extent reasonably practicable to protect a client's interests upon termination of representation, which includes surrendering papers and property to which the client is entitled. Ill. R. Prof'l Cond. R. 1.16(d). The Administrator charged Respondent with violating this Rule by failing to return the Ambroses' files. We find that the Administrator proved by clear and convincing evidence that Respondent violated Rule 1.16(d).

We find that the Ambroses never received their client files from Respondent, despite multiple requests. We believe Michael's credible testimony, bolstered by the documentary evidence, that he first requested the files by phone, email, and certified letter in April 2022 and that Respondent ignored those requests. We do not find credible Respondent's testimony that he did not receive or was unable to respond to these communications. It is also undisputed that Michael requested his files and terminated the representation on December 12, 2022. However, Respondent still failed to provide the files to Michael when he came to Respondent's office twice in the next two weeks, even though they consisted of only a handful of documents and Respondent told Michael they would be ready on December 20, 2022.

As explained in Section II C, we find that Respondent did not mail the Ambroses their files on December 20, 2022. Rather, we find that Respondent caused a damaged and backdated letter to be placed in the Ambroses' mailbox without the files on or shortly before January 14, 2023. Based on this finding, we determine that Respondent never surrendered the Ambroses' files. Instead of protecting his clients' interests by providing the information they needed to pursue their three matters on their own or through another attorney, Respondent obstructed them, in violation of Rule 1.16(d).

II. Respondent is charged with engaging in dishonest conduct by knowingly backdating a client letter containing a false statement, fabricating packaging to make that letter appear as if it were delivered by the U.S. Postal Service, and knowingly making a false statement of material fact about that letter to the Administrator.

A. Summary

We find that the Administrator proved by clear and convincing evidence that Respondent engaged in dishonest conduct by knowingly backdating the client letter that the Ambroses found in their mailbox in January 2023, falsely stating in the letter that he had included Michael's entire client files, making the letter appear to have been damaged and delivered by the U.S. Postal Service, and falsely stating to the Administrator that he mailed Michael his entire client files. We find that Respondent's conduct violated Rules 8.4(c) and 8.1(a).

B. Evidence Considered

We consider the following evidence, in addition to the admitted facts and evidence described in Section I B.

Respondent and several lay witnesses described Respondent's computer skills as basic. They testified that he was unable to diagnose or fix computer problems. Respondent insisted that he did not know how to backdate a document on a computer. (Tr. 323-24, 335, 396-97, 403, 513, 530). Respondent also presented photographs of a computer screen showing various file names

and time stamps, which he testified correlated with his Memo to File written on April 28, 2022, and the letter and envelope written and scanned on December 20, 2022. (Tr. 379-95, 422-27, 450-54; Resp. Exs. A, A-1, A-2, B-2, B-3, B-4, C, C-1, C-2, C-3, D-1).

The Ambroses testified that the package Laura found in their mailbox on January 14, 2023, looked suspicious. It did not appear to be a genuine piece of mail because it had no postmark, and the envelope and letter were torn cleanly across the top, with no other crumpling or damage. All mail they had ever received had U.S. Postal Service markings. Laura was concerned that an unauthorized person put this package in her mailbox, so she asked her neighbors to review their video surveillance from the previous three days, as the Ambroses had not checked their mail during that time. (Tr. 64-67, 78-79, 81, 101-104, 107-111). The neighbors did not find any relevant video recordings, nor had they seen Respondent near the Ambroses' home. (Tr. 77, 105-106, 113-21).

Once Michael received the package, he and Laura asked their mail carrier and her supervisor if they knew how it got into the Ambroses' mailbox. (Tr. 73). Laura Dozier, who has been a mail carrier for nine years and the Ambroses' regular mail carrier since June 2022, testified that she did not deliver that envelope and that she never saw it before the ARDC showed it to her during the investigation of this case. Starting in June 2022, Ms. Dozier was delivering mail six days a week and had no days off "for a long time," although she could not remember specifically if she had any days off during the week of January 14, 2023. (Tr. 123-26).

Ms. Dozier was confident that she would have remembered the package in question. (Tr. 124-25, 129). Before placing mail in a mailbox, she checks that the name and address match and looks for other markings. (Tr. 127). This envelope would have stood out to her because she "rarely ever" sees one that is not stamped, without machine-processing markings at the bottom, and without a barcode for her to scan upon delivery. (Tr. 124-25, 130). She would "definitely" know

if she had handled this We Care bag because records are usually kept of all delivered We Care bags and because her usual practice is to bring damaged mail to the customer's door, offering them an opportunity to refuse the item. (Tr. 129, 134).

Keith Williams, a U.S. postal inspector with 11 years' experience and a former police detective, testified that the December 20, 2022, package did not appear to have been processed by the U.S. Postal Service because of the uncancelled stamps and lack of barcode. (Tr. 136-40). These markings normally would have been applied by a machine at the St. Louis processing center or manually at the local post office. A mail carrier should not deliver damaged mail without postal markings, but it could happen. (Tr. 143, 146-48). The We Care bag at issue did not appear counterfeit, but there was no rule against a postal worker giving a customer a We Care bag, and these bags could be purchased online from unauthorized retailers. (Tr. 139-41, 43). He was not aware of any evidence that Respondent purchased or received such a bag. (Tr. 140-41).

Respondent presented testimony from several witnesses that they sometimes received mail that was damaged, did not have postal markings, or took longer to arrive around Christmas. (Tr. 322, 351-53, 369-72, 531). Respondent's client and a neighboring business owner, John Coyle, testified that he "frequently" received damaged mail from the U.S. Postal Service, including envelopes that arrived empty. Mr. Coyle showed examples of manila envelopes that were delivered at his corporate headquarters with uncancelled stamps and a barcode or with no postal markings. (Tr. 356-72; Resp. Exs. AH, AI, AJ, AK, AM, AN).

Respondent testified unequivocally that he did not place the package in question in the Ambroses' mailbox or have anyone other than the U.S. Postal Service deliver it on his behalf. (Tr. 267-68, 506). Respondent explained his whereabouts on January 11 through 14, 2023, the time during which the package arrived. His cell phone records showed that he made and received several

calls on each of these days, including one call on January 13 that was corroborated by a witness. These records showed that none of the calls originated in the Ambroses' hometown, but there were gaps between calls, such as between 11:00 a.m. and 2:00 p.m. on January 11. (Tr. 192-95, 507-10; Resp. Ex. Z at 13-14). Respondent also presented a handwritten office calendar page to support that, on January 12, he was in court in Edwardsville in the morning and afternoon and at his office for a client meeting around 3:00 p.m. (Tr. 510-12; Resp. Ex. G). As for January 13, a client testified that he was with Respondent from about 1:00 to 2:30 p.m., including lunch at a restaurant, which was reflected on the client's credit card statement. (Tr. 345-54; Resp. Ex. Q). Respondent's wife affirmed that Respondent was at home every night from January 11 through 13 and that they left to visit relatives in Missouri on the evening of January 13, not returning to Illinois until days later. (Tr. 312-15, 322-23, 507, 512). The Administrator conceded that Respondent's whereabouts on January 14 were not at issue. (Tr. 343, 455, 506-507).

C. Analysis and Conclusions

Rule 8.4

A lawyer shall not engage in conduct involving dishonesty, fraud, deceit, or misrepresentation. Ill. R. Prof'l Cond. R. 8.4(c). This Rule broadly prohibits "anything calculated to deceive, including the suppression of truth and the suggestion of falsity." In re Edmonds, 2014 IL 117696, ¶ 53, 21 N.E.3d 447 (2014). The Administrator charged Respondent with violating Rule 8.4(c) by knowingly fabricating and backdating the December 20, 2022, letter, which falsely represented that Respondent sent Michael his entire client files, and by fabricating packaging to make it appear that the contents of the envelope were removed or lost after Respondent mailed the envelope and that the envelope was delivered by the U.S. Postal Service. We find that the Administrator proved by clear and convincing evidence that Respondent engaged in the charged conduct and violated Rule 8.4(c).

There is no direct evidence that Respondent or someone on his behalf placed the bag containing the damaged envelope and backdated letter in the Ambroses' mailbox in January 2023, but there is abundant circumstantial evidence supporting this finding. Circumstantial evidence is legal evidence, which the Hearing Board may rely on, even when the respondent's exculpatory testimony is the only direct evidence that the dishonest conduct did not occur. In re Discipio, 163 Ill. 2d 515, 523-24, 645 N.E.2d 906 (1994); Edmonds, 2014 IL 117696, ¶¶ 54-55. This is because "motive and intent are rarely proved by direct evidence, but rather must be inferred from conduct and the surrounding circumstances." In re Stern, 124 Ill. 2d 310, 315, 529 N.E.2d 562 (1988). In fact, "circumstantial evidence may be more convincing than direct evidence and it need not exclude all other possible inferences." In re Kozel, 96 CH 50, M.R. 16530 (June 30, 2000) (Review Bd. at 12).

We find credible Ms. Dozier's testimony that she did not deliver the package at issue when she was the Ambroses' regular mail carrier in January 2023. We find particularly compelling that Ms. Dozier was asked about the package shortly after its arrival, and she confirmed at that time that she did not deliver it. We believe that she would have remembered it because of her usual practices of checking postal markings, bringing damaged mail directly to a customer's front door, and recording all delivered We Care bags. We also find credible Mr. Williams' testimony that We Care bags are available to the public through postal workers or unauthorized online retailers, explaining how Respondent could have obtained one.

Although we find Respondent's testimony to be generally uncredible, the evidence he presented actually supports our finding that he had the opportunity to deliver the package to the Ambroses between January 11 and 13, 2023. Respondent's cell phone records showed calls originating outside of the Ambroses' hometown during those days, but there are time gaps. For

example, on January 11, there are no calls listed between 11:00 a.m. and 2:00 p.m., and Respondent offered no other explanation of his whereabouts that day. Respondent also testified about some court appearances and a client appointment that were handwritten in his office calendar for January 12, but those accounted for just a few hours. While Respondent's witnesses were credible as to the time they spent with him, their testimony only covered one lunch meeting on January 13, one phone call on January 13, and the nights of January 11 through 13 Accordingly, we are not persuaded by Respondent's contention that these records and this testimony showed that he was not near the Ambroses' house on the dates in question. He could have delivered the package during the many hours that were unaccounted for in his timeline. Alternatively, he could have had someone deliver the package for him between January 11 and 14, and we have no reason to believe his assertions that this did not happen.

In addition to opportunity, the evidence established a strong motive. On December 28, 2022, Counsel for the Administrator sent Respondent a letter about his conduct related to the Ambroses' representation. Respondent would have appeared less neglectful if he had already returned the client files on his own accord on December 20, 2022, rather than in response to the investigation notice. Moreover, Respondent could cover up his lack of work by claiming to have sent Michael the one-and-only copy of the client files and blaming the U.S. Postal Service for losing them. On January 17, 2023, three days after the Ambroses received the package at issue, Respondent submitted to the ARDC a copy of the purported December 20, 2022, closing letter and refunded the Ambroses' filing fees, allowing him to claim that he had satisfied his client obligations.

We reject Respondent's argument that the closing letter could not have been backdated because he was not a skilled computer user. It takes only basic word processing skills to type an

earlier date at the top of a document, and, as further discussed in Section III, Respondent failed to produce the subpoenaed computer that contained evidence of the document's actual creation date. We reject Respondent's argument that his photographs of file data with December 20, 2022, time stamps established that he wrote and sent the letter to Michael that day. Based on Respondent's demonstrated untruthfulness, and in the absence of the computer in question, we decline to give credence to the contention that the photographed file data correlated with the letter the Ambroses found in their mailbox in January 2023.

The abundance of circumstantial evidence, coupled with our finding that Respondent was not a credible witness, clearly convinced us that Respondent acted deceitfully by backdating the closing letter to December 20, 2022; making the package appear to have been damaged while lost in the mail for nearly a month; and faking the disappearance of the Ambroses' nonexistent client files, which he falsely stated were sent with the letter. While Respondent's alternative story is possible, we need not believe it when there are "substantial questions, based on the record, as to the witness's veracity and credibility." In re Green, 07 SH 109, M.R. 23617 (Mar. 16, 2010) (Review Bd. at 14-15). Having considered all of the evidence and assessed the credibility of the witnesses, we find that Respondent acted dishonestly in violation of Rule 8.4(c).

Rule 8.1

A lawyer shall not knowingly make a false statement of material fact in connection with a disciplinary matter. Ill. R. Prof'l Cond. R. 8.1(a). The Administrator charged Respondent with violating this Rule by falsely stating in his written response dated January 17, 2023, that he mailed Michael his entire client files on December 20, 2022. We find that the Administrator proved by clear and convincing evidence that Respondent violated Rule 8.1(a).

Whether Respondent mailed Michael his entire client files on December 20, 2022, was material to whether he appropriately responded to Michael's requests for his file. Having found

that Respondent did not mail Michael his entire client files on December 20, 2022, we also find that Respondent's assertion to the Administrator that he did so was a knowingly false statement in violation of Rule 8.1(a).

III. III. Respondent is charged with failing to comply with a lawful subpoena from a disciplinary authority.

A. Summary

We find that the Administrator proved by clear and convincing evidence that Respondent knowingly failed to provide the computer equipment that the ARDC lawfully demanded by subpoena on May 12, 2023, during its investigation of Counts I and II. We find that Respondent's conduct violated Rule 8.1(b).

B. Admitted Facts and Evidence Considered

We consider the following admitted facts and evidence, in addition to those described in Sections I B and II B.

On May 12, 2023, Counsel for the Administrator issued a subpoena to Respondent, requiring him to produce by May 31, 2023, "[a]ll computers, including any and all passwords, and all data storage devices, including but not limited to hard drives, zip drives, and/or thumb drives that contain or may contain any and all client documents for Michael Ambrose and Laura Ambrose that were produced, edited, printed, saved or stored by Thomas G. Maag." (Adm. Ex. 14 at 2-4). Respondent testified that his research and consultation with an ethics expert confirmed that complying with the subpoena would result in disclosure of other clients' confidential and privileged information, in violation of Rule 1.6. (Tr. 285-88). His June 6, 2023, letter to Administrator's Counsel opined that he could only ethically comply if he obtained informed consent from all of his former and current clients or if he were compelled by court order. (Resp. Ex. N). Respondent testified that he notified his clients about the subpoena and that several

objected to the production of his computer which contained their information, including one client who testified as such. (Tr. 329-33, 419-21; Resp. Ex. P-1).

The parties were unable to resolve their differences informally, and the Administrator sought no court intervention. (Tr. 404-16, 513-17). Respondent did not move to quash the subpoena, despite "probably" having filed such a motion before, and he never tendered the requested computer equipment. (Ans. at par. 27-29; Tr. 282-83). Instead, he gave Administrator's Counsel a jump drive containing what he believed were the relevant documents from his computer hard drive, including the April 28, 2022, Memo to File and the December 20, 2022, closing letter. He described these files as in their "original computer format," from which "it can be determined inclusively [*sic*] that the relevant documents in question were, in fact, created on the exact dates that they are purported to be created on." (Tr. 402-403).

The Administrator presented testimony from expert witness Laurence Lieb, a certified computer forensic examiner with over 10 years' experience in computer data preservation and analysis in litigation matters. (Tr. 149-50; Adm. Ex. 15). Mr. Lieb testified that he would need the original hard drive that created a document in order to determine its provenance, and a copy of that file on a jump drive alone would be insufficient. (Tr. 155-56, 179-80). Opening files or even turning on a computer makes significant changes to the files, which is why he would need to remove the hard drive while the computer is off and use his specialized equipment to make an identical copy called a forensic image. (Tr. 157, 166-67). Then he would search within his forensic image for only the relevant files by using a keyword such as "Michael Ambrose" or by filtering to a specific time and date, such as a given hour on December 20, 2022. If a document were created at that time, his forensic tool would find it. (Tr. 162-63, 190). Mr. Lieb would also check whether

the system clock was altered, a "surprisingly common" tactic that makes files appear to have been created, accessed, or modified at a different date or time. (Tr. 172-74).

During the hearing, Mr. Lieb looked at a photograph of the properties tab of a .pdf file that Respondent claimed contained the December 20, 2022, letter to Michael. Mr. Lieb testified that it was impossible to determine, based on that photograph, whether Respondent fabricated the document because a properties tab does not say anything about the contents of the file, nor does it convey system clock alteration data. Without access to Respondent's computer, Mr. Lieb lacked the requisite evidence to opine whether any document in this case was backdated or fabricated. (Tr. 165-72, 180-89).

C. Analysis and Conclusions

A lawyer shall not knowingly fail to respond to a lawful demand for information from a disciplinary authority in connection with a disciplinary matter, except that a lawyer is not required to disclose information otherwise protected by the Rules of Professional Conduct or by law. Ill. R. Prof'l Cond. R. 8.1(b). The Administrator charged Respondent with violating this Rule by not providing the computer equipment described in the May 12, 2023, subpoena. We find that the Administrator proved by clear and convincing evidence that Respondent violated Rule 8.1(b).

Respondent admitted that he knowingly withheld the requested computer equipment. He insisted that this was legally mandated because compliance with the subpoena would violate his duty of client confidentiality under Rule 1.6, as well as his duty to protect privileged attorney-client communications and work product. He cited the United States Constitution and various cases and statutes that provide protections for individuals' personal information, such as health records and political associations. He urged us to find that these laws excused his non-compliance with the subpoena, in accordance with the Rule 8.1(b) exception. (Ans. at par. 28; Tr. 285-86, 569-71; Resp. Ex. N).

However, this substantive defense to the subpoena's enforceability is not an issue for the Hearing Board to decide. Rather, Respondent should have filed a motion to quash in the circuit court and demonstrated to that court good cause for why he should not have to comply. 735 ILCS 5/2-1101; Ill. S.Ct. R. 754(e). Respondent was aware of this procedure, having filed motions to quash during his 24-year career as an attorney. Moreover, Respondent cited a case in which this procedure was used to successfully argue an attorney-client privilege defense. Swindler & Berlin v. U.S., 524 U.S. 399 (1998) (affirming the district court's decision to grant a motion to quash a subpoena seeking an attorney's client meeting notes). The same procedure has been used for constitutional defenses in Illinois. A.G. Edwards v. Sec'y of State, 331 Ill. App. 3d 1101, 772 N.E.2d 362 (5th Dist. 2002) (affirming the circuit court's denied enforcement of a State agency's overbroad subpoenas, which sought irrelevant information and invaded individuals' due process and privacy rights). While we generally agree with Respondent's proposition that Illinois attorneys have a duty to protect clients' confidential and privileged information, with limited exceptions, Respondent did not avail himself of the procedure for raising these arguments, so it would be improper for us to address them here.

Furthermore, we disagree with Respondent's argument that In re Zisook required the Administrator to seek a court order to compel his compliance with the subpoena. In that case, the Court held that an attorney claiming the Fifth Amendment privilege against self-incrimination in opposition to the Administrator's subpoena must appear with the requested documents and assert the privilege for each incriminating question. In re Zisook, 88 Ill. 2d 321, 430 N.E.2d 1037 (1981). Then the Administrator "*may* seek a judicial determination of the validity of the claimed privilege" as applied to those questions. Id at 333 (emphasis added). As for the documents, "[t]he witness must appear with the papers, and a similar judicial determination must be made as to the propriety

of a claimed privilege." Id at 335. Even if we were to extend this precedent to privileges other than the Fifth Amendment, Zisook makes clear that it is not appropriate for an attorney to unilaterally refuse to comply with a subpoena, and judicial intervention only happens after the respondent first produces what was requested. In the present case, Respondent's refusal to tender the subpoenaed computer equipment to the Administrator stopped the privilege review process before it began. Thus, he was not eligible to claim any privileges under Zisook.

Having found no applicable exceptions to Rule 8.1(b), we find that the May 12, 2023, subpoena was a lawful demand for information from the Administrator in connection with Respondent's disciplinary matter. We must next determine whether Respondent knowingly failed to respond to that subpoena.

Per Respondent's admissions, we find that he did not tender the computer equipment listed in the subpoena. Rather, Respondent produced a jump drive containing a copy of the documents that he deemed relevant and photographs of file data on his computer screen. We find expert witness Laurence Lieb to be credible, based on his extensive knowledge about computer data issues in legal matters generally and as applied to this case. Mr. Lieb testified that he could not determine the provenance of a document without the original hard drive, which contains necessary information that a jump drive alone lacks. Mr. Lieb also testified that it was impossible to verify the contents of a document and determine its true creation date based on a photograph of the document's properties tab. Considering all of the evidence, including the testimony highlighted here, we find that giving the Administrator selected documents on a jump drive and photographs of file data did not constitute compliance with the subpoena. Thus, Respondent knowingly failed to respond to the Administrator's May 12, 2023, subpoena in this disciplinary matter, in violation of Rule 8.1(b).

EVIDENCE OFFERED IN MITIGATION AND AGGRAVATION

Aggravation

Based on the Ambroses' experiences with Respondent, Laura now believes that she would have to do a lot of research before hiring an attorney again. (Tr. 96).

Throughout this disciplinary proceeding, Respondent demonstrated unprofessionalism. Respondent submitted his response to the ARDC's investigation request six days late. (Tr. 267-68). He failed to attend two pre-hearing conferences. (Oct. 24, 2023, Hearing Bd. Order; Mar. 19, 2024, Hearing Bd. Order; Tr. 290-91). He sent Administrator's counsel his exhibits and filed a Motion in Limine four days late. (Tr. 9, 11, 294-95). Respondent also emailed Administrator's counsel with stipulation requests after the deadline, including requesting that she agree not to testify about their communications, even though the Hearing Board had stricken her from his witness list over four months earlier. (Oct. 20, 2023, Hearing Bd. Order; Tr. 289-90, 294, 299-303). During the hearing, when Administrator's Counsel quoted the May 12, 2023, subpoena and asked, "We're not seeking any information related to other clients, correct?" Respondent replied, "No, Ma'am; you're lying. I apology for my terminology. You are incorrect." (Tr. 276). After the hearing, he ignored the Chair's Order to correct his erroneous final exhibit list and exhibit submissions, causing two of his exhibits to be stricken. (July 9 and 23, 2024, Hearing Bd. Orders).

Additionally, during the hearing, Respondent disclosed confidential and privileged information about at least four of his clients. While explaining his whereabouts in January 2023, he presented a page from his office calendar. Referring to the clients by name, he testified about the topic of two clients' court cases and another client's meeting with him on January 12, 2023. (Tr. 510-12; Resp. Ex. G). Likewise, although he insisted that client witness Robert Dorman avoid mentioning any specifics about his legal matters, Respondent later testified to the nature of Mr.

Dorman's cases until stopped by the Administrator's objection. (Tr. 376-79, 442-43). Mr. Dorman also testified that Respondent showed him documents from the Ambroses' client files, which Mr. Dorman searched for and opened while helping Respondent explore the files' properties. (Tr. 384-87; Resp. Exs. A, A-1, A-2, D-1).

Finally, Respondent was dishonest with the Hearing Board. He gave false testimony, including claiming that he sent a demand letter to the hot tub company in early 2020, denying that he received most of the Ambroses' communications in 2020 to 2022, fabricating the April 28, 2022, conversation with Michael, and asserting that he did not backdate the December 20, 2022, closing letter. He also presented two false exhibits: the fabricated Memo to File, and an email which was admitted and later stricken because Respondent's version was missing 11 words, despite his insistence that it was a true and correct copy.

Mitigation

Respondent testified that his law practice, located in the impoverished community of Wood River, "is primarily one that helps people, weak people, downtrodden people," including "those that are not the political elite or are not the power source." (Tr. 442, 44). He took on "about a dozen" unpaid criminal cases for a client because she could not afford to keep paying him, "and she's not the only one." (Tr. 443-44). Many of Respondent's current cases involve civil rights or politics, and one client testified that he would need to hire another attorney to handle his federal court matters if Respondent were suspended. (Tr. 327-29, 342, 376-79, 442).

Respondent testified that several of his close family members were receiving treatment for serious medical issues during his representation of the Ambroses, and his father passed away in May 2022. While this did not preclude him from working on the Ambroses' matters or communicating with them in general, it negatively impacted his emotional state, kept him from

working on Michael's life insurance policy issue, and impaired his responsiveness to client communications during the first half of 2022. (Tr. 244-47, 249-251, 437-40). Respondent's wife and an attorney friend corroborated this testimony. (Tr. 192-93, 196-97, 319).

During the hearing, Respondent began his cross examinations of Michael and Laura by "apologizing that you were dissatisfied with my service," "that I couldn't help you more than I was able to," and "that you're not happy." (Tr. 76, 89, 105). Respondent acknowledged in his testimony that he should have better communicated with Michael, and he explained that his office now "make[s] it a point whenever we close a file, to confirm with the client their understanding that file or that part of a file is closing." (Tr. 433, 436).

Prior Discipline

Respondent has been licensed to practice law in Illinois since 2000. He was previously suspended for 60 days, from October 7 to December 6, 2019. In re Maag, 2018PR00099, M.R. 029888 (Sept. 16, 2019). In that case, Respondent took title to a client's house as payment for legal fees without advising the client that the transaction posed a conflict of interest. He then engaged in a further conflict of interest by attempting to evict that client while simultaneously representing her in other legal matters.

RECOMMENDATION

A. Summary

Based on the proven misconduct, several substantial factors in aggravation, and minimal mitigation, the Hearing Board recommends that Respondent be suspended for two years and until further order of the Court.

B. Analysis

The purpose of the disciplinary process is not to punish attorneys, but to protect the public, maintain the integrity of the legal profession, and safeguard the administration of justice from reproach. Edmonds, 2014 IL 117696, ¶ 90. When recommending discipline, we consider the nature of the misconduct and any factors in mitigation and aggravation. In re Gorecki, 208 Ill. 2d 350, 360-61, 802 N.E.2d 1194 (2003). 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 [the] respondent." Discipio, 163 Ill. 2d at 528. We seek to recommend similar sanctions for similar types of misconduct, but we must decide each case on its own unique facts. Edmonds, 2014 IL 117696, ¶ 90.

Respondent engaged in an extensive course of serious misconduct between September 2019, when Respondent started representing the Ambroses, and January 2023, just after their representation ended and the disciplinary investigation began. What started as neglect of the Ambroses' three matters grew into a series of lies and deceptive acts as Respondent tried to hide his misconduct, implicating multiple aggravating factors that continued into 2024 during his interactions with the Hearing Board.

First, we find aggravating Respondent's prior discipline, a 60-day suspension that the Supreme Court ordered just days before he accepted the Ambroses' matters for representation. This should have heightened his awareness of his ethical obligations. In re Storment, 203 Ill. 2d 378, 401, 786 N.E.2d 963 (2002). Instead, Respondent neglected the Ambroses' matters and attempts to communicate with him over a three-year period, and then covered up his misconduct through a calculated scheme that was intended to deceive his clients, the Administrator, and the Hearing Board. We find aggravating that Respondent engaged in a pattern of neglect exacerbated

by dishonesty, including repeating misrepresentations and fabricating documents. In re Samuels, 126 Ill. 2d 509, 531, 535 N.E.2d 808 (1989) (pattern of neglect over several years is aggravating); In re Green, 07 SH 109 (Hearing Bd. at 41) ("The neglect of a client matter is aggravated when the attorney makes misrepresentations to, or even displays a lack of candor with, a client.").

Respondent also engaged in deception and disrespect toward Administrator's Counsel and the Hearing Board during this proceeding. He falsely testified about numerous facts related to the Ambroses' representation, attempted to enter an exhibit into evidence by falsely stating that it was a true and correct copy, called Administrator's Counsel a liar when confronted with the truth, missed multiple deadlines and appearances throughout this disciplinary proceeding, and ignored the Chair's Order to correct his erroneous exhibits after the hearing. We find this behavior, which persisted even in the context of a disciplinary proceeding, to be significantly aggravating. Gorecki, 208 Ill. 2d at 366 (lack of candor before the Hearing Board is an aggravating factor); In re Boscamp, 2022PR00070, M.R. 031859 (Sept. 21, 2023) (Hearing Bd. at 17-18) (citing In re Vavrik, 117 Ill. 2d 408, 415, 512 N.E.2d 1026 (1987) (giving false testimony in a disciplinary hearing demonstrates an unfitness to practice law)).

While Respondent acknowledged that he could have better communicated with the Ambroses, he took no personal responsibility, instead blaming his family members' health issues, his father's death, the COVID pandemic, the U.S. Postal Service, and even the clients. We do not find Respondent's apologies to Michael and Laura to be genuine, as he expressed no accountability for having caused their discontentment. Respondent's lack of genuine remorse and failure to take responsibility for his conduct are aggravating and do not inspire confidence that he is ready to meet the ethical expectations of the profession. In re Lewis, 138 Ill. 2d 310, 347-48, 562 N.E.2d 198 (1990); Samuels, 126 Ill. 2d at 531.

Another aggravating factor is that Respondent caused risk of harm and actual harm to the Ambroses. In re Saladino, 71 Ill. 2d 263, 276, 375 N.E.2d 102 (1978). Respondent argued that they were unharmed because he fully refunded their filing fees and because the Missouri statute of limitations would not lapse until several months after his hearing. Even if Respondent correctly calculated the expiration date, he never told the Ambroses about it, which created a risk that they would not timely assert their legal claims. Additionally, Michael testified about his numerous attempts to obtain updates and the client files from Respondent, including sending certified letters, checking case records at the Madison County courthouse, and eventually hiring another attorney, which cost time and money. Laura testified about losing trust in attorneys. These negative impacts on the clients constitute actual harm. In re Smith, 05 CH 59, M.R. 21378 (Mar. 19, 2007) (Hearing Bd. at 33-34) (citing Smith, 168 Ill. 2d 269 (client is harmed when attorney's unexplained delays cause needless anxiety and lost trust); In re Demuth, 126 Ill. 2d 1, 533 N.E.2d 867 (1988) (client is harmed by the expense and inconvenience of hiring another attorney)).

Finally, we find aggravating Respondent's selective assertion of client confidentiality and attorney-client privilege, depending on whether hiding or sharing client information benefitted him. Respondent claimed that he could not ethically comply with the subpoena for his potentially inculpatory hard drive because he had to protect the client information it contained. But then Respondent voluntarily disclosed details about at least four different clients while defending himself at the hearing. This conduct undermines the genuineness of Respondent's defenses to Count III and instead reveals his dishonest and selfish motive for failing to produce his computer. In re Rinella, 175 Ill. 2d 504, 505, 677 N.E.2d 909 (1997) (selfish motive is an aggravating factor); Lewis, 138 Ill. 2d at 346 (dishonest motive is an aggravating factor). It also demonstrates

Respondent's willingness to ignore the Rules when doing so serves his self-interest, casting further doubt on his ability to act ethically in the future.

We have considered in mitigation Respondent's testimony, supported by the testimony of his wife and his friend, that he faced personal challenges which impacted his professional life in 2020 to 2022. However, these circumstances do not excuse Respondent's failure to diligently represent the Ambroses for over three years or his subsequent dishonest behavior. We give no weight to Respondent's uncorroborated testimony about his pro bono work and improved office practices, as we generally do not find him to be credible. Green, 07 SH 109 (Hearing Bd. at 43-44). None of Respondent's seven witnesses – including two attorneys – gave any character testimony on his behalf, so his own statements about character and reputation are not a mitigating factor. Id. (citing In re Rotman, 136 Ill. 2d 401, 556 N.E.2d 243 (1990); Lewis, 138 Ill. 2d at 344).

The Administrator asked us to recommend a suspension of two years and until further order of the Court (UFO). Respondent contended that no sanction was warranted because he committed no misconduct. Having found that the Administrator proved the charged misconduct, we disagree with Respondent and must determine the appropriate sanction to recommend. Respondent did not cite any cases for a sanction recommendation, and the Administrator's cited cases had suspensions ranging from six months to three years, with or without UFO.

"A suspension UFO is the most severe sanction other than disbarment and is typically reserved for cases involving mental health or substance abuse, a disregard of ARDC proceedings, or other factors that call into question the attorneys' ongoing fitness to practice law consistent with the Rules of Professional Conduct." In re Limperis, 2022PR00003, M.R. 031947 (Jan. 17, 2024) (Hearing Bd. at 22). Some of the Administrator's cited cases resulted in suspensions UFO because the attorneys failed to participate in the entire disciplinary process. In re Pirtle, 95 SH 352, M.R.

11897 (Jan. 23, 1996) (suspension for three years UFO); In re Finnegan, 03 CH 68, M.R. 19499 (Sept. 13, 2004) (suspension for six months UFO).

In another case cited by the Administrator, the attorney's original misconduct was greatly aggravated by his subsequent failure to address the charges promptly and honestly, presentation of fabricated evidence, false testimony, and lack of restitution to the client. In re Houdek, 113 Ill. 2d 323, 497 N.E.2d 1169 (1986). The Court held that "neglect of a legal matter is in itself sufficient grounds for suspension," and a two-year suspension was appropriate when the attorney misrepresented to his client that he had remedied the neglect and then was dishonest during the disciplinary proceeding. The Court added a UFO provision due to the attorney's failure to make restitution and "the lack of any evidence that he is willing or able to meet professional standards of conduct in the future." Id. at 327. We find Houdek to be comparable to Respondent's neglect of the Ambroses' matters compounded by his misrepresentations to them, false testimony, and fabrication of evidence.

Similarly, the Court suspended an attorney for two years UFO for neglecting two clients' matters, resulting in harm that he failed to recompense; misrepresenting to a client that he had filed a court case when he had not; and dishonestly testifying during his disciplinary hearing, including falsely blaming a client for not providing necessary documents to him and falsely claiming that he had informed a client about her case's merit and outcome. In re Stark, 2013PR00027, M.R. 27037 (Jan. 16, 2015). This misconduct continued while two other disciplinary proceedings were pending, which should have heightened his awareness of his ethical obligations. For these reasons, the Hearing Board found "no basis for believing that a fixed-term of suspension will adequately protect the Respondent's future clients, the administration of justice, or the legal profession." Id. (Hearing Bd. at 35). Likewise, Respondent, who had recent prior discipline, failed to file lawsuits

for the Ambroses and misrepresented that he had filed them; attempted to shift blame by falsely claiming the Ambroses had not provided the documents he requested; and falsely testified at the hearing, including fabricating a conversation with Michael about the merit and outcome of the Ambroses' matters.

Other cases have resulted in suspensions UFO where attorneys' persistent dishonesty and failure to accept responsibility for their misconduct demonstrate an inability or unwillingness to conform to the ethical rules. For example, in a case cited by the Administrator, an attorney who engaged in a deceptive course of conduct, including creating false online reviews and profiles to harass another attorney, attempted to mislead the Hearing Board about a material fact during his disciplinary hearing. Although he apologized and expressed remorse, his actions demonstrated that he had not changed his ways. In re Quitschau, 2017PR00084, M.R. 029433 (Sept. 20, 2018) (suspension for six months UFO). Likewise, an attorney's attempt to conceal dishonest conduct and blame others instead of acknowledging wrongdoing "demonstrates the need for him to prove his rehabilitation prior to again being granted the privilege to practice law." In re Denny, 95 CH 563, M.R. 12526 (May 28, 1996) (suspension for one year UFO); see also In re Wilkins, 2014PR00078, M.R. 028647 (May 18, 2017) (suspension for two years UFO).

We considered but do not rely on the Administrator's cited cases of In re Guilford and In re Win, which involved less egregious misconduct and more mitigation than the present matter. In re Guilford, 115 Ill. 2d 495, 505 N.E.2d 342 (1987) (suspension for two years); In re Win, 2015PR00112, M.R. 28238 (Sept. 22, 2016) (suspension for one year, on consent).

We recommend a suspension for two years UFO, based on Respondent's serious misconduct, minimal mitigation, and significant aggravation, including his failure to be deterred by recent prior discipline, ongoing pattern of dishonesty toward clients and throughout the

disciplinary proceeding, and failure to take responsibility for his actions. This recommended sanction is consistent with Houdek and Stark, whose facts are similar to the present case. We believe that a two-year suspension acknowledges the seriousness of Respondent's behavior and that the suspension should run until further order of the Court to protect the public until Respondent demonstrates that he is willing and able to ethically practice law again.

Had Respondent accepted responsibility for neglecting the Ambroses' matters when confronted by his clients and later the Administrator, we would not be recommending such a severe sanction. Instead, Respondent chose to cover up and blame others for his mistakes, engaging in a deceptive and selfish course of conduct against his clients, the Administrator, and the Hearing Board. In accordance with relevant case law and based on the serious misconduct and several substantial aggravating factors, which are not outweighed by the limited mitigating factors, we recommend that Respondent, Thomas Gordon Maag, be suspended for two years and until further order of the Court.

Respectfully submitted,

Rebecca J. McDade
Laura K. Beasley
Brian Russell

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 September 30, 2024.

/s/ Michelle M. Thome

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

4858-9291-3130, v. 1

[1] This factual finding, based on our assessment that Michael was more credible than Respondent, resolves their conflicting testimony. While we consider Respondent's false testimony as aggravation in making our sanction recommendation, we do not find any misconduct related to the April 28, 2022, conversation and memo, as the Administrator did not charge any.

[2] While we consider Respondent's misrepresentation to a client as aggravation in making our sanction recommendation, we do not find any misconduct related to Respondent's false statement to Michael that he had filed lawsuits for the Ambroses, as the Administrator did not charge any.