In re Thomas Gordon Maag
Respondent-Appellant

Commission No. 2023PR00054

Synopsis of Review Board Report and Recommendation
(April 2026)

The Administrator filed a three-count disciplinary Complaint against Respondent, alleging that Respondent failed to diligently represent his clients, a husband and wife, in three matters; he failed to reasonably communicate with them; he failed to surrender their legal files to them; he engaged in conduct involving dishonesty; he made false statements to the Attorney Registration and Disciplinary Commission; and he failed to comply with the Commission's lawful demand for information, in violation of Rules 1.3, 1.4(a)(3), 1.4(a)(4), 1.16(d), 8.1(a), 8.1(b), and 8.4(c) of the Illinois Rules of Professional Conduct (2010).

The Hearing Board found that Respondent engaged in all of the misconduct charged in the Complaint. The Hearing Board recommended a two-year suspension, until further order of the Court ("UFO").

Respondent appealed, arguing that: (1) the Hearing Board erred in finding that he engaged in the misconduct charged in Counts II and III, which should result in a remand; (2) the Hearing Board Panel, through its Chairperson, abused its discretion and violated Respondent's due process rights by making erroneous discovery, procedural, and evidentiary rulings, which should result in a remand; and (3) Respondent should be suspended for no more than one year, with no UFO sanction.

The Review Board affirmed all of the Hearing Board's findings of misconduct. The Review Board also affirmed the Chair's rulings that were challenged on appeal. The Review Board recommended that Respondent be suspended for two-years, UFO, as recommended by the Hearing Board.

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

In the Matter of: **THOMAS GORDON MAAG,** Respondent-Appellant, No. 6272640.	Commission No. 2023PR00054

REPORT AND RECOMMENDATION OF THE REVIEW BOARD

SUMMARY

In August 2023, the Administrator brought a three-count disciplinary Complaint against Thomas Gordon Maag ("Respondent"), charging him with failing to diligently represent his clients, Michael and Laura Ambrose (the "Ambroses" or the "clients"), in three matters. Specifically, Respondent was charged with failing to reasonably communicate with the clients; failing to surrender the clients' legal files to them; engaging in conduct involving dishonesty; making false statements to the Attorney Registration and Disciplinary Commission ("Commission"); and failing to comply with the Commission's lawful demand for information, in violation of Rules 1.3, 1.4(a)(3), 1.4(a)(4), 1.16(d), 8.1(a), 8.1(b), and 8.4(c) of the Illinois Rules of Professional Conduct (2010) ("IRPC").

Respondent represented himself during the Hearing Board disciplinary proceedings. In September 2023, he filed his Answer to the disciplinary Complaint, wherein he admitted some of the factual allegations, but denied all allegations of misconduct.

On March 21-22 and April 5, 2024, the Hearing Board held the disciplinary hearing. The Administrator presented testimony from seven witnesses, including the Ambroses; called

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Respondent as an adverse witness; and presented fifteen exhibits that were admitted. In his defense, Respondent testified on his own behalf in a narrative fashion; denied any misconduct on all three counts; presented testimony from seven other witnesses; and presented twenty-four exhibits that were admitted.[1]

On September 30, 2024, the Hearing Board filed its Report and Recommendation ("Report") and found, by clear and convincing evidence, that Respondent committed all of the charged misconduct. The Hearing Board also rejected all of Respondent's discovery, procedural, and evidentiary challenges. The Hearing Board recommended that Respondent be suspended for two years, and until further order of the Court ("UFO").

On March 14, 2025, the Review Board held the appellate oral argument. Respondent did not proceed *pro se* or attend the argument; instead, his new appellate counsel appeared and argued on his behalf.[2] On appeal, Respondent now admits that he engaged in the wrongdoing charged in Count I of the Complaint. Currently, Respondent argues: (1) the Hearing Board erred in finding that he engaged in the misconduct charged in Counts II (engaging in dishonest conduct and making false statements) and III (failing to produce a computer pursuant to a subpoena), which should be reversed and remanded for a hearing; (2) the Hearing Board Panel, through its Chairperson ("Chair"), abused its discretion and violated Respondent's due process rights by making erroneous discovery, procedural, and evidentiary rulings, which also should result in a reversal and remand to the Hearing Board for a new hearing (a "Mulligan") (3/14/25 Appellate Argument Board Member Comment, circa 28:10); and (3) Respondent should be suspended for no more than one year, with no UFO sanction. The Administrator argues there is no error, much less reversible error.

One key legal issue involves Rules 1.6(a) (attorney-client privilege confidentiality) and 8.1(b) (responding to the Administrator's demand for computer information). The Hearing Board

found that Respondent violated Rule 8.1(b) by failing to comply with a subpoena *duces tecum* from the Administrator, requiring Respondent to produce his computer for a forensic examination of documents relating to the Ambroses. Respondent argues that Rule 1.6 prohibited him from producing his computer, absent a court order obtained by the Administrator, and he allegedly complied by producing certain limited documents on a "jump drive." Respondent claims that based on his assertion of the attorney-client privilege, and pursuant to Rule 1.6(a), he should not be found liable for violating Rule 8.1(b) for failing to comply with the subpoena; and this matter should be reversed and remanded for a hearing on his refusal to produce his computer and assertion of the privilege. We address this issue and other ones and relevant case law in the following pages.

For the reasons set forth herein, we affirm the Hearing Board's findings of misconduct and conclusions on Counts I, II, and III. In doing so, we affirm all of the Hearing Board's rulings concerning the contested discovery, procedural, and evidentiary matters. We have carefully considered the entire record and all of Respondent's arguments. We adopt the Hearing Board's sanction recommendation that Respondent be suspended for two years, UFO. This Report is lengthy and includes numerous endnotes, because of the many issues and arguments that Respondent has raised on appeal in his two oversized briefs. These briefs total 99 pages, cite more than 125 cases (including some multiple times), and include many issues and arguments not raised at the Hearing Board or in his opening appellate brief, which we deem forfeited or waived.

BACKGROUND

Respondent

In 2000, Respondent was admitted to practice law in Illinois and later, he was admitted to practice in Missouri. In or about 2010, Respondent and his brother began practicing together in

the law firm known as the Maag Law Firm, LLC, in Wood River, Illinois. Respondent's law practice focuses on personal injury, civil rights, and criminal defense.

Respondent's Prior Discipline

Respondent has one prior disciplinary case. On September 16, 2019, the Illinois Supreme Court suspended him for sixty days, effective October 7, 2019. *In re Maag*, 2018PR00099, M.R. 029888 (Sept. 16, 2019) (*See* Hearing Bd. Report at 27.) As discussed below, Respondent accepted title to a client's house as payment for his legal fees without advising the client that the transaction posed a "conflict of interest" and without complying with the safeguards in Rule 1.8(a) of the IRPC (i.e., failing to disclose the conflict and obtaining the client's informed consent). After Respondent obtained the deed, he engaged in a further conflict of interest by filing a lawsuit against the client for eviction and money damages, while simultaneously representing her in other legal matters, in violation of Rule 1.7(a)(2).

In the prior disciplinary matter (C. 581-627), Respondent was represented by competent counsel and consented to the suspension. Respondent submitted the required affidavit under Supreme Court Rule 762(b) and agreed that: he read Administrator's Petition to Impose Discipline on Consent; the assertions were true and complete; he joined in them "freely and voluntarily"; and he "understood the nature and the consequences" of the petition. (R. 595.) Respondent also answered questions under oath, accepted responsibility for his actions, and was remorseful. He also took significant rehabilitative steps, including dismissing his eviction proceeding against his client, withdrawing from all representation of that client, repaying the client's retainer, forfeiting any future attorney's fees from the client, and apologizing. (C. 606-21.) Respondent's conduct in that proceeding is in stark contrast to his conduct and handling of this matter *pro se*.[3]

Complaining Parties

Michael Ambrose ("Michael"), a physician, and his wife, Laura Ambrose ("Laura"), live in Illinois. (R. 50-51.) Dr. Ambrose has owned a medical clinic for a decade. (R. 51.) In 2019, Respondent agreed to represent Michael and Laura Ambrose in three matters concerning a hot tub, a diamond ring, and an insurance policy. (R. 51-58, 62-64.)

SUMMARY OF THE FACTS

The Hearing Board's Report sets forth the facts and procedural history, which are adopted herein. The summary below is based on the Hearing Board's findings of facts, which are supplemented where appropriate and discussed in more detail hereafter.

Overview

For three years – 2020, 2021, and 2022 – Respondent neglected the Ambroses' three cases, doing little or no work on them, and he failed to file lawsuits or send demand letters on behalf of the Ambroses. The Hearing Board found that to cover up his neglect, Respondent engaged in the following actions.

• Respondent falsely represented to Michael Ambrose that he had filed three lawsuits on behalf of the Ambroses, after the companies failed to respond to his purported demand letters (factors in aggravation).

• He created a "Memo to File," dated April 28, 2022, falsely describing a conversation with Michael about the merits and outcome of the Ambroses' three matters (factors in aggravation); a conversation which Michael denied took place.

• He failed to return the Ambroses' legal files, which would have disclosed his neglect; instead, he dishonestly provided to the Ambroses a cover letter, dated December 20, 2022, falsely representing that he was returning their legal files, and he fabricated damaged packaging that made it appear as if the legal files were lost in the mail.

• He falsely represented to the Administrator that he had sent the legal files to the clients.

• He failed to comply with the May 12, 2023 subpoena *duces tecum* served on him by the Administrator requiring production of any computer that contained documents relating to the Ambroses.

• He provided false and misleading testimony at the disciplinary hearing.

• The Hearing Board stated: "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." (Hearing Bd. Report at 34.) We agree.

Set forth below is a summary of the facts relating to each count.

Count I – Neglecting Three Matters and Failing to Communicate with the Ambroses

In 2019, Respondent agreed to represent Michael and Laura Ambrose in three matters: (1) a dispute with a company concerning a faulty hot tub and concrete damage caused by the hot tub; (2) a dispute with a jewelry company concerning the value of a diamond engagement ring that Michael purchased from that company; and (3) a dispute with a financial services company concerning a life insurance policy. (R. 53-65, 115-117.) Respondent admits that he did not file any lawsuits in connection with these matters. (Answer to the Complaint ("Ans.") at par. 5.)

The Ambroses agreed to a 33% contingent fee for Respondent's services, and paid $1,545 as a retainer for filing and service fees. (Ans. at pars. 3-4; R. 56.)

The Ambroses and Respondent each testified at the disciplinary hearing. The Hearing Board stated: "We begin our analysis with our findings that Michael and Laura Ambrose were highly credible….We find that Respondent, on the other hand, was not a credible witness." (Hearing Bd. Report at 8.)

The Hot Tub: Michael testified that he and his wife had numerous communications with the hot tub company concerning the faulty hot tub, which resulted in the company replacing the hot tub. (R. 65-68.) Before their initial meeting, Laura emailed Respondent with a list of problems concerning the hot tub. (R. 53-55, 114-15; Adm. Ex. 2.) Michael testified that he updated Respondent about the hot tub being replaced; however, he emphasized to Respondent that the issue concerning the concrete damage had not been resolved. (R. 60, 68.) Respondent testified that he sent a demand letter to the hot tub company, but he failed to produce a copy of any such letter at the disciplinary hearing. (R. 253-55, 579.) The Hearing Board rejected Respondent's testimony, stating: "We do not believe that he sent a demand letter about the hot tub…." (Hearing Bd. Report at 10.) Respondent also testified that since the hot tub was replaced, Michael seemed satisfied and no further action needed to be taken. (R. 254, 454.) Michael testified that the issue of the damaged concrete was never resolved. (R. 92.)

The Diamond Ring: On direct examination, Michael testified he told Respondent that he had purchased a diamond engagement ring several years earlier, and the jewelry store had given him an appraisal that was substantially higher than the appraisal he later obtained from a local jeweler. (R. 62-63.) Shortly after their first meeting, Laura sent Respondent an appraisal concerning the value of the diamond ring. (R. 116.) Michael explained to Respondent that the original company name was Distinctive Diamonds; the company had two locations, one was Distinctive Diamonds and one was Diamonds Direct; they were the same company, owned by the

same person, but operating under two names. (R. 62-64; Adm. Ex. 3.) On cross-examination, Michael testified that the jewelry company at issue was still operating in 2024, but the store had changed names. (R. 106-07.) Respondent did not send a demand letter to the company. (Hearing Bd. Report at 4, 10.)

The Insurance Policy: Michael sent Respondent two emails in March 2020, with information concerning the insurance policy, and a statement from the insurance company showing the payments Michael had made. (R. 58-62; Adm. Exs. 3-4.) Respondent admitted that he did not send a demand letter concerning the insurance policy, and he did not file a lawsuit. (Ans. at par. 5; R. 259-60, 457-58; Respondent claimed that Michael had not provided the requested paperwork. (R. 457-58; Adm. Ex. 1 at 2.) However, Michael testified that he had emailed the paperwork to Respondent. (Hearing Bd. Report at 4-5; R. 58-62, 94-95; Adm. Exs. 3-4.)

Communications: According to Michael, he made numerous requests for status updates, which included telephone calls and emails. Michael testified that over a two-year period between March 2020 and April 2022, he was unable to reach Respondent, except for three brief phone calls. (R. 59-60, 67-68, 70; Adm. Exs. 3, 5, 6.)

False Statement: Michael testified that during a telephone call in May 2021, Respondent stated that he had filed lawsuits in all three cases. (R. 68.) Based on Respondent's statement, Michael checked the records at the Madison County, Illinois courthouse and Missouri court records online, where the lawsuits would have been filed. Michael found that there were no cases under his name. (R. 68-69.) Respondent admitted that he did not file any lawsuits. (Ans. at par. 5.)

Count II: Making a False Document to Deliver to a Client and Fabricating Packaging from the U.S. Postal Service

Count II of the Complaint charged that Respondent provided a letter to the Ambroses, dated December 20, 2022, in which he falsely represented that he was returning their legal files to them, but he did not include any files with the letter; instead, he dishonestly created torn packaging to make it falsely appear that the files were lost in the mail. Count II also charged that Respondent falsely represented to the Administrator that he had sent the files to the Ambroses, and that the December 20, 2022 letter was backdated. Set forth below is a timeline of certain events.

March 2022: On March 6 and 12, 2022, Michael emailed Respondent seeking updates on the three cases. Respondent testified that he had no "active recollection" of receiving those emails. (R. 255-56; 258-59; Adm. Ex. 3, 4, respectively.)

April 2022: In April 2022, Michael asked Respondent and his staff to return the Ambroses' legal files, but no response was forthcoming. Specifically, according to Michael, on April 11, he requested the files in a telephone conversation with Respondent's office staff; on April 18, he sent an email to Respondent requesting the files, and stating that he had not heard from Respondent in over a year; and finally, on April 28, Michael sent a certified letter to Respondent requesting the files. Michael received no response concerning those requests. (R. 69-78; Adm. Ex. 5 at 7, Ex. 9.)

According to Respondent, after Michael made the first two requests for the client files, Respondent purportedly prepared the April 28, 2022 "Memo to File." Allegedly, the Memo memorialized a telephone conversation between Respondent and Michael on that date, in which

Respondent explained the status of the Ambrose cases. (Adm. Ex. 13 at 8.) (Respondent failed to produce the Memo to the Administrator until two days before the disciplinary hearing, allegedly because it had been misfiled.) (Ans. at pars. 6, 8; R. 277-79; 569-70; Adm. Ex. 13 at 8.)

Michael testified that he did not have a telephone call with Respondent on April 28; rather, he sent Respondent a certified letter on that date, requesting that his legal files be returned. (R. 74-75.) Michael's testimony was corroborated by a time-stamped mailing receipt for that certified letter, which showed that Michael mailed the certified letter at 10:39 a.m., twenty minutes after Respondent purportedly spoke to Michael. (Adm. Ex. 7 at 2.) According to Michael, he would not have sent the certified letter on April 28 requesting his files, if he had spoken to Respondent on that date. (R. 74-75.) As factors in aggravation, the Hearing Board stated: "[W]e 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." (Hearing Bd. Report at 9.)

December 2022 - January 2023: In December 2022, Michael sent a certified letter, dated December 5, 2022 to Respondent, terminating the attorney-client relationship, and asking Respondent to have the files ready to be picked up on December 19, 2022. (R. 79-83; Adm. Ex. 9.) On December 19, a week after the certified letter was delivered, Michael visited Respondent's office to pick up the files, but Respondent said he did not have the files ready. (R. 81-82.) The next day, December 20, Michael returned, but Respondent was not there at that time and he failed to leave any files for Michael to pick up. (R. 83-84.)

Shortly thereafter, the Ambroses filed a complaint with the Commission. (R. 85-86; Adm. Ex. 13 at 15-55.) On December 28, 2022, the Administrator emailed Respondent requesting that he provide a response to the Ambroses' submission within two weeks. (Adm. Ex. 13 at 13-15.)

As discussed below, on January 14, 2023, Laura Ambrose discovered a torn manila envelope in the Ambroses' mailbox. On January 17, 2023, six days after the Commission's deadline to respond to its December 28 letter, Respondent sent a letter to the Administrator stating that he had mailed the client files to Michael, which included a disk of documents and the December 20, 2022 letter. (R. 289; Adm. Ex. 13 at 1-4.) Also, Respondent mailed a check with the same date (January 17) to the Ambroses for $1,545, to refund the Ambroses' filing fees. (R. 97-99; 270; Adm. Ex. 13 at 53.)

The Torn Manila Envelope: On January 14, 2023, Laura found a damaged manila envelope in the Ambroses' mailbox, containing the letter from Respondent, dated December 20, 2022, which stated that Respondent was sending the legal files to the Ambroses, including certain paper documents and a disk containing documents. (R. 86-90; 122-24; Adm. Exs. 10, 10A, & 11.)

The manila envelope was torn open. The envelope contained only the December 20 letter (torn in the same fashion as the envelope), two paper clips, a black metal clip, and a broken rubber band. (R. 122-24.) Although the letter referenced other documents and a disk, the envelope did not contain these items. The envelope was enclosed in a plastic U.S. Postal Service "We Care" bag, which can be purchased on-line. (R. 86-90; 160-01; Adm. Ex. 10A.)

The envelope had no postmark or barcode. (R. 88; Adm. Ex. 10, 10A.) The Ambroses' regular mail carrier, Laura Drozier, testified that she did not deliver that envelope. (R. 146.) A

long-time Postal Inspector, Keith Williams, testified that because the stamps were not cancelled and the envelope failed to include a bar code, the torn envelope did not appear to have been processed through the mail. (R. 158-62.)

Set forth below is a photograph of the torn manila envelope, the torn letter, and the "We Care" bag, which the Hearing Board admitted into evidence.

(Adm. Ex. 10A at 2.)

According to Respondent, the missing disk allegedly contained Respondent's purported April 28, 2022 Memo to File; a copy of Respondent's December 20 letter; a scanned copy of the manila envelope; and some other documents. These documents allegedly included, *inter alia*: Respondent's purported demand letter to the hot tub company; the retention agreement between the parties; and Michael's December 5, 2022 certified letter to Respondent seeking the return of the client files. (R. 282-84.)

In Respondent's testimony, he summarized his December 20 mailing: "It [the Ambroses' file] was not a thick file by any stretch of the imagination." (R. 283-84); "[T]here was not a lot. I probably should have scanned it [i.e., the file]." (R. 286). In Respondent's closing argument, he repeated his testimony: "Yes, there wasn't a large file. It fit into a manila envelope. I never claimed it was a large file." (R. 586.)

Respondent testified that he did not copy the purported demand letter to the hot tub company, so that the only existing copy of that letter was allegedly lost in the mail. (R. 286-87; 525; 527-28.) Also, he did not allegedly copy the entire file because his office was closing for the holidays (though he went into the office the next morning). (R. 286-87; 525; 527-28.) Respondent's Answer to Paragraph 27 of the Complaint discussed the December 20 letter, but it did not clarify his position. Specifically, Respondent wrote a "quadruple negative," stating: "The letter speaks for itself, but stated not that no copies of the files were being retained, but rather no copies of the documents which were not saved on the CD were being retained." (C. 134-137.)

In closing arguments, the Administrator's Counsel summarized the facts concerning the purported December 20, 2022 mailing:

> We have produced the actual envelope, and the panel can see that that envelope had a very striking appearance. It was pristine. It was unmarred by dirt. It did not have smears. The edges were crisp. It had an artful tear down one side that matched the

> envelope on the inside. The letter itself inside was also unmarked, lacking in dirt, just pristine. And that letter conveniently was dated eight days before the ARDC docketed its investigation into Respondent's conduct.

(R. 563-64.) (Emphasis added.)[4] As shown above, these comments were appropriate.

We conclude that the Hearing Board's findings concerning Count II were not against the manifest weight of the evidence or contrary to law, and we affirm the Hearing Board's decision on Count II.

Count III – Failure to Comply With the May 12, 2023 Subpoena

Count III charged Respondent with failing to respond to a lawful demand from a disciplinary authority, in violation of Rule 8.1(b), in that Respondent failed to comply with the Administrator's May 12, 2023 subpoena *duces tecum*, requiring the production of any computer containing documents relating to the Ambroses. (*See* Subpoena, Adm. Ex. 14.) According to Respondent, the relevant computer was a desk top computer, which he could have personally delivered to the Commission's office. (Resp. Ex. N at 3.) However, Respondent refused to produce his computer, asserting that the computer contained privileged materials relating to other clients. (Resp. Ans. at par. 28; Resp. Ex. N.; R. 303-04, 310.) Nevertheless, Respondent never sought judicial review of the privilege issue; he did not move to quash the subpoena; and he did not seek a protective order.

Instead, Respondent produced a "jump drive" containing a copy of some Ambrose documents, and photographs of file data on the computer screen, which he asserted constituted compliance with the May 12 subpoena. (Ans. at par. 28; R. 424-25, 538.) However, the Administrator's forensic computer expert, Laurence Lieb, testified that he could not perform a forensic analysis of the Ambrose documents on Respondent's computer based solely on what Respondent produced. (R. 177-81, 188-96.)

THE HEARING BOARD'S MISCONDUCT FINDINGS

The Hearing Board found that Respondent engaged in all the misconduct charged in the Complaint (Hearing Bd. Report at 8-24), including sometimes in a "tension"-filled atmosphere. (R. 329; 520.)[5] A summary of the Hearing Board's findings is provided below.

Count I: The Hearing Board found the following (Hearing Bd. Report at 3-13):

• Respondent violated Rule 1.3 by failing to diligently represent the Ambroses in three matters. (*Id.* at 10-12.) Rule 1.3 states: "A lawyer shall act with reasonable diligence and promptness in representing a client."

• Respondent violated Rule 1.4(a)(3) and (4) by failing to reasonably communicate with the Ambroses about those three matters. (Hearing Bd. Report at 9-10.) Rule 1.4(a) states: "A

lawyer shall:…(3) keep the client reasonably informed about the status of the matter; [and] (4) promptly comply with reasonable requests for information."

• Respondent violated Rule 1.16(d) by failing to surrender the Ambroses' files. (Hearing Bd. Report at 12-13.) Rule 1.16(d) states: "Upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interests, such as…surrendering papers and property to which the client is entitled."

Count II: The Hearing Board found the following (Hearing Bd. Report at 13-20):

• Respondent violated Rule 8.4(c), in that Respondent engaged in dishonest conduct by knowingly backdating a cover letter to the Ambroses, dated December 20, 2022; falsely stating to them that he was sending their complete client files; and falsely stating to the Administrator that he mailed Michael the entire client files. (*Id.* at 13.) Moreover, the Hearing Board further found that Respondent "fabricated" the manila envelope "packaging to make it appear that the contents were removed or lost after Respondent mailed the envelope was delivered by the U.S. Postal Service." (*Id.* at 16.) Rule 8.4(c) states: "It is professional misconduct for a lawyer to… engage in conduct involving dishonesty, fraud, deceit, or misrepresentation."

• Respondent violated Rule 8.1(a) by falsely representing to the Administrator in his January 17, 2023, that he sent the entire legal files to the Ambroses, even though he had not done so. (*Id.* at 19-20.) Rule 8.1(a) states: "[A] lawyer…in connection with a disciplinary matter, shall not…knowingly make a false statement of material fact."

Count III: The Hearing Board found (Hearing Bd. Report at 20-24):

• Respondent violated Rule 8.1(b) by knowingly failing to provide computer equipment that the ARDC lawfully demanded on May 12, 2023, during the investigation of Counts I and II." (*Id.* at 20.) The Hearing Board further found that Respondent's actions were not protected by IRPC 1.6, the tendering of the jump drive did not constitute lawful compliance with the subpoena, and Respondent failed to file a proper motion. (*Id.* at 20-24.) Rule 8.1(b) states: "[A] lawyer…in connection with a disciplinary matter, shall not:…knowingly fail to comply with a lawful demand for information from…[a] disciplinary authority, except that this Rule does not require disclosure of information otherwise protected by these Rules or by law."

Findings Regarding Mitigation and Aggravation

In mitigation, the Hearing Board found that Respondent faced personal challenges that impacted his professional life, including that his father passed away, and his mother and daughter had serious medical issues. (Hearing Bd. Report at 26-27, 31.) Although Respondent testified that he did *pro bono* work and improved his office practices, the Hearing Board gave no weight to these factors because they were uncorroborated, and it found that, generally, Respondent was not credible. (*Id*. at 32.)

In aggravation, the Hearing Board found that there were substantial aggravating factors, including that Respondent provided false and misleading testimony; he called the Administrator's Counsel a liar; he missed deadlines and appearances; he ignored the Chair's Order to correct his

erroneous exhibits after the hearing; he disclosed confidential client information concerning at least four clients; he caused harm to the Ambroses; his misconduct was exacerbated by his attempts to cover up his negligence; and he failed to accept responsibility or express remorse. Respondent was also previously disciplined.[6] (*Id*. at 9-10; 25-31.)

The Hearing Board's Recommendation

The Hearing Board recommended that Respondent be suspended for two years, and until further order of the Court. (*Id*. at 27-34.)

ARGUMENTS

The Review Board reviews the Hearing Board's findings of fact under a "manifest weight of the evidence" standard. *See* Supreme Court Rule 753(d)(3). For a finding to be against the manifest weight of the evidence, the opposite conclusion must be clearly evident, *In re Winthrop*, 219 Ill. 2d 526, 542 (2006), or the finding appears arbitrary, unreasonable, or not based on the evidence. *In re Sides,* 2020PR00047 (Review Bd. at 12), M.R. 031287 (Sept. 21, 2022). Generally, questions of law, including the interpretation of disciplinary rules, are reviewed *de novo*. *See In re Thomas*, 2012 IL 113035, ¶ 56; *In re Rothman*, 2002PR00087 (Review Bd. at 8), M.R. 20128 (May 20, 2005). The Hearing Board's findings regarding the credibility of witnesses and the resolution of conflicting testimony and evidence in particular deserve great deference because the Hearing Board can best observe the witnesses' demeanor and assess their credibility. *In re Timpone,* 157 Ill. 2d 178, 183, 196-97 (1993).

Respondent argues: (1) the Hearing Board erred in finding that he engaged in the misconduct charged in Counts II and III; (2) the Chair abused her discretion by making certain discovery, procedural, and evidentiary rulings, which should result in a remand; and (3) Respondent should be suspended for no more than one year, with no UFO provision.[7] We reject Respondent's arguments.

The Hearing Board issued a well-reasoned and thorough analysis of the facts and the law in this case. We affirm the Hearing Board's findings of misconduct and the Chair's rulings concerning discovery, procedural, and evidentiary issues, including for reasons not relied upon by the Hearing Board.[8] We also adopt the Hearing Board's sanction recommendation of a two-year suspension, UFO.

The Hearing Board's Findings Of Misconduct Are Supported By The Record

Respondent argues that the Hearing Board erred in finding that he engaged in the misconduct charged in Counts II and III. We disagree. We conclude that Respondent has failed to show that the Hearing Board's findings of misconduct are against the manifest weight of the evidence or contrary to law.

A key part of our analysis is based on the Hearing Board's determination of the credibility of the witnesses. The Hearing Board found that Respondent lacked credibility and made significant adverse credibility findings against him, with which we agree. In more than twenty instances, the Hearing Board characterized Respondent's testimony or conduct as being false, untruthful, not credible, dishonest, deceitful, disrespectful, and unprofessional; and the Hearing Board found that Respondent's actions involved lies, misrepresentations, deceptive acts, serious misconduct, a calculated scheme, dishonesty, deception, a cover up, obstruction, selfish motives, fabrication, and a failure to take responsibility. (Hearing Bd. Report at 8-13, 16-19, 25-34.)

Moreover, Respondent has raised numerous issues on appeal that were not raised before the Hearing Board. Those issues are forfeited. *See O'Shaughnessy-Marcanti*, 1996PR00001 (Review Bd. at 8), M.R. 14249 (Jan. 29, 1998) (stating "[M]any of the objections which [respondent] now raises were not brought to the attention of the Hearing Board. Generally, objections not raised in the trial court…may not be raised for the first time on appeal."); *Palm v.*

2800 Lake Shore Drive Condo Ass'n, 2013 IL 110505 ¶26; *People v. Houston*, 229 Ill. 2d 1, 7, n.3 (2008) (affirming, in part, on forfeiture grounds, and stating, "[F]orfeiture [is]…the failure to make the timely assertion of the right."). [These three cases and principle are collectively referred to as "*O'Shaughnessy*."] Additionally, Respondent has raised issues in his reply brief and at oral argument that were not included in his opening brief. These issues are waived or forfeited. *See* Commission Rule 302(f)(5) ("Points not argued [in the appellant's opening brief] are waived and shall not be raised in the reply brief or oral argument."); Illinois Supreme Court Rule 341(h)(7) ("Points not argued [in the appellant's opening brief] are forfeited and shall not be raised in the reply brief, [or] in oral argument."). In endnote 25 of this Report, we have also identified several issues that are waived or forfeited, where Respondent has failed to properly preserve the record.

Count II – Fabricating a Torn Envelope and Making False Statements

Respondent argues that the Hearing Board erred in finding that he engaged in the misconduct charged in Count II. This argument has no merit.

The Hearing Board found that Respondent violated IRPC 8.4(c) (dishonesty) and 8.1(a) (false statement to the Administrator). (Hearing Bd. Report at 16-20.) The Hearing Board stated:

> 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….[W]e also find that Respondent's assertion to the Administrator that he [mailed the client files to Michael] was a knowingly false statement.

(*Id.* at 19-20.) We agree. The following evidence supports these Hearing Board's findings.

• Laura Ambrose discovered the manila envelope in the Ambrose mailbox on January 14, 2023. (R. 122.) She testified: "[The envelope] didn't look crumbled, it didn't look damaged in any other way other than a clean rip at the top. Then upon opening, it's just one letter [December 20, 2022] with a bunch of paper clips, a claw clip, and an old broken rubber band. It was unlike anything I'd ever seen. It did not look like a genuine piece of mail to me." (R. 123.)

• Michael Ambrose saw the envelope later on January 14 and testified: "[I]t just looked super clean….It looked cleanly torn across the top and cleanly torn through the letter….[T]here was no deactivation of the stamps. It wasn't postmarked. There was not bar code along the bottom." (R. 87-88.)

• Laura Dozier was a mail carrier for nine years and the Ambroses' regular carrier for the seven months before January 14, 2023, when the torn manila envelope was discovered. According to Laura, she did not deliver the torn manila envelope. (R. 145-48.) When shown the torn envelope at the disciplinary hearing, she stated: "I don't see anywhere it's stamped or any markings at the bottom that's it been through a machine. I just haven't seen this; it would have stood out to me." (R. 146.) She also testified: "For a long time [after becoming a regular mail carrier in June 2022] [,] I didn't get a day off. I worked six days a week every day except Sunday [when mail was not delivered]." (R. 148.)

• Keith Williams, the long-time U.S. Postal Inspector, testified that the manila envelope did not appear to have been processed by the U.S. Postal Service because: (1) the stamps were not cancelled; and (2) the envelope failed to have a bar code. (R. 158-62.) He also testified that the "We Care" plastic bags could be obtained publicly through postal workers or purchased online through unauthorized retailers. (R. 161.)

• Michael Ambrose also testified that after the damaged manila envelope was discovered, he and his wife spoke to Dozier and her supervisor to determine if they had information about how the manila envelope had gotten into the Ambroses' mailbox. (R. 95.) That conversation took place at a time when Dozier would have remembered whether she had delivered the envelope; and when Dozier and her supervisor would have remembered whether someone else was responsible for delivering that envelope. Nevertheless, Respondent argued: "The fact that she [Dozier] doesn't remember putting an envelope in a mailbox when she probably delivers thousands and thousands of letters a day is of no consequence. I wouldn't expect an average letter carrier to remember what they delivered on a given day." (closing argument). (R. 589.) The Hearing Board rejected Respondent's argument, stating: "Ms. Dozier was confident that she would have remembered the package in question."; and "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." (Hearing Bd. Report at 14, 17.)

• The Hearing Board made significant credibility determinations. Respondent testified and denied that he placed the manila envelope in the Ambroses' mailbox or caused someone to place it there (other than the U.S. Postal Service). (Hearing Bd. Report at 14.) And he presented witnesses who testified "they sometimes received mail that was damaged, did not have postal markings, or took longer around Christmas." (*Id.* at 15.) The Hearing Board stated: "There is no direct evidence that Respondent or someone on his behalf placed the damaged envelope and backdated letter in the Ambroses' mailbox in January 2023, but there is abundant circumstantial evidence supporting this finding." (*Id.* at 17). The Hearing Board found credible the testimony of the Administrator's witnesses – Dozier, Williams, and the Ambroses – and Respondent's testimony, generally, not credible. (*Id.* at 8, 14-19.) The Hearing Board noted that the testimony of Respondent's witnesses "as to the time that they spent with him" did not cover all of the relevant time period, and the "gaps" in Respondent's telephone records and schedule between January 11-14, 2023, allowed him or someone else to place the manila envelope in the mailbox. (*Id.*)[9]

• Respondent's motive is a significant factor here. The Hearing Board stated: "[T]he 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." (Hearing Bd. Report at 18.)[10]

• Respondent offered no evidence that anyone (other than himself) had a motive to tear open the manila envelope and take out the documents and disk, which had no financial value.

• Respondent's claim that he sent the manila envelope (with confidential documents) by general U.S. Mail during the holiday season, and without specific tracking, defies common sense, especially since Respondent had practiced law for two decades and the Ambroses had terminated his legal services. It is reasonable to conclude that, if Respondent had actually intended to provide the files to the Ambroses, he would have sent the files in a manner that would have allowed him to track the envelope (e.g., FedEx, UPS, certified mail, or registered mail) to protect the Ambroses' interests and his own. Alternatively, Respondent could have offered Michael another opportunity to pick up the files, thus insuring that the Ambroses received the files. *See* n.8.

• On January 17, 2023, Respondent finally responded to the Commission's December 28, 2022 inquiry letter, and he included a copy of the purported December 20, 2022 letter and some digital documents. (Hearing Bd. Report at 8). Coincidentally, that same day, Respondent mailed separately (and not in the torn manila envelope) a refund check to the Ambroses for $1,545 for their filing fees that he kept in his client trust account since September 2019, a mailing which was "postmarked" and "allow[ed] him to claim that he had satisfied his client obligations." (*Id*. at 8, 18.)

Under the instant facts, we conclude that the record supports the Hearing Board's findings that Respondent engaged in the misconduct charged in Count II, and those findings are not against the manifest weight of the evidence or contrary to law.

<u>Count III – Failure to Comply with the Subpoena</u>

Respondent argues that the Hearing Board erred in finding that he violated Rule 8.1(b) as charged in Count III by failing to comply with a subpoena served on him by the Administrator. Respondent argues that he did not violate Rule 8.1(b) because he asserted the attorney-client privilege relating to non-Ambrose client documents under Rule 1.6(a). He argues further that his submission of the jump drive (containing limited documents), and some computer photographs of his computer's hard drive, constituted compliance with the May 12, 2023 subpoena. (Resp. Br. at 20-24; Resp. Reply at 12, R. 424.) We reject Respondent's arguments. Set forth below is a summary of the relevant events and the appellate issues raised.

• **<u>March 27, 2023 Subpoena</u>**: As part of the Commission's investigation, on March 27, 2023, the Administrator, through its counsel, caused to be served on Respondent, an Illinois

Supreme Court-issued subpoena *ad testificandum* and *duces tecum*, i.e., a subpoena for a deposition with an attached "Rider," which was narrowly tailored seeking documents pertaining to the Ambroses. (Adm. Ex. 12 at 1-3.) Specifically, the Rider stated:

> Please provide entire client file for all matters handled for Michael Ambrose and/or Laura Ambrose, including all correspondence to the Ambroses or sent on their behalf, retainer agreements, and timekeeping records. Documents due April 5, 2023.

Id. (Emphasis added.) Respondent failed to provide the entire requested client files (Complaint, par. 26), but he is not charged for his failure to comply fully with this first subpoena.[11]

• **May 12, 2023 Subpoena**: On May 12, 2023, the Administrator served on Respondent a second Illinois Supreme Court-issued subpoena *duces tecum* (with a Rider), pursuant to Illinois Supreme Court Rule 754(b), seeking any computer that contained documents relating to the Ambroses, and requiring compliance by May 31, 2023. (Adm. Ex. 14.) According to Respondent, the relevant computer was a desk top computer, which he could have personally delivered to the Commission's office. (Resp. Ex. N at 3.) The May 12 subpoena and Rider required production of:

> All 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 4) (Emphasis added.)[12] Respondent never complied with this subpoena.

Contrary to Respondent's contention, the May 12, 2023 subpoena was limited to those documents relating to the Ambroses. Specifically, the Administrator stated that the May 12 subpoena was issued "for the limited purpose of determining whether Respondent had engaged in any work on Michael and Laura's three matters and whether Respondent had backdated the December 20, 2022 letter." (*See* Complaint, par. 27) (C. 17).)[13] In fact, Respondent admitted under oath that the May 12 subpoena did not name any of Respondent's clients other than the Ambroses. (R. 302.)

• **Respondent's June 6, 2023 Letter**: On June 6, 2023, a week after the due date for complying with the subpoena, Respondent sent a letter to the Administrator's Counsel, wherein Respondent acknowledged that he had received the second subpoena, and that he had been told he could submit his computer directly to the Administrator or the Administrator's forensic computer expert. (Resp. Ex. N; R. 433.)

However, in the June 6 letter, Respondent asserted that his computer contained confidential records relating to non-Ambrose clients, including, *inter alia*, attorney-client privileged materials and mental health records.[14] Respondent asserted further that pursuant to Rule 1.6(a) and, absent a valid court order, he could not ethically produce his computer. (Resp. Ex. N.) We reject Respondent's argument on appeal.

• **The Forensic Process**: Laurence Lieb, the Administrator's computer expert, testified about the forensic process of locating and reviewing specific targeted documents on computers.

(R. 171-212; Lieb's Report, Adm. Ex. 15.) Lieb always uses specific keyword search terms to locate targeted documents, without looking at irrelevant information on the computer. (R. 180-86.) By using keywords, the search is "instantly narrowed down to just those files, emails, [and] correspondences that contain those keywords." (R. 183.) If allowed access to Respondent's computer, he would have used specific keywords, including, for example, the name Michael Ambrose and relevant dates (e.g., December 20, 2022) to locate Ambrose documents on Respondent's computer, without looking at any other client files. (R. 183-86.)

According to Lieb, based on best forensic practices, the process of reviewing relevant documents involves an industry standard forensic tool that can search for the relevant documents, without looking at non-relevant information. The process creates a forensic image of the computer's hard drive, so that no changes can be made to the hard drive. (R. 172-81, 190-94; Adm. Ex 15 at 3.) By using this forensic tool and keyword searches, Lieb had the ability to filter down to the specific activity on Respondent's computer concerning Michael Ambrose and the date of December 20, 2022. (R. 212.)

Leib has never "gone rogue" and "peeked" at irrelevant documents. (R. 186-87.) Importantly, as an independent expert, he relies on repeat business, and looking at irrelevant documents would destroy his reputation. Further, forensic tools exist that can identify untargeted searches. (R. 151, 186-87.) Significantly, the Hearing Board determined: "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 in this case." (Hearing Bd. Report at 24.)[15]

During the parties' communications, Respondent asked for information on how a forensic analysis of his computer would be done, and the Administrator's Counsel explained the process. (C. 118-19.) Specifically, Counsel told Respondent that the forensic analyst would use specific search terms to analyze the hard drive; the analyst's search would be limited to keywords; and the analyst would not perform an inspection of each individual document on the hard drive. (C.118.)

Based on Lieb's testimony, it is clear that the examination of Respondent's computer would have been limited to locating and reviewing materials relating to the Ambroses, and the examination would not have involved the review of materials relating to other Respondent clients. Accordingly, we conclude that no privileges relating to other clients would have been violated. *See* n.8.

• **The Jump Drive**: Regarding the jump drive (a/k/a "thumb drive") and screen shots that Respondent produced, Lieb testified that they were forensically insufficient for him to provide an opinion concerning the provenance of any documents on Respondent's computer. Moreover, without examining the original hard drive, he "lacked the requisite evidence to opine whether any document in this case was backdated or fabricated." (Hearing Bd. Report at 22, 24; R. 208.) (*See also* R. 177-81, 188-96; 211-12; Adm. Ex. 15 at 10.) We conclude that the Hearing Board properly found that the limited documents that Respondent produced in the jump drive and computer photographs did not comply with the May 12 subpoena.

• **IRPC 1.6 and 1.8**: Respondent argues that pursuant to Rule 1.6(a) and the attorney-client privilege, he could not turn over his computer. We reject this argument. Rule 1.6(a) states in relevant part: "A lawyer shall not reveal information relating to the representation of a client

unless…the disclosure is permitted by paragraph (b).” However, Rule 1.6(b)(5) allows a lawyer to reveal confidential client information “to establish a claim or defense on behalf of a controversy between the lawyer and the client…or to respond to allegations in any proceeding concerning the lawyer's representation of the client.” We conclude that pursuant to Rule 1.6(b)(5), Respondent was permitted to produce his computer to respond to the allegations of misconduct concerning his representation of the Ambroses, since the subpoena related only to the Ambrose documents, and the forensic examination would have been limited to those documents.

Two Comments to Rule 1.6 are also relevant. Comment 10 states: “Where a …disciplinary charge alleges…misconduct of the lawyer involving representation of the client, the lawyer may respond to the extent that the lawyer reasonably believes necessary to establish a defense…. Such a charge can arise in a…disciplinary…proceeding and can be based on a wrong allegedly committed by the lawyer against the client.” Comment 17 states: “Disclosure may be required…by other Rules…. *See*…[Rule] 8.1.”

Rule 8.1(b) was added to the IRPC for the first time, effective January 1, 2010. As previously noted, Rule 8.1(b) states: “[A] lawyer…in connection with a disciplinary matter, shall not…knowingly fail to comply with a lawful demand for information from…[a] disciplinary authority, except that this Rule does not require disclosure of information otherwise protected by these Rules or by law.”

Additionally, Supreme Court Rule 766, titled “Confidentiality and Privacy,” provides that various matters before the Commission are confidential, and the Administrator may not unilaterally turn over information obtained in an investigation. This rule would have protected the privacy and confidentiality of Respondent's non-Ambrose clients during the investigation and disciplinary proceedings. Significantly, Respondent was aware of Rule 766, since he referred to it in his June 6, 2023 letter. (Resp. Ex. N.)

Illinois attorneys have a duty to cooperate, in good faith, with the Commission in an investigation or disciplinary proceeding, which Respondent failed to do. Significantly, being a lawyer is a privilege, and not a right. *See In re Campanale*, 2022PR0019 (Hearing Bd. at 21), M.R. 03197 (Sept. 21, 2023). We find that under the instant facts, Respondent was authorized and obligated to produce any computer containing the Ambrose documents, including pursuant to Rule 1.6(b)(5), Rule 8.1(b), Rule 766, and the established forensic procedures testified to by expert Lieb.[16] We also find that by turning over his computer, and under the instant facts, Respondent would not have compromised any privileges belonging to other clients or violated any ethical rules. Thus, Respondent's total reliance on Rule 1.6(a), and his total disregard for Rules 1.6(b)(5) and 8.1(b), are misplaced. *See* n.8. Therefore, we find that the Hearing Board's decision on this issue was not against the manifest weight of the evidence or contrary to law.

Finally, the great ancient Greek mathematician Archimedes once stated the geometric axiom: “*The shortest distance between two points is a straight line*.” *See* https://elevatesociety.com/the-shortest-distance-between-two/. In the modern era, that statement has been expanded to resolving non-mathematical matters in the most direct route. (*Id.*) Tellingly, Respondent has failed to take the shortest distance to cooperate with the Commission's investigation and disciplinary proceedings. *See* n.8.

• **Adjudication of the Privilege Issue**: Respondent argues that based on his assertion of the various privileges, he had: complete discretion to refuse to comply with the May 12 subpoena; no obligation to produce his computer (absent a court order and a probable appeal)[17]; and no obligation to obtain a protective order, or an order quashing or modifying this subpoena. We reject Respondent's arguments and address the relevant rules below.

Illinois Supreme Court 754(e) states: "A motion to quash a subpoena issued pursuant to this rule shall be filed with the court. Any person who fails or refuses to comply with a subpoena may be held in contempt of court." The plain language of Rule 754(e) requires the party objecting to the subpoena to file a motion to quash in the Supreme Court, i.e., Respondent. Accordingly, since the May 12 subpoena was a Supreme Court-issued subpoena under Rule 754 (n.12), Respondent failed to comply with this rule and his arguments can be denied summarily. *See* n.8.

Respondent also argues that under Illinois Supreme Court Rule 754(f), the Administrator was required to seek a court order, stating: "This use of the imperative 'shall' imposes a mandatory condition on the Administrator, leaving no discretion to bypass judicial enforcement." (Resp. Br. at 26.) Respondent's argument was not presented to the Hearing Board, and as such, it is forfeited. (*O'Shaughnessy*.) Rule 754(f) states: "A petition for rule to show cause why a person should not be held in contempt for failure or refusal to comply with the subpoena issued pursuant to this rule shall be filed with the court." Substantively, the word "shall" applies only to the location where the rule to show cause must be filed, namely, in the Supreme Court; it does not mandate that the Administrator must file a rule to show cause, or that the Administrator must seek a contempt sanction, rather than charging a Rule 8.1(b) violation. Accordingly, Respondent's argument fails. [Note: Rules 754(e) and 754(f) overlap in part. Pursuant to Rule 754(f), the Supreme Court can refer contempt petitions to the Cook or Sangamon County courts to "entertain petitions, hear evidence, and enter orders compelling compliance with subpoenas…."]

Respondent also argues that the Administrator should have moved for an order compelling compliance, citing Illinois Supreme Court Rule 219. (Resp. Br. at 25.) This argument fails because, in part, Respondent did not comply with Rule 754(e). Specifically, Rule 219 states: "If a party…refuses to comply with a request for…tangible things, the party…serving the request may…move for an order compelling…compliance with the request." Even if Respondent had moved to quash in the Supreme Court and the matter was referred to a circuit court, Rule 219 does not mandate that the Administrator move for such an order.[18] Accordingly, we reject Respondent's argument.

Moreover, at oral argument, Respondent's counsel argued that Illinois Supreme Court Rule 201(k) required that the parties "meet and confer" before a discovery motion could be filed, and since that did not occur, Respondent had no obligation to file any motion. (3/14/25 Appellate Argument, circa 8:00.) We reject this argument. Under Rule 201(k), motions may be filed when, as here, the parties are unable to reach an accord concerning differences over discovery. *See* Rule 201(k) (stating "The parties…shall make reasonable attempts to resolve differences over discovery. Every motion…shall incorporate a statement that…[the parties] have been unable to reach an accord."). Because of the impasse between the parties on the production of the computer issue, Respondent could have filed a motion to quash, or a motion for a protective order, with a declaration that the parties were unable to reach an accord.

• ***Zisook* Analysis**: The parties agree that no Illinois case is factually on all fours with the facts of the instant case. At the disciplinary hearing and on appeal, both parties cited *In re Zisook*, 88 Ill. 2d 321 (1981), as providing guidance concerning how the assertion of privilege should be handled in disciplinary cases. (Resp. Br. at 25; Resp. Reply at 10-11; Adm. Br. at 27-28.) Respondent cited the case in his closing argument, stating: "There is a mechanism that the Supreme Court has set up in the case law in *Zisook.*" (R. 538, 594.) The Hearing Board also cited *Zisook* in reaching its determination that Respondent violated Rule 8.1(b). (Hearing Bd. Report at 23-24.)

The Illinois Supreme Court addressed the procedural issue of whether an attorney may refuse to comply with a subpoena for testimony and documents by asserting a Fifth Amendment privilege against self-incrimination. As discussed below, the *Zisook* Court (and then the instant Hearing Board) concluded that simply asserting the attorney-client privilege is not sufficient.

In this case, subpoenas were issued to three attorneys, including attorneys Zisook and Elias. The subpoena to Zisook directed him to produce certain documents and provide testimony; but he refused to comply with the subpoena, based on his assertion of his Fifth Amendment privilege. The Supreme Court held that Zisook could not refuse to produce the subpoenaed documents, or refuse to testify, simply by asserting his Fifth Amendment privilege. (88 Ill. 2d at 328.) Instead, Zisook was required to produce the documents to the Administrator, and then assert the claimed privilege. (Zisook was also required to appear for a deposition, and assert the privilege as to each incriminating question.) Once Zisook had complied with that procedure by producing the documents and asserting privilege, the Administrator had the option of seeking judicial review. (*Id*. at 333, 335, 341.)

Moreover, regarding Elias, who failed to appear and failed to produce the requested documents, the Court stated: "The respondent's failure to do so does not constitute a proper way of claiming the privilege." (*Id.* at 321, 336.) The following additional quotations from *Zisook* are instructive here.

> [I]f the sole discretion for asserting the privilege rests with the witness, there is a substantial opportunity for abuse….The State, the legal profession and this court have significant interests in maintaining the integrity of the bar in Illinois. So vital is this interest that attorneys are expected to assist the Commission. (*Id.* at 331.)
> ***
> We also must strike a balance which satisfies the needs of the Commission and protects the rights of the witness. Due to the conflicting interests, as well as the potential for abuse, we find that in attorney disciplinary hearings[,] it is inappropriate to vest complete discretion solely in the witness in applying the privilege against self-incrimination. Rather, the issue must ultimately be resolved by the court. (*Id*. at 332.)
> ***
> [A] witness wishing to claim the privilege must appear, as commanded, and claim the privilege as to each incriminating question. At this point the Commission may seek a judicial determination of the validity of the claimed privilege. (*Id*. at 333.)
> ***

> The same is true for a subpoena *duces tecum*. The 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.)

Clearly, pursuant to *Zisook*, Respondent's simple assertion of privilege was not sufficient to excuse his failure to comply with the May 12 subpoena since "Respondent admitted that he knowingly withheld the requested computer equipment." (Hearing Bd. Report, at 22).

The Hearing Board stated further:

> [W]e 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….Then the Administrator '*may* seek a judicial determination of the validity of the claimed privilege' as applied to those questions….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.'…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.

(*Id.* at 23-24.) We agree. Respondent never produced his computer pursuant to the May 12 subpoena. His "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." (*Id.* at 24.)

• **Declining to Rule on the Privilege Issue and Respondent's Options**: Respondent argues further that the Hearing Board erred by declining to decide whether Respondent's assertion of privilege was valid; and the case should be remanded to determine this issue. (*See, e.g.,* Resp. Br. at 10, 14, 24, 30; Reply Br. at 12.) We reject Respondent's argument.

The Hearing Board stated:

> [Respondent] urged us to find [the] laws excused his non-compliance with the subpoena, in accordance with the Rule 8.1(b) exception ["knowingly fail[ing] to respond to a lawful demand for information from…[a] disciplinary authority, except…[it] does not require disclosure of information…protected by these Rules or law."]
>
> ***
>
> 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 5-1101; 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….<u>Respondent did not avail himself of the procedure for raising these arguments, so it would be improper for us to address them here</u>.

(Hearing Bd. Report at 22-23.) (Emphasis added.) (citations omitted.)

We agree that the Hearing Board did not err by declining to address the substantive defense to reach its conclusion since Respondent should have filed a motion to quash before the Supreme Court (Rule 754(e)), which likely would have referred the matter to the Cook or Sangamon County Courts for further review. (*See* 735 ILCS 5-1101.) His failure to file a motion to quash or for a protective order in any court is telling. Moreover, it demonstrates that, as the Hearing Board concluded, he did not seek to protect the interests of his non-Ambrose clients, but rather, his own interests.[19] Accordingly, the Hearing Board's rulings were not against the manifest weight of evidence or contrary to law.[20]

Furthermore, Respondent argues that the Review Board should remand this matter for a ruling by the Hearing Board on the substantive defense of the attorney-client privilege to the non-production of his subpoenaed computer. (Resp. Br. at 68; 3/14/25 Appellate Argument, circa 20:00.) We reject this argument. Because of Respondent's request for an administrative ruling, we find by clear and convincing evidence that under the instant facts and record, and for the reasons set forth in this Report: (1) Respondent did not successfully assert the privilege; and (2) he did not have the right to refuse to produce his computer under IRPC 8.1(b), as charged in the Complaint. *See* n.8. Therefore, no remand is necessary.

<u>The Hearing Board Did Not Abuse Its Discretion in the Challenged Rulings</u>

Respondent argues that the Hearing Board, through its Chair, abused its discretion and violated his due process rights by making erroneous discovery, procedural, and evidentiary rulings. Respondent argues that the matter should be remanded for a hearing on Count II and III and for a reduced sanction recommendation. (Resp. Br. at 31-44; Resp. Reply at 13-22.) We reject Respondent's arguments.

Discovery, procedural, and evidentiary rulings by the Hearing Board Chair are reviewed for an abuse of discretion. *In re Carroll*, 2015PR00132 (Review Bd. at 7), M.R. 02985 (May 24, 2018); *In re Chiang*, 2007PR00067 (Review Bd. at 10), M.R. 23022 (May 18, 2009). An abuse of discretion occurs when no reasonable person would agree with the position taken by the Chair. *See In re Franklin*, 2019PR00068 (Review Bd. at 10), M.R. 031177 (May 19, 2022).

Respondent's arguments include the following points: (1) the Hearing Board erred in its credibility findings; (2) Respondent's Motions to Continue should have been granted; (3) Respondent's Motion for Written Discovery should have been granted; (4) the expert testimony of Respondent's computer expert, Robert Dorman, should have been admitted at the hearing; (5) an untimely and purported expert report by Scott Bokal should be considered on appeal; (6) the Administrator's Responses to the Requests to Admit should have been admitted as an exhibit; (7) the Administrator's Counsel was not authorized to sign documents; and (8) Respondent's due process rights were violated. We reject all of these arguments.[21]

After careful consideration of all of Respondent's arguments (including those forfeited or waived), we conclude that the Chair did not abuse her discretion concerning any of the challenged rulings; Respondent's due process rights were not violated; and no basis exists for a remand.

• **Respondent's Collateral Estoppel Argument Has No Merit**

Respondent argues that the Hearing Board was prohibited from finding that his testimony was not credible, based on collateral estoppel arising from the prior 2019 disciplinary proceeding. (Resp. Br. at 17; Resp. Reply at 8-9.) He argues that the Hearing Board did not have authority to evaluate and rule on Respondent's credibility because of a stipulation entered into in Respondent's prior 2019 disciplinary case that certain witnesses would testify to Respondent's reputation for truthfulness. (*Id.*) This argument has no merit.

The Hearing Board is responsible for making credibility findings of witnesses' testimony. *See In re Thomas*, 2012 IL 113035, ¶ 56 (stating "The Hearing Board...is in the best position to observe the witnesses, to assess their demeanor and credibility, to resolve conflicting testimony, and to render fact-finding judgments."). We reject Respondent's argument that the Hearing Board was effectively stripped of its responsibility to make credibility findings, based on a stipulation in the 2019 disciplinary matter, concerning witnesses who did not even testify in 2019. During the oral argument, Respondent's appellate counsel wisely agreed that this written collateral estoppel argument would be a "heavy lift" and, she later conceded, that it should "not be given weight." (3/14/25 Appellate Argument, circa 19:45 *seq,* and 22:50 *et seq.,* respectively.) We agree that Respondent's argument should not be given any weight. Respondent's argument is factually and legally baseless.

• **Respondent's Motion For Written Discovery Was Properly Denied**

Respondent argues that the Chair erred by denying Respondent's motion to conduct written discovery. (Resp. Br. at 32–33; Resp. Reply at 14–16) (C. 143-44, 229.) Commission Rule 251(a)

states: "Written interrogatories shall not be served by any party without leave of the chair of the hearing panel and for good cause shown." The Hearing Board denied Respondent's motion "for lack of good cause." (C. 229.) Respondent's argument fails.

In his motion, Respondent stated that he "hoped that written discovery [would] allow the Administrator to realize the insurmountable holes in its allegations"; and he needed written discovery because the Administrator's Responses to the Requests to Admit allegedly included factually inconsistent responses (*e.g.*, when the Administrator asserted a lack of knowledge in some responses). (C. 143-44; *see also* C. 147 (asserting his "hope" again).) Respondent's motion was properly denied for several reasons.

First, the Complaint sufficiently identified Respondent's misconduct, so that written discovery should have been unnecessary. Second, Respondent received all relevant witness interviews and unprivileged portions of the file to which he was entitled. (R. 8-9.) Third, if Respondent still needed purported relevant discovery, he had the right to take the depositions of the Administrator's witnesses to address issues relating to the merits of the Complaint. Fourth, Respondent failed to attach to his motion any proposed interrogatories or other requests for discovery so the Chair could determine their relevancy. Fifth, Respondent's "hope" to persuade the Administrator to change its position regarding the facts and law here does not establish "good cause" or provide a valid basis to grant written discovery. (R. 7-9; C. 209.) *See also* n.8. Accordingly, the Hearing Board did not abuse its discretion in this ruling.

• **Respondent's Motions to Continue Were Properly Denied**

Respondent argues that the Hearing Board, through its Chair, erred in denying two written motions, dated March 4 and 14, 2024, and an oral motion, dated March 6, 2024, requesting that the scheduled March 21-22, 2024 disciplinary hearings be continued (C. 276-78; 531-34), and that these denials were a violation of due process. (Resp. Br. at 32-34; Resp. Reply at 13-14.) We conclude that Respondent's three motions were properly denied. (C. 335-36, 560-62; R. 2-20 (*passim*).)

To begin, Commission Rule 272 addresses the issue of continuing a disciplinary hearing and states: "The Chair may continue a hearing…at the Chair's discretion. No hearing…shall be continued at the request of any party except upon written motion supported by affidavit. No hearing shall be continued at the request of a party except under extraordinary circumstances. Engagement of counsel shall not be deemed an extraordinary circumstance."

Respondent's arguments concerning his motions to continue the disciplinary hearings fail for the following reasons.

First, Respondent did not attach the required Rule 272 affidavits to his motions, and the March 6 oral motion was not in writing; as such, these appellate arguments can be summarily denied. *See* n.8.

Second, Respondent failed to provide sufficient evidence to meet his burden of showing that "extraordinary circumstances" existed. *See In re Duric*, 2015PR00052 (Review Bd. at 9), M.R. 030734 (May 18, 2021) (stating "As the party seeking to continue the hearing, Respondent solely

bore the burden of providing sufficient competent evidence to convince the hearing panel chair that extraordinary circumstances existed to warrant a continuance.").

Third, Respondent's argument that the March 21-22, 2024 hearing dates should have been continued so he could hire counsel on the eve of the hearing (after representing himself *pro se* for more than a year) was properly rejected since under Commission Rule 272, "engagement of counsel" is not "an extraordinary circumstance." Respondent's claim that additional time was needed to address certain motions and scheduling issues also fails to qualify as an extraordinary circumstance, especially since new appellate issues were created, in part, by his own failure to address numerous deadlines in a timely manner. (*See, e.g.*, Hearing Bd. Report at 29 (stating Respondent "missed multiple deadlines and appearances throughout this disciplinary proceeding…"); *accord*, Respondent, without prior permission, missed the mandatory October 23, 2023 Commission Rule 260(a) pre-trial conference where the discovery and March 2024 hearing dates were set. (C. 232-35.) [The August 23, 2023 scheduled pre-trial conference (C. 106-07) was continued, at Respondent's request, to September 27, 2023, and that hearing continued to completion on October 23, 2023, with Respondent's absence. (C. 149-50).]

Fourth, although Respondent argues on appeal that a continuance was needed to secure another expert after Robert Dorman's expert testimony was excluded, Respondent failed to make this argument to the Hearing Board. (Resp. Br. at 38-39; Resp. Reply at 14.) Specifically, on appeal, Respondent states: "Mr. Maag sought a continuance…in a motion filed on March 14, 2024, citing the need to secure another expert for his defense….Refusing to continue the hearing to allow Mr. Maag the time to secure a replacement expert constitutes an abuse of discretion." (Resp. Br. at 38-39 (citing C. 531-33; 560).) Respondent's argument is forfeited (*O'Shaughnessy*) and factually false because he failed to cite the need to secure another expert as a basis for continuing the hearing in his written March 14 motion. Thus, the Chair's March 15, 2024 ruling on this issue (C. 560-61) was proper. [*See also,* other expert issues, *infra.*]

Fifth, on March 6, 2023, the then-Chair properly denied Respondent's oral motion to continue the March 21-22 hearing dates because of Respondent's misinterpretation of Count II. Allegedly, Respondent interpreted Count II as stating that he placed the damaged manila envelope in the Ambroses' mailbox on January 14, 2023, and he built his defense around that date. On appeal, Respondent's claims the Administrator had a "shift in theory" about that date and cited cases for the continuance. (Resp. Brief at 32-34, Resp. Reply at 13-14.) Respondent's claims and cases are unavailing.

Specifically, Count II states: "Prior to January 14, 2023, when Michael and Laura found the manila envelope in their mailbox, Respondent…caused it to be placed in Michael and Laura's home mailbox in a clear U.S Postal Service bag." (Complaint at par. 20, C. 15.) (Emphasis added.) In rejecting Respondent's motion, the Chair noted Respondent's factual mistake and delay in raising this issue, stating: (1) "I went back to the complaint, and I don't see that they [the Administrator] allege in the complaint that you did anything on the 14th"; and (2) "But that's not what it [the Complaint] says so the fact that between now and when the complaint was filed [August 16, 2022] -- I mean there have been all these [seven] months to sort of clarify what you assumed, right, because that is not what the complaint says." (R. 7-8.) Additionally, Counsel for the Administrator stated that the Commission provided to Respondent all relevant witness interviews and unprivileged portions of the file (R. 8-9), which provided him with information

about the relevant dates. Thus, Respondent had appropriate notice concerning the relevant dates and the ability to defend against the charges. Moreover, the Administrator conceded that Respondent was out-of-town on January 14 (Hearing Bd. Report at 16), and Respondent eventually acknowledged that this January 14 date dispute "may well be moot." (R. 10.) Accordingly, Respondent's cited cases are irrelevant here.

In sum, based on our review of the record, we conclude that the Hearing Board properly denied Respondent's written and oral motions to continue the disciplinary hearing and he was not denied due process.

• Robert Dorman's Proposed Expert Testimony Was Properly Excluded

Respondent argues that the Hearing Board, through the Chair, abused its discretion by granting the Administrator's Motion to Bar Robert Dorman as an Expert Witness. (Resp. Br. at 36-39; Resp. Reply at 16-19; *see* Admin. Br. at 33-34.) [Dorman was allowed to testify as a lay witness, explaining to Respondent certain aspects of the computer-at-issue and photographs. (*See* C. 398-422.)] Respondent argues that if this expert ruling was reversed, Dorman may still be called to testify as an expert on remand. (Resp. Br. at 39.) Respondent's argument should be rejected.

To begin, Respondent sought to call Dorman as an expert witness relating to documents on Respondent's computer, including that no changes or alterations to the relevant documents were observed. (C. 160-61.) On March 8, 2024, the Administrator filed a motion to bar Dorman's proposed expert testimony because he lacked relevant qualifications in computer and information technology and data collection, as applied to the facts of this case. (C. 348–54.) On March 14, the Chair issued an order barring Robert Dorman from providing expert opinion testimony. (C. 553.)

Rule 702 of the Illinois Rules of Evidence states: "If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise." Under this rule, Dorman was not qualified. The record shows that, even though Dorman had some computer training and had held information technology positions in the past, he was unqualified based on his admitted ignorance about the creation and backdating of documents.

Before the disciplinary hearing, the Administrator's Counsel deposed Dorman, and then moved to bar his testimony, arguing that his deposition revealed that he had very limited training, certification, or experience in the relevant computer technology. (C. 348.) In Dorman's deposition, attached as an exhibit to the Administrator's motion (C. 401), he was asked: "Was [it] your understanding that you would be looking into this for [Respondent] as an expert?" Dorman answered: "At that time, no.…[H]e [Respondent] asked me…do I know how to identify if a PDF [Portable Document Format] has been changed. Is it possible it can be changed. I said, 'Well, you know, I don't know, I don't know how. That's beyond my technical capability to do it.'" (C. 426.) Additionally, Dorman was asked whether he undertook a deeper analysis of documents on Respondent's computer (other than looking at the properties tab), and he replied: "I don't know what kind of deeper analysis you could have done." (C. 430.)[22]

Based on our review of the record, we agree with the Hearing Board that Dorman's expert lack of knowledge of the relevant issues disqualified him from offering an expert opinion concerning the Ambroses' files on Respondent's computer, including, inter alia, whether Respondent backdated documents, and specifically the letter dated December 20, 2022.

• Respondent's Proposed Scott Bokal's Report Was Properly Excluded

On appeal, Respondent attached to his opening brief a report prepared by Scott Bokal, a certified computer examiner, concerning Respondent's computer. (*See* Resp. Br. at Appendix 5.) Although that report was not part of the record before the Hearing Board, Respondent argues the Bokal report should be considered because it includes findings indicating that the documents at issue were not backdated. (Resp. Br. at 7, 39; *see also* Resp. Reply at 25.) We reject these arguments. Respondent never submitted the Bokal report to the Hearing Board and Bokal never testified before the disciplinary board or even sat for a deposition. Therefore, this issue is forfeited. (*O'Shaughnessy*.)

Case law supports rejection of Bokal's report because that report was not part of the record. *See People v. Dillard*, 2025 IL App (4th) 230739, ¶166 (stating "[W]e emphatically reject any consideration of the materials defendant cites for the first time on appeal."); *In re Hoffman*, 1998PR00122 (Review Bd. at 6), M.R. 18006 (March 26, 2002) (stating "It is well established that facts outside the record cannot generally be considered on appeal."); *In re Ford,* 2018PR00011 (Review Bd. at 7), M.R. 030123 (Jan. 17, 2020) (stating "Respondent attached three exhibits to his exceptions…[which were not] part of the record. We therefore will not consider them on appeal."); *In Re Horne*, 1997PR00098 (Review Bd. at 11), M.R. 14249 (June 30, 2000) (Review Board would not consider extra-record evidence to refute findings of misconduct.). Thus, we reject Bokal's report on appeal and Respondent's arguments based on that report. *See* n.8.

In his Reply, Respondent argues for the first time that "[Bokal's] report was properly attached [to Respondent's opening brief] under Commission Rule 284(a)." (Reply at 10.) This argument was not raised in Respondent's opening brief and, therefore, it is waived. (Commission Rule 302(f)(5)). Substantively, Respondent's argument also has no merit.

Commission Rule 284(a) states: "A matter which might otherwise be presented by post-trial motion may be the subject of an exception filed with the Review Board." (Resp. Reply at 18.) However, to present new evidence, the party offering the evidence must show that the evidence could not have been discovered before the trial and with the exercise of due diligence. *See City of Chicago v. Eychaner,* 2020 IL App (1st) 191053, ¶38 (stating "A motion for a new trial based on newly discovered evidence requires establishing the new evidence be…undiscoverable 'before trial with the exercise of due diligence.'") (citation omitted); *In re Gertzman,* 1993PR00597 (Review Bd. at 8-9), M.R. 12768 (Sept. 24, 1996) (striking proposed affidavits under Rule 284, and stating: "A grant of a new trial on the basis of new evidence is properly denied where the evidence could have been discovered before trial in the exercise of due diligence.").

Respondent fails to demonstrate newly-discovered evidence of a qualified computer expert that could not have been obtained with due diligence before the disciplinary hearing began (March 21, 2024) or even at its conclusion (April 5). The following chronology reflects Respondent's failure on this issue. By early June 2023, Respondent acknowledged that the Administrator had

retained an expert to examine his computer. (Resp. Ex. N.) In late September 2023, in the Administrator's Supplemental Witness Disclosures filing, Laurence Lieb was disclosed to Respondent as the Administrator's expert. (C. 152-55.) By January 26, 2024, Lieb had completed his expert's report (Adm. Ex. 15; 15-0010), and thereafter, it was transmitted to Respondent. Despite the significance of Lieb's report and findings, Respondent never sought to take the deposition of the Administrator's expert Lieb; and Respondent moved for a continuance on February 21, 2024 on other grounds. (C. 254-55.)

On March 8, 2024, after receiving the Administrator's motion to bar Robert Dorman's expert testimony (C. 348-54), and with the impending March 21-22 hearing dates, Respondent failed to retain a back-up qualified computer expert, in case the Administrator's motion was granted. After the Administrator's motion was granted on March 14 (C. 553), Respondent still did not obtain another expert until after the Hearing Board issued its Report and Recommendation on September 30. (C. 672-73.) Therefore, Respondent had almost two months from the issuance of Lieb's report to the first hearing date to obtain a qualified computer expert and two and one-half months until the completion of the hearings (April 5, 2024). Accordingly, we decline to consider Bokal's report because it was not submitted before or even during the Hearing Board's proceedings and no factual or legal basis exists to make it part of the record.

Finally, we are troubled by Respondent's retention of Bokal only after the release of the Hearing Board's Report on September 30, 2024 (C. 672-73) (stating "Since September 30, Maag located and conferred with a forensic expert…."). The Bokal report submitted by appellate counsel was not completed until November 20, 2024 (Resp. Br. Appendix, A5-02), more than six months after the disciplinary hearings ended and five days after Respondent's motion to file his initial oversized appellate brief was granted (though Bokal and his future report are not mentioned in that motion). (*See* Respondent's November 12 motion and November 15, 2024 Order, respectively.) Moreover, the Administrator's Counsel warned Respondent that his argument lacked a "good faith" basis since, effectively, it was a post-trial motion prohibited under Commission Rule 284. (C. 683.)[23] Accordingly, the Bokal argument is meritless.[24]

• **Respondent's Claim that the Administrator's Responses to the Requests to Admit were Judicial Admissions was Properly Denied**

Respondent argues that the Hearing Board erred by excluding from evidence the Administrator's Responses ("Responses") to Respondent's Requests to Admit ("Requests" or "RTAs") as "judicial admissions." (Resp. Br. 39-42; Resp. Reply at 19-20.) We reject Respondent's arguments. Set forth below is a chronology relating to this issue.

In September 2022, Respondent served thirty Requests on the Administrator (C. 29-48); and the Administrator's Counsel subsequently filed timely sworn Responses. (C. 111-122.) In mid-March 2023, Respondent filed an untimely Motion *in Limine* ("MIL") (C. 465-80) seeking, *inter alia*, to bar alleged contrary evidence of certain of the Administrator's Responses and to introduce other responses as "judicial responses." (C. 476-80; R. 535-52.) On March 19, 2023, the Chair denied the MIL, *without prejudice*. (C. 576.) Respondent failed to renew the MIL and seek a specific ruling on it until the very end of Respondent's case-in-chief, and immediately before the close of evidence, when he sought to introduce the Responses as Exhibit I. (R. 564); *See* Ill. R. Evid. 103(a); *Cf. Foreman v. Gunite Corp.*, 2012 IL App (1st) 091644 ¶17; *Woolums v.*

Huss, 323 Ill. App. 3d 628, 663 (4th Dist. 2001) (both cases holding that the failure to obtain a ruling on a motion to strike an affidavit forfeits the issue on appeal). The Chair denied the admission of Respondent's Exhibit I (R. 556-59); Respondent failed to specify which of the Responses, Numbers 1-29, were relevant; and he failed to explain why Exhibit I should be admitted at the time offered. (*See* R. 555 (non-specific response)). *See* Ill. R. Evid. 401-02; *Simon v. Plotkin,* 50 Ill. App. 3d 603, 607 (1st Dist. 1977) (rejecting an offer of proof and requiring it to be made in a proper manner, to state what is offered, by whom offered, and for what purpose). For the aforesaid and following reasons, we find that the Chair did not abuse her discretion in so ruling. *See* n.8.

First, despite possessing the Administrator's Responses for almost six months, Respondent never moved procedurally to obtain a timely and definitive judicial or administrative ruling on the admissibility of the Responses before the close of all of the evidence; thus, this issue is forfeited. (*O'Shaughnessy*.) *See* Illinois Supreme Court Rule 216(c) (stating "Any objection to a request or to an answer shall be heard by the court upon prompt notice and motion of the party making the request."); Commission Rule 260(b) (stating "[T]he Chair shall conduct prehearing conferences to consider action regarding:…(4) prehearing rulings on the admissibility of evidence….and (9) any other matters which may aid in the disposition of the action.").

At the hearing, the Chair stated: "[T]hese were things that you guys should have addressed prior to the hearing, if I am correct." Respondent admitted: "That is accurate."; and the Chair replied: "That is accurate. And you had the opportunity to do that prior to the hearing. So, I am not going to take judicial notice of admissions." (Emphasis added.) (R. 556-57.) The Chair also stated: "This was something that the two of you had the ability to deal with prior to the hearing, which would have been the appropriate time, for our purposes." (R. 558.) Respondent's failure to act to obtain a judicial or administrative ruling estops him for seeking such a ruling now. *See* n.8.

Second, Respondent failed to timely object to Michael's direct examination testimony that the company was operating in 2024, and he cross-examined Michael on the subject. (R. 63-64; 107-07; Adm. Ex. 3.) Therefore, this issue is forfeited and waived. *O'Shaughnessy*; *Hedge v. Midwest Contractors Equipment*, 53 Ill. App. 2d 365, 380 (1st Dist. 1964) (objection waived by asking a question on the same subject); n.8; *see also* Ill. R. Evid. 103(a)(1)&(b)(3) (requiring "timely" and "contemporaneous" objections).

Third, and substantively, Respondent's argument that the Hearing Board erred by not finding that the jewelry store (where Michael purchased the engagement ring) was out of business is factually wrong. (Resp. Br. at 39-40.) Respondent's Request No. 30 sought an admission that the "jewelry store at issue went out of business in 2020" (C. 120), which the Administrator admitted; however, Respondent takes that Response and legal issue out-of-context. Michael testified that the jewelry company at issue was still operating in 2024; and it was still the same company that had sold him the diamond engagement ring, but the store had simply changed names. (R. 106-07.) The original company's name was Distinctive Diamonds, with two locations (Distinctive Diamonds and Diamonds Direct). The two stores were the same company, owned by the same person, and operating under two names; eventually, one store was closed, but not the company itself. (R. 62-64; Adm. Ex. 3.)

In conclusion, the Hearing Board properly rejected Respondent's argument, stating: "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." (Hearing Bd. Report at 11.) We agree. The Hearing Board did not err by properly excluding the Administrator's Responses as judicial admissions.

• <u>The Administrator's Counsel Was Authorized to Sign the Responses</u>

Respondent argues that the Administrator (and not the Administrator's Counsel) was required to sign the Responses. Respondent states: "Verification [by the Administrator's Counsel] without the signature of the Administrator…had the effect of admitting all the requests to admit." (Resp. Br. at 40.) Since the Administrator did not sign the Response, Respondent claims, all of his Requests (which included purported facts and information that contradicted the allegations in the Complaint) should be deemed as having been admitted as being true (even though the Responses included denials). (*Id.* at 39-42.) This argument has no merit. The Administrator's Counsel had the authority to sign the Responses.

In support of his argument, Respondent cites *People v. Darguzis*, 2022 IL App (3d) 200325. (Resp. Br. at 40-41.) But this case does not support Respondent's argument. The Third District stated: "Our judgment today is confined to the legal ability of the State to respond to requests to admit in statutory [license] summary suspension proceedings," 2022 IL App (3d) 200325, ¶29, a fact pattern not relevant here. Furthermore, the *Darguzis* court also stated: "[A] response to a Rule 216 request to admit can be certified by a person with knowledge of the facts sought to be admitted, including the party's attorney" (*id.* at ¶27), a statement that Respondent omits.

Accordingly, under the instant facts, the Responses were properly signed by the Administrator's Counsel, who was handling the case, interacted with Respondent frequently (*see* Resp. Ex. N), and had knowledge of the relevant facts. Thus, no error occurred here.

• <u>Respondent Was Not Denied His Due Process Rights</u>

Finally, Respondent argues that the cumulative effect of erroneous rulings by the Hearing Board, through the Chair, violated Respondent's due process rights. Respondent states: "Together, the [Hearing Board's] abuses rose to the level of a due process violation." (Resp. Br. at 45.) This argument fails. A review of the record reveals that none of the Chair's rulings alone, or in the aggregate, constitute denial of Respondent's due process rights.

Due process in a disciplinary proceeding requires notice of the allegations of misconduct, and a fair opportunity to defend against those allegations. *See In re Chandler*, 161 Ill. 2d 459, 470 (1994). Respondent's due process rights were fully satisfied since Respondent received the Complaint and the relevant discovery documents, which provided proper notice of the allegations of misconduct.

Moreover, Respondent had a fair opportunity to defend against the allegations. The Complaint was filed in August 2023, and the disciplinary hearing was held approximately seven months later, which gave Respondent sufficient time to defend himself. He had the opportunity to engage in discovery, and he made numerous motions concerning procedural, evidentiary, and discovery issues. A three-day disciplinary hearing was held that provided Respondent with a fair opportunity to defend against the allegations. We conclude that no due process violations occurred; and the Hearing Board did not abuse its discretion regarding the challenged procedural, discovery, and evidentiary rulings, including issues on appeal forfeited or waived.[25]

SANCTION RECOMMENDATION

The Hearing Board recommended a two-year suspension, UFO. Respondent argues that the appropriate sanction is a suspension of one year or less, without a UFO provision. (3/14/25 Appellate Argument, circa 20:10; 27:50.) For the reasons set forth below, we conclude that the appropriate sanction is a two-year suspension, UFO, as recommended by the Hearing Board.

To begin, we review the Hearing Board's sanction recommendation based on a *de novo* standard. *In re Thompson*, 2022PR00059 (Review Bd. at 11), M.R. 032293 (Sept. 20, 2024). The Hearing Board's findings regarding aggravation are factual findings, which will not be reversed unless against the manifest weight of the evidence. *In re Sides*, 2020PR00047 (Review Bd. at 12), M.R. 031287 (Sept. 21, 2022). In making our recommendation, we consider the nature of the misconduct, and any aggravating and mitigating circumstances shown by the evidence. *See In re Gorecki*, 208 Ill. 2d 350, 360-61, 366 (2003). The Illinois Supreme Court considers five factors in imposing sanctions, including: (1) protecting the public; (2) maintaining the integrity of the legal profession; (3) deterring other attorney misconduct; (4) protecting the administration of justice from reproach; and (5) the purpose of discipline is not to punish the attorney. *In re Timpone*, 157 Ill. 2d 178, 197 (1993); *In re Discipio*, 163 Ill. 2d 515, 528 (1994).

The Serious Nature of Respondent's Wrongdoing

We give substantial weight to the serious nature of Respondent's misconduct, his questionable testimony and arguments, and the significant aggravating factors in this case. Over a

period of three years, Respondent failed to represent the Ambroses diligently and to communicate with them reasonably; he failed to take any substantial steps on their behalf (*e.g.,* failing to file lawsuits or send demand letters to the companies at issue); and he failed to surrender the complete client files to the Ambroses or in a timely fashion.

Respondent's negligence was not the only major problem in this case. Indeed, Respondent's attempt to cover up his negligence was a significant and continuing problem. As the Hearing Board stated:

> 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….[Respondent] covered up his misconduct through a calculated scheme that was intended to deceive his clients, the Administrator, and the Hearing Board….[His] pattern of neglect [was] exacerbated by dishonesty including repeating misrepresentations and fabricating documents.
> ***
> 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.

(Hearing Bd. Report at 28-29.) We agree.

The evidence, including in aggravation (*see supra*), shows the following events: In 2020, Respondent began neglecting the three cases. In 2021, he falsely represented that he had filed three lawsuits. In 2022 and 2023, he made a series of false statements to the Ambroses and the Commission, and he created the torn manila envelope. In 2024, he provided false and misleading testimony at the disciplinary hearing. In 2025, on appeal, he has continued to argue, through his appellate counsel, that there was no pattern of dishonesty. *See, e.g*., Resp. Brief at 49 (stating in part, "Maag Did Not Engage in a Pattern of Dishonesty.").

Based on the record, once Respondent started on a course of action involving intentional dishonesty and deceit in this case, he never changed course. Even with the mitigating evidence described below, the record provides little or no evidence that Respondent will change his behavior, or that he can be trusted to comply with ethical rules in the future. Stated differently, after appellate review, if Respondent is allowed to practice law without an appropriate sanction, he may engage in additional misconduct. Unfortunately, his prior discipline did not deter him from engaging in the ethical violations set forth in this Report.

Aggravating Factors

There are significant aggravating factors in this case, including the following:

• Respondent provided false and misleading testimony at the disciplinary hearing. The Hearing Board stated: "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." (Hearing Bd. Report at 26.) In our view, Respondent's false testimony is an indicator that he is unfit to practice law. *See In re Boscamp*, 2022PR00070 (Hearing Bd. at 17-18), M.R. 031859 (Sept. 21, 2023) (attorney disbarred) (stating "An attorney's false testimony in a disciplinary hearing 'demonstrates a further unfitness to practice law.'") (Citation omitted.)

• Throughout the disciplinary proceeding, Respondent demonstrated "unprofessionalism." (Hearing Bd. Report at 25). He failed to attend two pre-hearing conferences and submitted his Motion in *Limine* four days late. (*Id.*) Respondent sought a stipulation from the Administrator's Counsel about her possible testimony, even though she had been stricken from the witness list four months earlier, and he improperly and inaccurately accused her of "lying." Respondent ignored the Chair's Order to correct his final erroneous exhibit list, causing two of his exhibits to be stricken. (*Id.*) The Hearing Board found this "persistent behavior" of Respondent in the disciplinary proceeding to be "significantly aggravating." (*Id.* at 29.)

• Respondent disclosed "confidential and privileged information" from four of his clients, mentioning clients' names, the topic of two client's court cases, names, and at least one meeting with a client. (*Id.* at 25-26.)

• At the disciplinary hearing, Respondent failed to accept responsibility or express genuine remorse. "[H]e 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." (*Id.* at 29.)

The Hearing Board found Respondent's "apologies" to the Ambroses not to be "genuine." (*Id.*) Respondent said that he was sorry that the Ambroses were dissatisfied with his services (R. 98, 127), but he failed to say that he was sorry for having done something wrong. The Hearing Board stated: "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." (Hearing Bd. Report at 29.)

• Respondent's *pro se* closing argument demonstrated his lack of remorse and his current unfitness to practice law. Respondent argued: (1) "And so I am crystal clear, I have made no false statements….Am I a liar? No."; (2) "I may be a lot of things, but dishonest is not one of them. I do not lie."; and (3) "I did not lie to anybody." (R. 595, 596, 600.) The evidence shows that these statements were false. Thus, even in 2024, he continued to make false statements, including those statements made to the Hearing Board and, subsequently on appeal, he has continued to advance his false statements.

• Respondent also failed in his closing argument to recognize the seriousness of his wrongdoing, stating: (1) "I would ask that no discipline be imposed."; and (2) "I would ask that the charges be dismissed in total." (R. 596, 601.)

• Respondent caused a risk of future and actual harm to the Ambroses, including that they wasted three years awaiting Respondent to act on their behalf; and Respondent never told them about the statute of limitations for their cases. Further, Laura lost trust in attorneys, and the Ambroses spent money to hire another attorney. The Ambroses needlessly expended time and energy trying to obtain information from Respondent, trying to get their files from him, and trying to discover how the torn envelope was delivered. In addition, Michael spent time searching court records to find out whether Respondent had filed any lawsuits on their behalf. (Hearing Bd. Report at 30-31.)

• Respondent's prior 60-day disciplinary suspension went into effect just days before he agreed to represent the Ambroses, which the Hearing Board said: "should have heightened his awareness of his ethical obligations." (*Id.* at 28 (citing *In re Storment*, 203 Ill. 2d 378, 401 (2002)). That prior disciplinary matter failed to convince Respondent that he should act diligently, communicate reasonably, deal honestly with the Ambroses, be truthful with the Administrator, and respond to lawful demands for information.

• Other than his own testimony, there is no evidence establishing that Respondent is honest and trustworthy, such as evidence showing that he engaged in significant charitable or civic activities; or participated in bar associations or other legal groups seeking to advance the law. There was no witness testimony that he is honest or had a reputation for honesty, or that someone who has worked with him believes he is reliable. As the Hearing Board observed: "None of Respondent's seven witnesses – including two attorneys – gave any character testimony on his behalf." (Hearing Bd. Report at 31.)

• Other than his own testimony, there is no evidence that Respondent made significant changes to his practice of law which would help to prevent future misconduct (Hearing Bd. Report at 31), such as taking on additional partners, seeking a mentor, establishing a new system for tracking cases, or going to work for another law firm or a company.

Mitigating Factors

The mitigating evidence includes the following:

• Respondent practiced law for seventeen years without any disciplinary problems until his prior disciplinary action.

• Additionally, the Hearing Board found that Respondent faced personal challenges that impacted his professional life, including that his father passed away in 2022, after a period of serious illness; Respondent's mother and daughter both had serious medical issues during 2021-22; and COVID-19 existed for part of the relevant period. (Hearing Bd. Report at 26-27, 31.) The Hearing Board considered those factors, stating: "[Those personal challenges] 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." (*Id*. at 26-27.) (*See also,* R. 266-73, 459-62 (Respondent's testimony); R. 218-19; 341 (his wife's testimony).)

• At the time of the instant disciplinary hearing, his family's crises seemed to have subsided somewhat. Respondent testified that his mother was stable (R. 266-67; 342); and his daughter was doing better. (R. 460-62.)

The mitigating evidence does not outweigh the serious nature of Respondent's misconduct and the aggravating factors discussed above.

In sum, based on the serious nature of Respondent's wrongdoing, we conclude that a two-year suspension, UFO, is warranted in this case. A UFO sanction will protect the public by requiring Respondent to apply for reinstatement to prove that he is fit to practice law, and that he is willing to abide by the ethical rules. *See In re Denison*, 2013PR00001 (Hearing Bd. at 49-50), (Review Bd.), M.R. 27522 (Sept. 21, 2015) ("[A UFO] sanction protects the public and the integrity of the profession…[because] Respondent [Denison] will not be able to resume practicing law until she establishes that she is fit to do so....That is particularly important to us in this case because the circumstances as a whole leave us with very serious doubt whether or not Respondent is willing or able to conform her future conduct to proper legal standards."). Additionally, in making our recommendation we have considered the need to deter Respondent and other attorneys. *See In re Discipio*, 163 Ill. 2d at 528 (stating "[A] sanction may appropriately consider the deterrent

value of attorney discipline and the need to impress upon others the significant repercussions of errors.”).

RELEVANT LEGAL AUTHORITY

We have carefully reviewed all of the cases cited by the Hearing Board and both parties concerning the appropriate sanction and address some of the relevant cases now.

Cases Cited by the Administrator: In making our recommendation, we rely primarily on three cases, which are similar to the instant case (at least in part) and provide guidance here: *In re Houdek*, 113 Ill. 2d 323 (1986) and *In re Stark,* 2013PR00027 (Hearing Bd.), M.R. 27037 (Jan. 16, 2015) (both cases cited by the Hearing Board), and *In re Trigo*, 2004PR00005, M.R. 21661 (Hearing Bd.), M.R. 21661 (Sept. 18, 2007) (cited by the Administrator on appeal).

• In *Houdek*, the Illinois Supreme Court imposed a two-year suspension, UFO. The misconduct included neglecting a legal matter; making misrepresentations to a client; fabricating evidence; and co-mingling and converting $45. The misconduct involved a single case and a small amount of money. However, in that case (as in the instant case), instead of addressing the original problem that involved neglect, the respondent made false representations, fabricated evidence, and testified falsely before the Commission. The Court concluded that such behavior did not inspire confidence that the respondent would conform his conduct to professional standards. The Court stated: “The respondent's failure to remedy his neglect, when [the client] complained of it to him, his misrepresentation to [the client] that he had taken care of the matter, and his less than candid dealings with the Commission warrant a suspension of 24 months. Moreover, his failure to date to make restitution to …[the client] and the lack of any evidence that he is willing or able to meet professional standards of conduct in the future warrant suspension until further order of the court.” 113 Ill. 2d at 327. The *Houdek* facts are similar to the facts in the instant case, including the neglect, false statements, fabrication of evidence, false testimony, and the failure to remedy the neglect. We find that in this case, as in *Houdek*, a two-year suspension is appropriate given the serious nature of Respondent’s misconduct and the aggravating factors; and a UFO sanction is warranted based on the lack of evidence that Respondent is willing or able to meet professional standards of conduct in the future.

• In *Stark,* the attorney was suspended for one year, UFO. Stark neglected two clients’ matters, which resulted in harm that he failed to recompense; he testified dishonestly during his disciplinary hearing, which included blaming a client for not providing necessary documentation and claiming that he had informed a client about the merit and outcome of her case. Stark had two other pending disciplinary proceedings. The *Stark* Hearing Board stated: “We find 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.” (*Stark* Hearing Bd. Report at 35.) Although *Stark* involved a one-year suspension, UFO (erroneously cited as two years, UFO) (*Maag* Hearing

Bd. at 32), we find that the facts in the instant are more serious than the facts in *Stark*. We also find that in this case, as in *Stark*, a UFO sanction is necessary to protect clients, the administration of justice, and the legal profession.

• In *Trigo,* the attorney was suspended for two years, UFO. The attorney neglected three client matters by failing to file immigration forms; he failed to return the clients' documents; and he failed to return unearned fees (which he converted). In aggravation, Trigo provided testimony that was not credible; he failed to accept responsibility or express remorse; he failed to make restitution; and he had two prior disciplinary matters involving similar misconduct. He presented no mitigating evidence. The *Trigo* Hearing Board stated: "Respondent's similar previous misconduct, his lack of remorse and his less than candid testimony at the hearing shows an unwillingness to adhere to the professional standards of the legal profession. We note that in cases where as here, the attorney is unwilling or unable to meet professional standards of conduct, the suspension was continued until further order of court." (*Trigo* Hearing Bd. Report at 25.) The *Trigo* facts are similar to the facts in the instant case. We find that in this case, as in *Trigo*, a two-year suspension, UFO, is warranted based on Respondent misconduct and the aggravating factors here, including that Respondent's prior discipline failed to deter him; Respondent refused to accept full responsibility or express genuine remorse; he provided false testimony at the hearing; he engaged in dishonest conduct to conceal his neglect of the Ambroses' three matters; and he failed to provide any character evidence.

We conclude that in the instant case, Respondent, like the attorneys in *Houdek*, *Stark*, and *Trigo*, engaged in serious wrongdoing, and that his actions show an unwillingness to adhere to professional standards.

<u>Cases Cited by Respondent</u>: With the filing of two oversized briefs,[26] Respondent, through his appellate counsel, has now cited more than 125 cases (including multiple citations of the same case). But even considering all of Respondent's cases, we recommend a two-year suspension, UFO.

Respondent argues that the appropriate sanction is a one-year suspension or less, without a UFO provision. Given the serious nature of Respondent's wrongdoing (including his negligence, false statements, creation of the torn manila envelope, misleading testimony, refusal to comply with the subpoena, failure to accept responsibility, and his prior discipline), we are not persuaded that a suspension of less than two years is appropriate, or that the sanction should not include a UFO provision.

Respondent cites three cases in which sanctions of two years or less, without a UFO, were imposed, arguing that those cases are comparable to the instant matter. *See, e.g.*, *In re Cagle*, 2005PR00023 (Hearing Bd.), M.R. 21355 (April 9, 2007) (two-year suspension without a UFO provision); *In re Copot,* 2022PR00036 (Review Bd.), M.R. 032491 (Feb. 13, 2025) (six-month suspension); *In re Solomon*, 2021PR00012 (Review Bd.), M.R. 032041 (April 9, 2024) (one-year suspension, stayed after five months with conditions). (Resp. Br. at 52-66.) We disagree that the cases cited by Respondent are comparable to the instant case.

• In *Cagle*, the attorney was suspended for two years, but without a UFO provision. Respondent argues that *Cagle* is comparable to this case, but a one-year suspension is more appropriate. Respondent is wrong. Cagle neglected six client matters during a five-year period, resulting in lengthy delays in the clients' cases. However, Cagle presented significant mitigating evidence. The Supreme Court rejected the Review Board's recommendation of a nine-month suspension and, instead, adopted the two-year suspension recommended by the Hearing Board. We conclude that the instant case involves aggravating factors that support the additional UFO provision here, which factors are not present in *Cagle*. However, we agree that *Cagle* supports our recommended two-year suspension here.

• In *Copot,* the attorney was suspended for six months for intentionally falsifying three emails. In aggravation, Copot failed to express remorse; he gave false testimony at the disciplinary hearing; and he made baseless accusations against the Administrator's Counsel. In mitigation, Copot had no prior discipline; a prior supervisor testified to Copot's good character (while no such testimony was elicited here); Copot's misconduct took place within a one-month period (not three years as here); and the entire scope of the charged misconduct involved three false emails. Thus, *Copot* is inapposite here because the wrongdoing in the present case is far more egregious than the cited wrongdoing.

• In *Solomon*, the attorney was suspended for one year, UFO, stayed by probation after five months, with conditions designed to correct the deficiencies in his law practice. Solomon neglected a client's case; he failed to keep his client informed about the court proceedings; and he converted $12,400. In aggravation, Solomon attempted to minimize his wrongdoing; and portions of his testimony were unreliable. In mitigation, he had only practiced law for one year when he took the client's case (contrary to the two decades of Respondent's practice here); he cooperated in the disciplinary proceedings (contrary to this case); he made full restitution; he made changes to his law practice (not recognized by the *Maag* Hearing Board); and he had no prior discipline (unlike the instant case). We find that *Solomon* is inapposite because that case involved less egregious misconduct and more mitigation than the instant matter.

Summary of Proposed Sanctions

In summary, the Hearing Board carefully considered all the relevant misconduct, together with the aggravating and mitigating factors, and recommended a two-year suspension, UFO. We recognize that during this lengthy disciplinary process, Respondent has continued to practice law: the Administrator's Petition for an Interim Suspension and rule to show cause (November 20, 2024) was continued until further order of the Court. (January 13, 2025 Court Order.) After our careful review of the disciplinary hearing, the extensive briefs and numerous cases, the Hearing Board's Report and Recommendation, the numerous appellate issues and arguments (including the oral argument), we recommend that Respondent be suspended from the practice of law. We agree with the Hearing Board that a two-year suspension, and until further order of the Court, is an appropriate sanction. As the Hearing Board concluded, the "relevant case law…serious conduct and several aggravating factors" are "not outweighed by the limited mitigating factors." (Hearing Bd. Report at 34.)

CONCLUSION

We affirm the Hearing Board's findings of misconduct and the Hearing Board's discovery, procedural, and evidentiary rulings, including that Respondent was not denied due process. We also affirm the Hearing Board's sanction recommendation that Respondent be suspended from the practice of law for a period of two years, and until further order of the Court. We conclude that the recommended sanction will serve the goals of attorney discipline, including protecting the public, deterring respondent and other attorneys, and maintaining the integrity of the legal profession.

Respectfully submitted,

David W. Neal
Esther J. Seitz
Scott J. Szala

ENDNOTES

[1] Abbreviations used herein include: (1) Common Law Record ("C."); (2) Report of Proceedings ("R."); (3) Administrator's Exhibits ("Adm. Ex."); (4) Respondent's Exhibits ("Resp. Ex."); (5) Respondent's Opening Brief ("Resp. Br.") and Reply Brief ("Resp. Reply"); (6) Administrator's Brief ("Adm. Br."); and (7) Oral Argument ("3/14/25 Appellate Argument"). Because of the extensive length of Respondent's two briefs and his newly-raised points in these briefs and appellate argument, we have cited to these documents and argument for completeness of the record.

[2] On September 12, 2023, Respondent – after receiving from the Administrator a "listing of ARDC counsel names" with the Complaint (C. 21-22; 2213; R. 310) – filed a "Motion for Extension of Time," with a verification, stating in part: "Respondent has contacted an [unnamed] attorney he expects to retain in this matter in the next few days to defend the allegations in this case." (C. 100-01.) On March 14, 2024, Respondent, who was still *pro se*, and without an affidavit or verification, moved to continue the scheduled March 21-22, 2024 hearing, alleging that he "ha[d] been attempting to retain counsel in this matter," and had "spoken with [unnamed] skilled and knowledgeable attorneys," who believed he had "substantial defenses to each and every allegation." (C. 531-34.) Respondent did not retain and publicly disclose outside counsel until approximately October 15, 2024, almost two years after this disciplinary matter began and after the Hearing Board had issued its Report and Recommendation on September 30, 2024.

[3] Respondent referenced his family legal and judicial history on several occasions. (*See, e.g*., R. 425) ("As an attorney who was raised in a legal family; my father was an attorney and a judge, my grandfather was an attorney….I am very cognizant of just what is and what an attorney is not."). Respondent also referenced or cited his father numerous other times, including in his opening statement (R. 46); his testimony (R. 267-73, 341-42, 459, 461); and his closing argument. (R. 582-84, 596.) We take judicial notice that in 2019, when Respondent retained outside counsel and consented to the two months' suspension, Justice Maag was a member of the Illinois Appellate Court. *See In Re Carlson*, 1996PR00800 (Review Bd. at 5, 6, 9), M.R. 13798 (June 15, 2001) (Hearing Bd. judicial notice); *In re Goings*, 2013PR00035 (Review Bd. at 14), M.R. 032033 (Sept. 30, 2024) (Review Bd. judicial notice).

[4] In closing argument, Administrator's Counsel argued that "[a]t its core, this is not a complicated case" (C. 559); addressed the implication that Respondent was a "victim of circumstance" (R. 564); and responded specifically to Respondent's "Occam's Razor" opening statement reference (R. 49), i.e., if two competing theories are advanced (Respondent v. Administrator) – the simpler explanation is to be preferred. *See* https://www.britannica.cm/topic/Occams-razor (discussing the 13th-14th English philosopher William of Ockham and the principle he espoused). Administrator's Counsel argued, and we agree, that the simpler Occam's Razor's explanation was that Respondent neglected the three Ambrose matters and, to cover up his neglect, he created the December 20, 2022 letter with false statements; generated the torn envelope; and caused the envelope and letter to be placed inside the Ambroses' mailbox in January 2023 (by himself or someone else). (R. 564.)

[5] Regarding "tension," the Chair stated: "Before we totally get started, there is an awful lot of tension in the room, and I just want to remind everybody that this is a legal proceeding, and I want to make sure we're respectful of each other and everybody who is here. So maybe we can ratchet down the emotion a little bit in all of this today." (R. 329.) In another session, she stated: "I do want to reiterate what I had said at the last hearing….And let's try to keep tension down so that we don't have the same sort of dynamic that we had going on the last time." (R. 520.)

[6] Although not addressed by the Hearing Board or the parties, we note that the Missouri Supreme Court imposed a reprimand on Respondent as a reciprocal sanction based on his prior disciplinary case in Illinois. *See In re Thomas G. Maag*, MBE No. 58108, Case No. SC98508 (Missouri Supreme Ct.). Significantly,

the Missouri Court stated: "On May 6, 2020, this Court issued a show cause order to Respondent, and Respondent did not file a response to the same." *Id*. (Missouri Ct. Order, Sept. 1, 2020.) Thus, it appears that Respondent failed to comply with an order issued by that Court. We have identified the Missouri case solely for the purpose of having a complete record; and we have not given any weight to that proceeding in terms of the sanction or any part of our analysis here. But we have taken judicial notice of the Missouri case. *See In re Carlson* and *In re Goings*, supra n.3.

[7] Respondent's arguments concerning the appropriate sanction relief have been a "moving target" (Resp. Br. at 45-65; Resp. Reply at 22-31; 3/14/25 Appellate Argument), with point (1) below (the only sanction argued by Respondent *pro se* before the Hearing Board), and points (2) – (5) (sanctions raised by appellate counsel for the first time and forfeited). (*O'Shaughnessy*.) Respondent's arguments have included: (1) dismissing all charges and imposing no sanction (R. 596, 601); (2) imposing a suspension of five months and no UFO; (3) imposing a suspension of five to six months, but no longer than one year, with no UFO, or imposing a one-year suspension, stayed by five to six months of probation (Resp. Br. at 67-68); (4) reversing and remanding to the Hearing Bd. for a hearing on Counts II and III and a ruling on the substantive defense of attorney-client privilege on the subpoenaed computer issue (Resp. Br. at 68; 3/14/25 Appellate Argument, circa 20:00); and (5) imposing a suspension of one year, with no UFO. (3/14/25 Appellate Argument, circa 20:10; 27:50.)

[8] Respondent's new issues and arguments have "opened the door" to additional findings, which we have made by clear and convincing evidence that further support the Hearing Board's findings and recommendation (whether or not we specifically state them as such in the Report). *See* Supreme Court Rule 753(d)(3) ("The Review Board…may make such additional findings as are established by clear and convincing evidence."). Moreover, and similar to an appellate reviewing court, we may affirm on grounds other than stated by the Hearing Board. *Cf: United States v. Printy (In re Estate of Funk)*, 221 Ill. 2d 30, 85-86 (2006) ("A reviewing court may sustain the decision of a lower court on any grounds which are called for by the record regardless of whether the lower court relied on the grounds and regardless of whether that court's reasoning was correct."); *People v. Johnson*, 208 Ill. 2d 118, 128 (2003) ("'[T]he question before [the] reviewing court is the correctness of the result reached by the lower court and the not the correctness of the reasoning upon which that result was reached.'") (citations omitted).

[9] Respondent argues: "[T]he Administrator failed to establish a chain of custody for the letter," citing *In re Czarnik*, 2016PR00131 (Review Bd. at 9-10, 13-14), M.R. 029949 (Sept. 16, 2019) (Resp. Br. at 54). (The *Czarnik* Review Board affirmed the Hearing Board's findings on this issue.) Respondent's reliance on *Czarnik* is misplaced. In that case, an eight-month time lag occurred between obtaining a lap top computer and processing it for information, which presented a "classic chain of custody issue." *Id*. In this case, no chain of custody issue exists regarding the December 20, 2022 letter. The Ambroses checked their mailbox on January 11, 2023, and then next on January 14, when the torn manila envelope was first discovered. (R. 100.) Therefore, the torn envelope was placed in the Ambroses' mailbox sometime on or between January 11 and January 14; and this short time period does not create a chain of custody issue as in *Czarnik* or undermine the Hearing Board's findings here.

[10] Respondent argues that the Hearing Board erred in finding that he backdated the December 20, 2022 letter because the Board "relied solely on his refusal to produce his hard drive" (Resp. Br. at 18) and no evidence existed that he "fabricated anything." (Resp. Reply at 9.) Respondent is wrong factually. The Hearing Board properly relied on several factors to conclude that Respondent backdated the December 20 letter. These factors include: (1) the Hearing Board found that Respondent was not a truthful witness and it rejected his denials on key points (Hearing Bd. Report at 19); (2) the Hearing Board rejected Respondent's argument that he was not skilled enough to "backdate" the letter, stating: "It takes only basic word processing skills to type an earlier date at the top of a document" and since he can operate "Word" and a scanner and can print out documents, he had the ability to backdate the letter (*id*. at 18-19; R. 535), a second and non-computer expert's technical use of the word "backdate" (*cf*: n.15); (3) the Hearing Board found

that Respondent had a "strong motive" to backdate the December 20 letter to make it appear that he sent the files before he was contacted by the Administrator (12/28/22) (Hearing Bd. Report at 18); (4) To avoid producing his computer for a forensic analysis, Respondent tendered the jump drive with limited documents, and photographs of the properties tab, which failed to provide the requisite evidence for a forensic analysis (*id*. at 22); (5) the Hearing Board concluded that, contrary to Respondent's testimony, he did not mail the December 20, 2022 letter on that date, and the letter in the manila envelope was not placed in the Ambroses' mailbox until sometime on or after January 11, 2023 and January 14 (when the envelope was discovered) (*id.* at 16-19); and (6) Respondent's refusal to provide his computer prevented a forensic evaluation to determine the date on which the letter was created. Accordingly, we conclude that the Hearing Board's findings on this and these other related issues are not against the manifest weight of the evidence or contrary to law. Even assuming, *arguendo*, that Respondent prepared the letter on December 20, this date is misleading because, as the Hearing Board found, it was not mailed on that date (no post mark or bar code), and it was not delivered until on or after January 11, 2023. (Hearing Bd. Report at 13-20.) Accordingly, we affirm the Hearing Board on this issue.

[11] Respondent misstates the record on another point. Under the heading "Finding that Mr. Maag Wrongly Refused to Comply with the Administrator's Subpoena Was Improper," Respondent's next sentence is: "On March 27, 2023, the Administrator issued a subpoena to Mr. Maag seeking his deposition and the entire Ambrose file [i.e., the "first" Administrator subpoena]. (C.17)" (quoting Paragraph 26 of Count III of the Complaint, but thereafter citing Rule 8.1(b)). (Resp. Br. at 23-24.) The subpoena-at-issue here is the May 12, 2023 subpoena [the second Administrator subpoena, not the first one] and cited in paragraph 27 of the Complaint. *See also* nn. 12-14.

[12] The March 27 and May 12, 2023 subpoenas were issued pursuant to Illinois Supreme Court Rule 754, which governs subpoenas in disciplinary proceedings. Rule 754(a) states: "The Administrator…[is] empowered to take evidence of respondents…concerning any matter which is the subject of an investigation or hearing." Rule 754(b)(1) states: "The Clerk of the [Illinois Supreme] Court shall issue subpoenas *ad testificandum* or *duces tecum*…including for Administrator investigations." Rule 754(c) states: "Any witness shall respond to any lawful subpoena of which he or she has actual knowledge." (Emphasis added.) The Illinois Supreme Court (not a circuit court) issued the subpoenas here, through its Clerk (Form 35), and with the Seal of the Supreme Court. These subpoenas stated: "We [the Supreme Court] Command You [Respondent]…to testify and give evidence…in a certain investigation now being conducted" by [the] Administrator relating to "Thomas G. Maag." And that "you also…produce [the documents and materials identified]" in the Attached Rider. (Adm. Ex. 12 at 1-3; Adm. Ex. 14 at 1-4) (Emphasis added.) *See also* n.13.

[13] In Respondent's Answer to the Complaint filed on September 22, 2022, Respondent refused to "accept" (or seek a clarification of) the Commission's allegation that its May 12 subpoena sought computer information for the "limited purpose" of analyzing Respondent's work on the three Ambrose matters and the potential backdating of the December 20 letter. (Complaint, par. 27.) Moreover, unlike his June 6, 2022 letter to the Commission, Respondent's Answer took a combative tone in this "speaking" document. For example, Respondent's Answer declared: "DENY that the subpoena was in any way shape or form limited to only seeking work or documents related only to the Ambroses, and affirmatively stated that the subpoena, on its face, purported to require the production of nearly every open case file this firm is presently handling, and a great many closed ones…." (C. 134-37.) Respondent cited Rule 1.6(a) and Rule 1.6(b)(6) (confidential information disclosure permitted pursuant to a court order), but conspicuously, he did not address Rule 1.6(b)(5) or Rule 8.1(b). Significantly, in Paragraphs 27 and 28 of his Answer, Respondent referenced the Administrator's Counsel by name four times. (C.137-38.)

Respondent's testimony and arguments evolved during the disciplinary hearing but the common denominator is that he, personally, did not discuss the specifics of Rule 1.6(b)(5) or acknowledge Paragraph 27. Instead, Respondent argued that under Rule 1.6, he could produce his computer only pursuant to a court

order (R. 310); and "no exception" to [Rule 1.6] subsections (b) or (c) "appear[ed] to apply" (R. 591). He also claimed that "nothing in Rule 8.1(b) supersedes the confidentiality of Rule 1.6." (R. 535-36.)

Respondent's claim that he was agreeable to retain a "special master or retired judge" (Resp. Br. at 23) is inconsistent with his claim of full protection for the rights of his clients (R. 535) because: (1) these officials are not specifically authorized under Rule 1.6(b) to adjudicate this issue (and the clients would have to agree and a court order obtained to do so); and (2) Respondent was "willing" to produce his computer to a "special master" "without client consent." (R. 537.)

Even Respondent's appellate counsel recognized the flaw of Respondent's testimony. Respondent's appellate brief stated: "Under Illinois law, attorney-client privilege can only be waived by the client, a court order, or in other certain limited circumstances." (Resp. Br. at 23); "Rule 1.6(a) protects client documents and work products by disclosure absent informed consent or [unlisted] specific exceptions." (*Id*. at 24.) And finally, appellate counsel explicitly acknowledged the "limited circumstances" or "specific exceptions" of "Rule 1.6(c)(5)" [sic] [Rule 1.6(b)(5)] by affirmatively stating that "limited disclosure of confidential information to the ARDC" is permitted. (*Id*. at 26.) (Emphasis added.) As the May 12 subpoena *duces tecum* made clear, the Administrator had limited its request for computer information to Ambrose-related matters (and not to "unrelated clients"). Accordingly, pursuant to these citations, Respondent has "opened the door" to additional grounds to affirm the Hearing Board's Report and Recommendation. *See* n.8.

[14] In his June 6, 2023 letter to the ARDC, Respondent intimated that the Commission might be cooperating with the State of Illinois, stating: "I know that the AG [Attorney General] would love to get some of these files, as they have tried…[in] discovery in some of my cases." (Resp. Ex. N.) Respondent also expressed his mindset and speculation in another filing:

It is no great secret that Respondent has been engaged in substantial litigation with offices of the State of Illinois, as well as prominent political office holders locally, and has been handling same with some degree of success. By any measure, Respondent is a thorn in the side of certain politically prominent persons, and to that end, has provided representation, advice, counseling and communication to persons and groups engaged in advocacy. It is highly likely that at least some of these persons would face reprisals should the fact of their political beliefs, advocacy, communications and membership be disclosed.

(C. 475.)

[15] At the time of the disciplinary hearing, Laurence Lieb was the CEO and owner of Tyger Forensics, a company that provided computer forensic services and analysis of evidence. According to his testimony and report, Lieb has extensive experience as a computer forensics expert in the legal industry, and he had experience analyzing electronic data using industry-standard practices. Lieb was certified by two forensic computer entities. He had been retained by numerous clients throughout the country and had testified in approximately 20 federal and state cases. (R. 171-96; Adm. Ex. 15 (Lieb's Report)).

With proper computer access, Lieb can determine whether a computer 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, and from a computer expert's standpoint and language, "backdated." (Hearing Bd. Report at 21-22; R. 184-86, 194-96; *cf*: n.10.) Lieb also testified: "[L]iterally 100 percent of my work is based on science, and 100 percent of work can be and has been replicated by a qualified peer." (R. 173.)

Lieb does not keep the copy of the hard drive "indefinitely," but only until the matter is resolved (R. 180). Then he "wipes" the copy of the hard drive using a forensic tool (which overrides the copy so it cannot be recovered) or, alternatively, if requested, returns the copy of the hard drive to the computer owner (e.g., Respondent) with his company's images and work product. (R. 182.)

[16] As acknowledged by Respondent in his June 6, 2023 letter and subsequent discovery, he was aware that his computer would be examined by the Administrator's expert, the procedures to be used, the confidentiality of the disciplinary proceedings, and that the Administrator could not unilaterally turn over information in this investigation. (*See* Resp. Ex. N; Administrator's Responses to Respondent's RTA's; Supreme Court Rule 766; C. 118-19.)

[17] At the disciplinary hearing, Respondent attempted to present an "advice of counsel" defense by testifying that he consulted with an ethics expert, who allegedly told Respondent that absent a court order, he did not have to comply with the May 12 subpoena, because it would result in disclosure of other clients' privileged information. (R. 307-10.) (Hearing Bd. Report at 20.) This hearsay testimony is rejected because Respondent failed to disclose the name of the purported expert (R. 308-10) and all of the relevant details regarding such purported consultation. Commission Rule 253(a) requires parties to disclose: (1) the "name, address and telephone numbers of persons who have knowledge of facts which are the subject of the proceeding and identify the subject of their knowledge"; and (2) "any reports… received from an expert who will testify." Commission Rule 253(b) provides that the "Hearing Board shall not allow…[the parties] to offer the testimony of any expert witness who provided a report to a party calling that expert witness, if that report has not been timely disclosed to all other parties." Long-time case law agrees. For example, Respondent failed to provide the specifics of any communications with the purported expert, including whether Respondent made a full and accurate report of all material facts to the expert; what specific legal advice was given to Respondent; and whether Respondent acted pursuant to that advice. *See, e.g., Karow v. Student Inn, Inc.*, 43 Ill. App. 3d 878, 884 (4th Dist. 1976) (regarding the advice of counsel defense). If Respondent had complied with Rule 253, the Administrator could have taken this purported expert's deposition and, if the expert had been called at trial, the Administrator's Counsel could have cross-examined the expert. Respondent's attempt to "backdoor" an "end run" around Rule 253 is disingenuous and fails. *See* n.8.

[18] We have considered Respondent's cases and arguments for his refusal to comply with the May 12 subpoena, including purported "safe harbor" or "right to privacy" privileges. (*See, e.g.*, Resp. Br. at 24-31). Except for *Zisook*, those cases are factually and legally inapposite. For example, *In re Marriage of Decker*, 153 Ill. 2d 298 (1992) (Resp. Br. at 24-28), is inapposite because the fact pattern there and the instant case are completely different, factually and legally. Specifically, *Decker* involved a complicated domestic relations dispute, in which an attorney for a noncustodial parent was held in direct civil contempt for failing to disclose whether her client communicated where the parties' child was secreted and not timely returned during a visitation. The Illinois Supreme Court vacated the contempt finding and discussed ethical issues, including a possible crime-fraud exception. Unlike the instant case, the lawyer in *Decker* was not accused of actively participating in possible criminal conduct or other wrongdoing, but rather, only keeping a lawyer-client communication. Simply stated, *Decker* is not factually comparable to the instant facts.

[19] We agree with the Hearing Board that, instead of protecting the interests of his non-Ambrose clients, he was protecting his own interests. The Hearing Board stated: "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 that it contained. But then Respondent voluntarily disclosed details about at least four different clients….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….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." (Hearing Bd. Report at 30-31) (citations omitted).

[20] Other states are in accord with the Hearing Board and our interpretation of Rule 8.1(b). *See Lawyer Disciplinary Bd. v. Barber*, 566 S.E.2d 245, 253 (W. Va. 2002), wherein the West Virginia Supreme Court sanctioned the non-compliant attorney for failing to respond to the disciplinary complaint. The West Virginia Court cited one of its earlier decisions, *The Committee on Legal Ethics of W. Va. Bar v. Martin*, 419 S.E.2d 4 (W. Va. 1992), wherein it stated: "[A]n onerous burden would be placed on the attorney

disciplinary system of this State if every time an ethics complaint was filed, the Committee was confronted with forcing the attorney to respond by issuing a subpoena." *Accord, In re Stricker*, 808 S.W.2d 356, 357 (Mo. 1991) (also cited by the *Barber* Court and stating: "This case illustrates the rationale underlying…[Rule 8.1]. Had Mr. Stricker responded to the bar committee's letter and provided the evidence that he later presented at the disciplinary hearing, the matter could have been resolved prompted. The duty to cooperate with the committee is not dependent on the merits of the complaint. Mr. Stricker's failure to cooperate constitutes a violation of Rule 8.1.") (citation omitted). *See* n.8.

[21] Respondent received leave to file two oversized briefs, without objection, resulting in this Review Board panel having to address numerous new and appellate-created issues that should have been raised, if at all, before the Hearing Board. Significantly, as discussed throughout this Report, many of these issues were improperly raised and are forfeited or waived. (*O'Shaughnessy*; Commission Rule 305(f)(5).) We remind all counsel that "Motions to allow additional pages are not favored, and the specific grounds establishing the necessity of excess pages shall be clearly set forth in an affidavit filed in support of the motion." Commission Rule 302(d).

[22] At his deposition, Robert Dorman discussed his background and relationship with Respondent in several matters and cases, often using "colorful" language (C. 411, 416, 423, 431). Respondent has represented him in four cases (C. 352-54) and sold him or allowed him to pick up a gun at Respondent's "other business." (C. 427, 433). Some of these cases, including Dorman appearing *pro se* initially, have resulted in Fifth District Appellate Court Rule 23 decisions against him. *See, e.g*., (1) *Abernathy v. Dorman*, 2024 IL App (5th) 231028-U ¶¶ 36-37 (Oct. 1, 2024) (C. 448-52) (indirect civil contempt and imposition of attorney's fees against Dorman); (2) *Dorman v. Haine*, 2024 IL App (5th) 230969 ¶¶ 12, 21, 23 (Aug. 13, 2024) (C. 431, 455) (criticizing Dorman, stating: "'The Appellate Court is not a depository…[to] dump the burden of research and argument.'") (citation omitted); (3) *Dorman v. Madison County*, 2023 IL App (5th) 220320-U (C. 434) (affirming summary judgment against Dorman); (4) *Dorman v. Gilbert*, 2024 IL App (5th) 231179-U (Oct. 28, 2024) (Resp. Br. Appendix (A6–1-6), ¶8 (affirming an imposition of attorney's fees against Dorman and noting: "On appeal, Dorman is again represented by Thomas Maag."); and (5) *Dorman v. Madison County Bd*., 2025 IL App (5th) 241355-U (Sept. 4, 2025) (affirming a dismissal against Dorman and remanding for recalculation of an award of attorney's fees against him). Despite Respondent's background and relationship with Dorman, he seeks a remand of these proceedings, asserting that Dorman should be permitted to testify as an expert witness. (Resp. Br. at 39.) Respondent's argument undercuts, in part, his purported need for Scott Bokal's testimony. *See* n.23 and accompanying text regarding Bokal.

[23] On October 15, 2024, Respondent's counsel filed a Request of Extension of Time and Notice of Intent to File Exceptions. Respondent sought to obtain new opinion evidence with the assistance of the Scott Bokal to file, in essence, a post-trial motion. (R. 672-73.) Counsel asserted that "[p]ursuant to ARDC Rule 508, Respondent had twenty-one (21) days in which to file a motion for reconsideration to the Hearing Board's Report and Recommendation." (C. 272.) The Administrator's counsel objected to that statement (C. 680-84), which is false since Commission Rules 501 *et seq*. (including Rules 508-09) involves recovery of funds sought by clients under the Client Trust Program for the wrongful conduct of their attorney (which, if applicable here, would be the Ambroses, not Respondent). The Administrator's counsel objected, citing Commission Rule 284, which states that "post-trial motions shall not be filed or considered by the Hearing Board." On October 16, 2024, the Hearing Board's Chair rejected Respondent's post-trial motion gambit, dismissed his Rule 284 and 508-09 arguments, and stated in part: "The Chair does not consider Respondent's request to be a proper request under Rule 284 because its only basis is relief in support of an intended request for reconsideration….However, there is no Commission Rule that allows for reconsideration of a Hearing Board Report and Recommendation based on newfound evidence….[T]he evidence Respondent seeks an extension of time is not 'newfound.' [I]t is opinion evidence that he could have easily pursued during the discovery process but chose not to." (C. 685-86.)

[24] We are also troubled by Respondent and his appellate counsel's subsequent attempt to supplement the record with outside-the-record matters. On July 30, 2025, now citing another rule, Illinois Supreme Court Rule 329, Respondent filed a Motion to Supplement the Appellate Record, or in the Alternative, for Reconsideration, offering as an exhibit a letter from a United States Congressman, dated June 25, 2025, to the Inspector General of the United States Postal Service (USPS) concerning a January-March 2022 audit of the St. Louis Processing and Distribution Center (which serviced some southern Illinois counties), discussing the Congressman's visit to that postal center in August 2024, and seeking a further audit. On July 16, 2025, Respondent's appellate counsel allegedly first became aware of the Congressman's June 2025 letter from a news source and, he claims, this information was newly-discovered evidence under Illinois Supreme Court Rule 329. Respondent asserted this argument, even though the prior audit, dated July 13, 2022, was publicly issued more than twenty-one months before the disciplinary hearing; and the Congressman's public visit to the postal center occurred eleven months before Respondent's counsel alleged notice.

On August 6, 2024, the Review Board denied Respondent's two motions. The Board cited, *inter alia*, *People v. Sims*, 244 Ill. App. 3d 966, 972-73 (5th Dist. 1993) (affirming murder and obstruction of justice convictions and rejecting a post-trial attempt to introduce a book regarding the trial, stating, in part, "Rule 329 is not to be 'used as a vehicle for introducing additional evidence into the record'….[S]upplementation must have a basis in the trial court record….and cannot be used to impeach or contradict the contents thereof….") (Citations omitted.) The Review Board properly rejected Respondent's attempt to introduce the USPS's 2022 audit, and the Congressman's 2024 visit and June 2025 letter. Clearly, the 2022 audit report and 2024 Congressional visit could have been discovered with due diligence before the disciplinary hearings and did not constitute newly-discovered evidence; and any 2025 or subsequent audit is now more than three years after the 2022 events-at-issue and factually irrelevant here.

[25] Respondent raises several other issues and arguments on appeal (discussed below) that are forfeited or waived. (*See O'Shaughnessy*; Commission Rule 302(f)(5).)

• "Fruit of the Poisonous Tree": At oral argument, Respondent's appellate counsel argued for the first time that the Hearing Board's findings on Count I and Respondent's failure to comply with the Commission's May 12 subpoena, improperly "colored" the Hearing Board's findings on Counts II and III, necessitating a remand for a new disciplinary hearing on those counts under the "fruit of the poisonous tree" doctrine. (3/14/25 Appellate Argument, circa 10:25). This argument was not raised at the disciplinary hearing or in Respondent's opening brief and, thus, it is forfeited and waived. (*O'Shaughnessy*; Commission Rule 302(f)(5)). Further, appellate counsel provided no legal support that this doctrine, a criminal law concept, applied to this disciplinary proceeding. We conclude that the Hearing Board's findings of misconduct, and its findings concerning Respondent's credibility, were well-founded as to all of the counts. Moreover, the Hearing Board is presumed to be impartial regarding all counts of the Complaint, and Respondent has not overcome that presumption. *See In re Betts-Gaston*, 2008PR00005 (Review Bd. at 15), M.R. 25529 (Nov. 19, 2012) (stating "The Hearing Board is presumed to be impartial, like any trier of fact."). Based on our review of the record, the Hearing Board panel was impartial and evaluated Counts II and III based on the merits of each count and the evidence presented. Thus, we reject Respondent's "fruit of the poisonous tree" argument, and find that the Hearing Board's findings, conclusions, rulings, and sanction recommendation were not improperly colored by Count I and the May 12 subpoena issue. *See* n.8.

• The Jump Drive: At oral argument, appellate counsel argued for the first time, that Respondent's production of a jump drive was "the equivalent of producing some documents and issuing a privilege log as to some others." (3/14/25 Appellate Argument, circa 8:00). This argument was not raised at the disciplinary hearing or in Respondent's opening brief. Thus, this argument is forfeited and waived. (*O'Shaughnessy*; Commission Rule 302(f)(5)). This argument also fails under Illinois Supreme Court Rule 201(n), concerning privilege logs, which states: "[When] documents are withheld from disclosure on a claim that they are privileged…any such claim…shall be supported by a description of the nature of the

documents, communications or things not produced or disclosed and the exact privilege which is being claimed." *See also Pietro v. Marriott Senior Living Servs.*, 348 Ill. App. 3d 541, 550 (1st Dist. 2004) (affirming a trial court's ruling that the objecting party failed to produce a proper and specific privilege log). Neither the jump drive nor Respondent's June 6, 2023 letter constituted a privilege log that meets the specificity required under Rule 201(n). *See* n.8.

• Motion to Quash: At oral argument, appellate counsel argued for the first time that Respondent could not have filed a Rule 753(e) motion to quash the subpoena because such motions only allow objections to the entire subpoena, rather than a part of it. (3/14/25 Appellate Argument, circa 8:25.) This argument is waived. (Commission Rule 302(f)(5)). Moreover, Respondent's counsel cited no authority, and we know of none, that requires a party to quash the entire subpoena, not just part of it. *See* Section 5/2-1101 of the Illinois Code of Civil Procedure, which states: "For good cause shown, the court on motion may quash or modify any subpoena." 735 ILCS 5/2-1101. (Emphasis added.)

• Cancellation of the Deposition: Respondent argues that because the Administrator's Counsel's cancelled the deposition, Respondent was unable to produce the computer and then assert the privilege. (Resp. Br. at 24; Reply at 11.) That argument was forfeited because it was not raised at the disciplinary hearing. (*O'Shaughnessy*.) This argument is also wrong factually. In the cover letter that accompanied the May 12, 2023 subpoena *duces tecum* – which was titled "Equipment Production Only" – the Administrator's Counsel stated: "In lieu of your personal appearance, you may produce the requested equipment to my attention on or before May 31, 2023. The production of the requested equipment will constitute compliance with the subpoena." (Adm. Ex. 14 at 1.) As stated previously, the Administrator's Counsel advised Respondent that he could provide the relevant computer to the Commission's computer expert, Laurence Lieb. (*See* Resp. Ex. N at 1.) Respondent declined both options. Instead, Respondent stated that he would not produce his computer absent a court order. (C. 10, 123; Resp. Ex. N.) Therefore, Respondent's refusal to produce his computer for examination by May 31, 2023 was a knowing failure to comply with a "lawful demand for information" from the Commission under Rule 8.1(b); and Respondent's argument that he was unable to produce the computer because the deposition was cancelled has no merit. *See In re Zisook, supra.*

• Access to Respondent's Computer: Respondent argues that other individuals had access to his computer, and they could have backdated the December 20, 2022 Memo to File. (Resp. Br. at 53.) This argument was not raised in the disciplinary hearing; therefore, it is forfeited. (*O'Shaughnessy*.) Moreover, Respondent never presented evidence that any individual (including anyone at his law firm) had a motive to tamper with Respondent's computer, or actually did so. The Administrator was not required to disapprove every scenario that Respondent could imagine. *See People v. Newton*, 2019 IL 122958 ¶27 (stating "The State need not disprove or rule out all possible factual scenarios."). *See* n.8.

• Counsel's Objection to an Incomplete Email: Respondent argues that the Hearing Board erred by improperly allowing the Administrator's Counsel to "testify" about an email that Respondent offered into evidence (Exhibit O), which was incomplete. (Resp. Br. at 42-44; Resp. Reply at 20-22.) Respondent raised this issue for the first time on appeal, and so, it is forfeited. (*O'Shaughnessy*.) Nevertheless, we address the issue substantively. At the disciplinary hearing, Respondent sought to introduce Respondent's Exhibit O, which was a June 27, 2023 email to Respondent from the Administrator's Counsel. Respondent initially stated: "It is genuine and I would move into evidence Exhibit O." (R. 438.) The Administrator's Counsel then objected, stating: "I would object. Mine is cut off. I don't have a complete email." (R. 438-39), wherein the Chair responded: "Mine is cut off as well." (R. 439.) The Chair and the parties then discussed whether the email was complete. (R.439-41.) Subsequently, and over Counsel's objection, the email was admitted as Exhibit O. Thereafter, Respondent stated: "If there's a word missing [in Exhibit O], presumably between now and the next hearing, we could both look at our respective emails." (R. 484.) When the hearing resumed two weeks later, during cross-examination, Respondent testified: "If I was mistaken, I apologize….There is certainly no intent to mislead anybody….Even if it's been cut off, the relevant portion is the same." (R. 541, 542.) Then the Administrator moved to strike Exhibit O, and her

motion was granted. The Chairman addressed Respondent, stating: "You represented that it was a true and accurate representation; it is not. It is stricken." (R. 542-43.) We find that the Administrator's Counsel did not testify; rather, she properly objected to the admission of an incomplete document and properly cross-examined Respondent concerning the lack of completeness of Exhibit O. *See* n.8. Thus, the Hearing Board, through the Chair, did not err in its ruling on this issue.

• Counsel's Closing Argument: Respondent claims that the Chair erred by improperly allowing the Administrator's Counsel to make two alleged "inflammatory" statements during her closing argument (Resp. Br. at 44-45; Resp. Reply at 20-22), namely, that Respondent did not accept responsibility or offer a genuine apology for his conduct (R. 571), and Respondent fabricated evidence, which Respondent claims was a reference to Exhibit O. (R. 574.) Respondent failed to object contemporaneously to Counsel's statements during closing arguments and, therefore, this argument is forfeited. (*O'Shaughnessy*; *see* Ill. R. Evid. 103(a)&(b)(3).) Nevertheless, we address Respondent's substantive arguments. During closing arguments, Administrator's Counsel stated: "Here, the Respondent fabricated more evidence." (R. 574.) That statement does not refer to Exhibit O; rather, it referred to other evidence that Counsel had just cited, namely, the manila envelope (R. 572-73) and the April 28, 2022 Memo to File (R. 569-70). Thus, Counsel's reference to fabricated evidence was appropriate. Regarding Counsel's arguments that Respondent failed to accept responsibility and make a genuine apology to the Ambroses, they were a proper summary of the evidence. In short, the issues of acceptance of responsibility and remorse constitute appropriate factors to be considered in terms of a proper sanction. Therefore, Counsel's arguments concerning these issues were appropriate.

[26] In footnote 1 of Respondent's opening brief, Respondent cites disciplinary cases involving 38 attorneys who were suspended and received UFOs since 1999. (Resp. Br. at 46-47.) At least 16 of the 38 attorneys with UFOs were suspended for two or three years (comparable to the sanction recommended here). Nevertheless, we emphasize that generally, parties should not use such a summary as a basis for filing future motions for oversized briefs, repeating the admonition of Commission Rule 302(f)(5): "Citation of numerous authorities in support of the same point is not favored."

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 April 9, 2026.

/s/ Michelle M. Thome

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

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

In the Matter of:	
THOMAS GORDON MAAG,	
Respondent-Appellant,	Commission No. 2023PR00054
No. 6272640.	

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 service on April 9, 2026, 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
By: Michelle M. Thome
Clerk of the Attorney Registration and
Disciplinary Commission of the
Supreme Court of Illinois

4927-5081-0271, v. 1

FILED

April 09, 2026

ARDC CLERK