STATE OF VERMONT
PROFESSIONAL RESPONSIBILITY PROGRAM

In re: Daniel W. Ewald, Esq.
PRB File No. 013-2023

Decision No. 258

Disciplinary Counsel filed a Petition of Misconduct against Respondent Daniel W. Ewald, Esq., on October 17, 2023. On November 7, 2024, the parties jointly filed a stipulation of facts and proposed conclusions of law. On January 14, 2025, the parties jointly filed a memorandum of law regarding proposed sanctions.

The Hearing Panel hereby accepts the stipulation of facts and makes the following findings of fact and conclusions of law and suspends Respondent from the practice of law for a period of six months.

FINDINGS OF FACT

Respondent Daniel W. Ewald, Esq., is a licensed Vermont attorney with offices in Killington, Vermont. He has practiced transactional law, including land transactions, for more than 40 years. Respondent enjoys a long-standing reputation as a competent, trustworthy, honest, and ethical lawyer among transactional attorneys in central and southern Vermont. He has no prior record of professional misconduct as an attorney.

Background

Respondent represented husband and wife Audie and Lisa Bellimer in several real estate transactions and the sale of a business over a period of more than 15 years. He also represented Lisa's cousin Raymond "Otis" Robinson in various matters over a period of approximately 14 years.

Lisa Bellimer and Otis Robinson were part of a large extended family in and around Killington. For approximately 60 years, the family owned a parcel of land in Killington. The parcel of around 1000 acres consisted of woods and a woodlot, orchards, and a seasonal camp. The parcel was bordered on one side by Town Highway #23 (also known as Little Sherburne Road) and on another by Town Highway #25, a discontinued Town road included within ownership of the parcel. In 2013, Robinson was the owner of record of the parcel.

Robinson discussed selling off the land with family members in 2013. The Bellimers wanted to buy a portion of the land that included the woodlot, some orchards, and the camp building. After walking the land together, Robinson and the Bellimers agreed they would buy a parcel of around 12 acres at $1,000 per acre.

Robinson planned to sell the remaining land on the open market. This remaining land included discontinued Town Highway #25. The Bellimers needed an easement across the private road to provide reasonable vehicular and additional pedestrian access to the woodlot behind (or west of) the camp building. The camp building itself was accessible along the eastern boundary of their parcel by Town Highway #23, a public road.

At a family event on December 8, 2013, Robinson and the Bellimers signed a handwritten "bill of sale" documenting the Bellimers' purchase of parcel and camp building for $12,000. The "bill of sale" did not include or reference an easement or right of way.

Respondent's Work for the Bellimers in 2014

In 2014, the Bellimers hired Respondent to draft a deed for the conveyance and record it with the Town of Killington.

Initially, Respondent urged the Bellimers to have a survey done to obtain an accurate description of the parcel for the deed. Robinson was very ill, and the Bellimers were afraid he

would pass away before signing a deed. They asked Respondent to prepare a deed without waiting for a survey. They anticipated having Respondent prepare a new deed after a survey was done.

Respondent drafted an initial deed with a property description based on information provided by Audie Bellimer. On August 9, 2014, Respondent emailed the deed he drafted to the Bellimers, writing in relevant part:

> Attached please find a Warranty Deed (just print it out) for your use in getting the 12 acre Killington Robinson piece titled into your name. We still need to do the Exhibit A but hopefully Otis will be fine with signing this as is. It does state on its face that he is intending to convey 12 acres in Killington. If you can get him to sign this I will notarize it for you so no need to get him out to a notary for this.

The next day, he emailed a property description (Exhibit A) he drafted to the Bellimers. The property description reflected that Robinson granted the Bellimers a right of way easement across discontinued Town Highway #25.

Audie Bellimer arranged for Robinson to sign the deed on August 16, 2014, and gave the signed deed to Respondent. Respondent told the Bellimers he would record the August 16, 2014, deed with the property description ("the August 2014 deed") with the Town of Killington. On September 6, 2014, Audie Bellimer wrote a $40 check payable to the Town of Killington and sent it to Respondent to record the deed. The Bellimers assumed that Respondent recorded the deed conveying them around 12 acres of Robinson's land plus a right of way easement across discontinued Town Highway #25 – and that they therefore owned the land and easement – shortly thereafter. Unbeknownst to the Bellimers, Respondent did not, in fact, file the August 2014 deed.

The Bellimers subsequently arranged for a survey to clarify the exact portion of Robinson's land they bought and the exact boundary with Robinson's remaining land.

Farnsworth Surveys prepared the survey, dated November 1, 2024. The survey reflected that the parcel the Bellimers bought (Parcel #2) was 18.3 acres. The survey also reflected that the large parcel Robinson planned to sell on the open market (Parcel #1) bordered the Bellimers' parcel. The survey further reflected that Town Highway #25 was discontinued, but it did not reflect any right of way easement across it, noting only, "EASEMENTS OR SERVITUDES ARE AS SHOWN OR DEEDED."

The survey was recorded with the Town of Killington on December 3, 2014.

Respondent's Work for Robinson in 2014

By November 2014, Respondent began representing Robinson in selling the remaining portion of his land on the open market. The Bellimers were unaware of the details and circumstances surrounding the sale of the land, including Respondent's role in the sale, although they were generally aware that Respondent also did legal work for Robinson. Respondent did not talk to any of them about any of the possible conflicts of interest at issue in representing Robinson in the sale of the land adjoining the Bellimers' parcel, which included Town Highway #25, over which the Bellimers believed they owned a right of way easement.

Respondent represented Robinson in the sale of the remaining portion of his land to Ying Ding. Robinson and Ding signed a purchase and sale contract for the land on November 4 and 6, 2014, respectively. As part of the contract, Ding agreed to "review the survey already in place for the adjoining approximate 18 acre parcel of land which is not being conveyed," which did not refer to the Bellimers' right of way easement.

As provided for in the contract, Respondent drafted the deed for the conveyance. The deed specifically noted that the sale did not include the Bellimers' parcel:

> Excepting and reserving from this conveyance the same lands and premises conveyed by Raymond Otis Robinson to Audie Bellimer[ ] and Lisa A. Bellimer[ ], husband and wife, of even date herewith and to be recorded simultaneously herewith in the Town of Killington Land Records which are described and depicted on the survey prepared by Farnsworth Surveys entitled 'Lands Surveyed for Audie and Lisa Bellimer[ ] Land of Otis Robinson' dated November 1, 2014… [and] recorded on December 3, 2014… to which survey reference may be had for a more particular description.

The deed did not, however, refer to the Bellimers' right of way easement over discontinued Town Highway #25. Robinson signed the deed on December 16, 2014.

Respondent also prepared a new deed for the Bellimers' parcel, which Robinson also signed on December 16, 2014. In the new deed, Respondent corrected the parcel size from approximately 12 acres to 18.3 acres and referred to the survey for the property description. Respondent failed, however, to include any reference to a right of way easement across discontinued Town Highway #25 in the new deed.

Respondent recorded both the new December 16, 2014, deed from Robinson to the Bellimers ("the new December 2014 deed") and the December 16, 2014, deed from Robinson to Ding (collectively, "the December 2014 deeds") with the Town of Killington on December 17, 2014. Respondent did not provide a copy of the new December 2014 deed to the Bellimers for review before it was signed by Robinson or recorded with the Town. He did not provide a copy of the new December 2014 deed to the Bellimers after it was signed by Robinson or recorded with the Town.

Prior to October 2019, Respondent never communicated to the Bellimers that the new December 2014 deed he drafted omitted any reference to the right of way easement across discontinued Town Highway #25.

Respondent's Attempts to Address Right of Way Dispute in 2019

In October 2019, a dispute arose over the Bellimers' use of the right of way. In an effort to show they owned the right of way easement, the Bellimers asked the Town for records of the conveyance. They learned for the first time that no document regarding their ownership of the right of way easement was recorded with the Town. The August 2014 deed that described their ownership of the easement was not in Town records, and both of the December 2014 deeds that were in Town records omitted any reference to the Bellimers' right of way easement over discontinued Town Highway #25.

Audie Bellimer contacted Respondent about the omission, and Respondent realized that he never recorded the August 2014 deed that included the property description showing the right of way easement. Respondent admitted that he was at fault for not recording the deed. Respondent did not, however, acknowledge or admit that he also failed to include the Bellimers' right of way easement in the December 2014 deeds that he drafted and recorded.

In an effort to preserve the Bellimers' right of way easement, Respondent prepared an affidavit stating that it was Robinson and the Bellimers' intention to include a right of way easement across discontinued Town Highway #25, but that "unbeknownst to Grantor and Grantees the August 27, 2014 Warranty deed was not recorded in the Killington Land Records and the December 16, 2014 supplemental warranty deed did not contain the language granting the right of way over the former Killington Town Highway #25 to the Bellimers." Audie Bellimer signed the affidavit on December 26, 2019.

Respondent also located a copy of the August 2014 deed in his files around this time. The deed included Robinson's signature, but the notary clause was not filled in. On or about December 27, 2019, Respondent completed the notary clause, attesting that Robinson, who died

in 2016, personally appeared before him on August 28, 2014 and acknowledged signing the deed as his free act. Respondent also wrote in the notary clause of the August 2014 deed that his notary commission expired "2/10/2015," implying that he had, in fact, signed and dated the notary clause in 2014.

In fact, Respondent did not witness Robinson signing the deed, and Robinson did not personally appear before Respondent and acknowledge signing the deed as his free act. Rather, Respondent took Robinson's acknowledgment over the telephone. Having represented Robinson over many years, Respondent believed he knew Robinson's voice and signature.

On December 27, 2019, Respondent recorded the August 2014 deed with the inaccurate and backdated notarization, as well as Audie Bellimer's affidavit, with the Town in an effort to fix the mistakes he made with both property transactions five years earlier. Respondent's attempts to fix the problem were unsuccessful, and the Bellimers lost the right of way easement they intended to purchase and believed they had purchased in 2014.

Respondent sent emails to Audie Bellion on October 7, 2020, placing blame on Otis Robinson for omitting the right of way easement. He wrote, "Otis did not give [Ding] notice of your right of way." He also wrote, "It is a shame that Otis did [not] have mention of your right of way put in neighbor's deed. But he didn't have [it] put in there as he needed that sale apparently… and that one is on Otis."

The Bellimers' Malpractice Claim against Respondent

The Bellimers made a malpractice claim against Respondent, In the fall of 2022, the Bellimers received monetary compensation from Respondent's insurer, with Respondent's consent, in a negotiated pre-suit settlement for the loss of the right of way easement. However,

the malpractice settlement did not fully compensate the Bellimers for the significant damage they suffered as a result of Respondent's misconduct.

The Bellimers lost the right to use discontinued Town Highway # 25 for vehicular and pedestrian access to the woodlot portion of their property. They lost the ability to use and enjoy the land they had purchased in the manner they had intended because of the lost access over discontinued Town Highway #25. They lost some of the value of their property due to the lack of reasonable vehicular access to the woodlot portion of it.

They also experienced worry and stress from their land use dispute with Ding and Killington Farms, LLC. (Ding conveyed Parcel #1 to Killington Mountain Farms, LLC, of which he was the member-manager at some point.) In March 2021, Killington Mountain Farms served the Bellimers with a Notice Against Trespass to prohibit them from using discontinued Town Highway #25 to access the woodlot portion of their property. In March 2021, Killington Mountain Farms also notified the Bellimers they were liable for slander of title due to the assertion of a right of way easement across discontinued Town Highway #25 in the August 2014 deed and in Audie Bellimer's December 26, 2019, affidavit.

Respondent's Cooperation with Disciplinary Proceedings

After the settlement, the Bellimers' malpractice attorney reported Respondent in a complaint to the Professional Responsibility Program filed pursuant to Rule of Professional Conduct 8.3(a), with the Bellimers' consent.

After the July 2022 misconduct complaint was filed against him, Respondent fully cooperated with Disciplinary Counsel's investigation by providing a written response to the complaint, producing requested documents, and sitting for a pre-charge interview.

After the Petition of Misconduct was filed against him in October 2023, Respondent continued to display a cooperative attitude toward the disciplinary proceedings by appearing for deposition, negotiating in good faith through his counsel toward an agreed resolution, and ultimately agreeing to admit substantially to the material facts alleged in the Petition.

CONCLUSIONS OF LAW

Disciplinary Counsel bears the burden of proving each element of misconduct by clear and convincing evidence. A.O. 9, Rule 20(C), (D); *see also In re PRB Docket No. 2016-042*, 216 VT 94, ¶¶ 7-8, 203 Vt. 635, 154 A.3d 949 (2016). Based on the parties' stipulation of facts and other evidence in the record, the Hearing Panel finds clear and convincing evidence that Respondent engaged in professional misconduct as follows.

I. Dual Violations of Rule 1.1 (Competence)

Under Vermont Rule of Professional Conduct 1.1, a lawyer must "provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation." V.R.Pr.C. 1.1. "Competent handling of a particular matter includes inquiry into and analysis of the factual and legal elements of the problem, and use of methods and procedures meeting the standards of competent practitioners." Vt.R.Pr.C. 1.1, cmt. 5.

Clear and convincing evidence in the record establishes that Respondent twice violated Rule 1.1 in representing Audie and Lisa Bellimer.

A. Failure to Timely Record August 2014 Deed

Respondent represented the Bellimers in purchasing a parcel of land with a right of way easement across discontinued Town Highway #25 from Otis Robinson. Unbeknownst to the

Bellimers, Respondent neglected to timely record the August 2014 deed that reflected the right of way easement. By failing to timely record a deed reflecting the purchase and easement, Respondent failed to provide the Bellimers competent representation. Respondent's failure to timely record the August 2014 deed that properly reflected the land and right of way easement the Bellimers purchased displayed a lack of the thoroughness required of a competent lawyer.

B. Omission of the Bellimers' Right of Way Easement in December 2019 Deeds

Respondent failed to include or reference the Bellimers' right of way easement in the two December 2014 deeds he drafted and recorded for the same purchase. His failures displayed a lack of the skill required of a competent lawyer.[1] *See In re Addison*, 363 S.C. 516, 611 S.E.2d 914 (2005) (Attorney who, among other errors, incorrectly described land being conveyed in a deed and omitted one of two lots in a mortgage property description violated his duty of competence.).

II. Violation of Rule 1.7 (Conflicts of Interest)

"[A] lawyer shall not represent a client if the representation involves a concurrent conflict of interest" where "the representation of one client will be directly adverse to another client" or where "there is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client," unless, in relevant part, "the lawyer reasonably believes that the lawyer will be able to provide competent and diligent representation to each affected client," and "each affected client gives informed consent, confirmed in writing."

[1] The Petition of Misconduct alleged that, by failing to inform the Bellimers that he drafted and filed the new December 2014 deed, which did not include the right of way easement, Respondent violated Rule 1.3, which requires lawyers to "act with reasonable diligence and promptness in representing a client." Vt.R.Pr.C. 1.3. The parties' proposed conclusions of law and memorandum of law regarding proposed sanctions, however, reflect that this conduct violated Respondent's duty of competence under Rule 1.1. The Panel agrees that Rule 1.1 applies to this conduct.

Vt.R.Pr.C. 1.7. "Informed consent requires that each affected client be aware of the relevant circumstances and of the material and reasonably foreseeable ways that the conflict could have adverse effects on the interests of that client." Vt.R.Pr.C. 1.7, cmt. 18.

"[A]bsent consent, a lawyer may not act as an advocate in one matter against a person the lawyer represents in some other matter, even when the matters are wholly unrelated." Vt.R.Pr.C. 1.7, cmt. 6. "Directly adverse conflicts can [ ] arise in transactional matters. For example, if a lawyer is asked to represent the seller of a business in negotiations with a buyer represented by the lawyer, not in the same transaction but in another, unrelated matter, the lawyer could not undertake the representation without the informed consent of each client." Vt.R.Pr.C. 1.7, cmt. 7.

Respondent's representation of both Robinson and the Bellimers involved a concurrent conflict of interest. Respondent represented Robinson in the sale of his land to Ding at the same time he represented the Bellimers in the purchase of a right of way easement on the same land from Robinson. There was a significant and obvious risk that Respondent's representation of the Bellimers in buying the right of way easement would be materially limited by Respondent's representation of Robinson in selling the same land, and vice versa. The value and ease of selling land encumbered by an easement could differ from the value and ease of selling unencumbered land.

To proceed with representation, therefore, Respondent needed to obtain informed written consent to the conflict from both Robinson and the Bellimers. He failed to do so. He never made Robinson or the Bellimers aware of the foreseeable ways the conflict could adversely affect their interests. He never sought or obtained consent to the conflict from Robinson before representing him in the sale of land for which he also represented the Bellimers in encumbering. He never sought or obtained consent to the conflict from the Bellimers before representing them in the

purchase of land for which he also represented Robinson in selling to Ding ostensibly unencumbered.

III. Dual Violations of Rule 8.4(c) (Dishonesty, Fraud, Deceit, or Misrepresentation)

"It is professional misconduct by a lawyer to… engage in conduct involving dishonesty, fraud, deceit or misrepresentation," that calls into question an attorney's fitness to practice law. Vt.R.Pr.C. 8.4(c); *In re PRB Docket No. 2007-046*, 2009 VT 115, ¶¶ 9, 12, 989 A.2d 523. Clear and convincing evidence in the record establishes that Respondent committed two separate violations of Rule of 8.4(c).

A. Notarizing Robinson's Signature on August 2014 Deed

First, Respondent violated Rule 8.4(c) by notarizing Robinson's signature on the August 2014 deed when he admittedly did not, in fact, witness Robinson sign the document, merely obtaining acknowledgment of his signature over the telephone. By writing that his notary commission expired, "2/10/15," Respondent also misleadingly indicated that he notarized the signature in 2014, when he did not notarize it until 2019. Knowing misrepresentations by an attorney in notarizing a document constitute a violation of Rule 8.4(c). *See In re Wysolmerski*, 2020 VT 54, ¶¶ 28-30, 237 A.3d 706 ("Respondent's submission of the affidavits when he had not seen [the affiant] sign them and had not administered the oath in [the affiant's] presence was knowingly dishonest conduct and a violation of Rule 8.4(c).").

B. Blaming Robinson for Omitting the Bellimers' Right of Way Easement in December 2014 Deeds

Seeking to shift blame away from himself and conceal his drafting errors, Respondent separately violated Rule 8.4(c) by dishonestly implying to Audie Bellimer that Robinson

deliberately omitted reference to the Bellimers' right of way easement across discontinued Town Highway #25 from the December 2014 deeds in order to sell the land that included the private road to Ying Ding. *See Iowa Supreme Court Att'y Disciplinary Bd. v. McCann*, 712 N.W.2d 89, 95 (Iowa 2006) ("A lawyer violates our disciplinary rules when the lawyer lies to cover up misconduct."); *see also Attorney Grievance Comm'n of Maryland v. Ucheomumu*, 462 Md. 280, 316-318, 200 A.3d 282, 303-04 (Md. 2018) (Attorney engaged in conduct involving dishonesty, fraud, deceit, or misrepresentation when he falsely blamed prior counsel for his own delay in ordering hearing transcripts.).

DETERMINATION OF SANCTIONS

I. Legal Standards for Imposing Sanctions

The purpose of the Vermont Rules of Professional Conduct is to "protect the public from persons unfit to serve as attorneys and to maintain public confidence in the bar." *In re PRB Docket No. 2006-167*, 2007 VT 50, ¶ 9, 181 Vt. 625, 925 A.2d 1026 (quoting *In re Berk*, 157 Vt. 524, 532, 602 A.2d 946 (1991)). Sanctions are not meant "to punish attorneys, but rather to protect the public from harm and to maintain confidence in our legal institutions by deterring future misconduct." *In re Hunter*, 167 Vt. 219, 226, 704 A.2d 1154 (1997); *see also In re Warren*, 167 Vt. 259, 263, 704 A.2d 789 (1997) ("Sanctions are intended to protect the public from lawyers who have not properly discharged their professional duties and to maintain public confidence in the bar.").

The American Bar Association Standards for Imposing Lawyer Discipline ("ABA Standards") call for the Hearing Panel "to weigh the duty violated, the attorney's mental state, the actual or potential injury caused by the misconduct, and existence of aggravating or mitigating factors" in determining sanctions for Respondent's violations of the Rules. *See In re*

Andres, 2004 VT 71, ¶ 14, 177 Vt. 511, 857 A.2d 803 (mem.); *see also* ABA Ctr. for Prof'l Responsibility, Standards for Imposing Lawyer Sanctions (1986, amended 1992), § 3.0 ("ABA Standards"). "Depending on the importance of the duty violated, the level of the attorney's culpability, and the extent of the harm caused, the standards provide a presumptive sanction… This presumptive sanction can then be altered depending on the existence of aggravating or mitigating factors." *In re Fink*, 2011 VT 42, ¶ 35, 189 Vt. 470, 22 A.3d 461. "Suspension is generally appropriate when a lawyer knowingly fails to serve a client's interests causing real or potential injury." *In re Andres*, 2004 VT 71, ¶ 14.

A. The Duty Violated

"In determining the nature of the ethical duty violated, the [ABA Standards] assume that the most important ethical duties are those obligations which a lawyer owes to clients." ABA Standards, Part II, Theoretical Framework, at 5. Among the duties a lawyer owes to clients are the duty of loyalty, which includes the duty to preserve client property and the duty to avoid conflicts of interest, and the duty of competence. *Id.* A lawyer has a duty to the general public not to engage in dishonest conduct because the general public "expects lawyers to exhibit the highest standards of honesty and integrity." *Id.* A lawyer has a duty to the legal system not to create false evidence or engage in other improper conduct. *Id.* Finally, a lawyer has a duty to the legal profession to maintain the integrity of the profession. *Id.*

B. Respondent's Mental State

A lawyer's mental state may be one of intent, knowledge, or negligence. Intent, the most culpable mental state, means "the conscious objective or purpose to accomplish a particular result." ABA Standards, Part III, Definitions, at 7. Knowledge means "the conscious awareness

of the nature or attendant circumstances of the conduct but without the conscious objective or purpose to accomplish a particular result." *Id*. Negligence, the least culpable mental state, means "the failure of a lawyer to heed a substantial risk that circumstances exist or that a result will follow, which failure is a deviation from the standard of care that a reasonable lawyer would exercise in the situation." *Id*. "[T]he distinguishing factor between negligent and knowing conduct is whether a lawyer had a conscious awareness of the conduct underlying the violation or whether he failed to heed a substantial risk that a violation would result from his conduct." *Fink*, 2011 VT 42, ¶ 38. "Application of these definitions is fact-dependent." *Id.*

C. Injury and Potential Injury

"The extent of the injury is defined by the type of duty violated and the extent of actual or potential harm." ABA Standards, Part II, Theoretical Framework, at 6. Injury means "harm to a client, the public, the legal system, or the profession which results from a lawyer's misconduct. The level of injury can range from 'serious' injury to 'little or no' injury." *Id.*, Part III, Definitions, at 7. Potential injury means "harm to a client, the public, the legal system or the profession that is reasonably foreseeable at the time of the lawyer's misconduct, and which, but for some intervening factor or event, would probably have resulted from the lawyer's misconduct." *Id.*

D. Aggravating and Mitigating Factors

Aggravating factors are those that "may justify an increase in the degree of discipline to be imposed." ABA Standards, § 9.21. Mitigating factors are those that "may justify a reduction in the degree of discipline to be imposed." *Id*., § 9.31.

The ABA Standards identify the following aggravating factors that may warrant increasing the presumptive sanction: prior disciplinary offenses, dishonest or selfish motive, pattern of misconduct, multiple offenses, bad faith obstruction of disciplinary proceedings, submission of false evidence, false statements, or other deceptive practices during disciplinary process, refusal to acknowledge wrongful nature of conduct, vulnerability of victim, substantial experience in the practice of law, indifference to making restitution, and illegal conduct. ABA Standards, §§ 9.0-9.3.

The ABA Standards identify the following mitigating factors that may warrant reducing the presumptive sanction: absence of a prior disciplinary record, absence of a dishonest or selfish motive, personal or emotional problems, timely good faith effort to make restitution or to rectify consequences of misconduct, full and free disclosure to disciplinary board or cooperative attitude toward proceedings, inexperience in the practice of law, character or reputation, physical disability, mental disability or chemical dependency under certain circumstances, delay in disciplinary proceedings, imposition of other penalties or sanctions, remorse, and remoteness of prior offenses). *See* ABA Standards, § 9.3.

II. Presumptive Sanctions

Respondent's two violations of Rule 1.1, one violation of Rule 1.7, and two violations of Rule 8.4(c) warrant a presumptive six-month suspension.

A. Dual Violations of Rule 1.1 (Competence)

In failing to provide competent representation, Respondent violated duties owed to his clients. As discussed above, he failed to provide competent representation to the Bellimers by (1)

failing to timely record the August 2014 deed that included their right of way easement, and (2) failing to include their right of way easement in the December 2014 deeds.

The parties agree, and the evidence shows, that Respondent neither intended nor knew about his failures when they occurred. Rather, Respondent's violations of Rule 1.1 were negligent. He simply forgot to record the August 2014 deed and did not realize his oversight until Audie Bellimer reached out to him 2019. Similarly, he forgot to include the Bellimers' right of way easement in the December 2014 deeds.

His oversights resulted in actual injury to the Bellimers. The Bellimers purchased a right of way easement over discontinued Town Highway #25 in order to maintain reasonable vehicle access to portions of their land. Respondent's negligence reduced their use and enjoyment of their land and likely reduced the value of their land. As a result of the dispute with Ying Ding over the easement, they suffered unnecessary worry and stress, which constitutes actual injury. *See In re Bowen*, 2021 VT 7, ¶ 39, 214 Vt. 154, 252 A.3d 300. The fact that the Bellimers received some amount of financial compensation via a malpractice claim against Respondent does not negate the actual injury they suffered.

By failing to record the August 2014 deed and failing to properly draft the December 2014 deeds, Respondent "demonstrate[d] failure to understand relevant legal doctrines or procedures and cause[d] injury or potential injury to a client," which warrants a presumptive sanction of reprimand. ABA Standards § 4.53. Respondent's failures also constitute negligence in dealing with the Bellimers' property (the right of way easement they purchased), resulting in actual injury, for which reprimand is also the presumptive sanction. ABA Standards § 4.13.

B. Violation of Rule 1.7 (Conflicts of Interest)

Respondent violated a duty to he owed to his clients to avoid conflicts of interest when he concurrently represented Robinson and the Bellimers in related real estate transactions without obtaining their informed consent to the concurrent representation. He also violated duties he owed to the public and the legal profession.

The parties agree, and the evidence shows, Respondent's mental state was one of knowledge. He was aware of the circumstances that gave rise to the conflict between his representation of Robinson as the seller of a parcel of land and his representation of the Bellimers as the buyers of a right of way easement on the same parcel and an adjacent parcel of land. He was aware Robinson and the Bellimers had potentially adverse interests with respect to the right of way easement, an awareness he demonstrated when he suggested to Audie Bellimer in October 2020 that Robinson reneged on his conveyance of the easement in order to facilitate a sale of unencumbered land to Ying Ding. Whether Respondent was aware that these circumstances constituted a violation of Rule 1.7 is immaterial. *See Bowen*, 2021 VT 7, ¶ 35 (A lawyer's ignorance of the standards of professional conduct does not mitigate a violation because lawyers have an obligation to know and abide by them.)

The evidence does not establish that it was Respondent's conflicted representation of Roberston and the Bellimers that resulted in the Bellimers losing their right of way easement. Rather, the evidence shows that, given the conflicted representation, harm to the Bellimers was reasonably foreseeable. Accordingly, for purposes of sanctions, Respondent's violation of Rule 1.7 caused the Bellimers potential injury to the Bellimers.

Respondent's conflicted representation did, however, cause actual injury to the public and the legal profession. A conflict-of-interest violation "feed[s] public distrust of lawyers and

decrease[s] public confidence in the profession." *See In re Robinson*, 2019 VT 8, ¶ 39, 209 Vt. 557, 209 A.3d 570 (per curiam) (quoting *In re Fink*, 2011 VT 42, ¶ 36).

The presumptive sanction for Respondent's conflict-of-interest violation is suspension. "Suspension is generally appropriate when a lawyer knows of a conflict of interest and does not fully disclose to a client the possible effect of that conflict, and causes injury or potential injury to a client." ABA Standards, § 4.32.

C. Dual Violations of Rule 8.4(c) (Dishonesty, Fraud, Deceit, or Misrepresentation)

1. Notarizing Robinson's Signature on August 2014 Deed

Respondent violated duties he owed to the public and the legal system when he misrepresented the date and circumstances under which he notarized Robinson's signature on the August 2014 deed and recorded it with the Town of Killington in 2019. "The community expects lawyers to exhibit the highest standards of honesty and integrity, and lawyers have a duty not to engage in conduct involving dishonesty." ABA Standards, Part II, Theoretical Framework, at 5. "Lawyers also owe duties to the legal system… Lawyers must always operate within the bounds of the law, and cannot create or use false evidence, or engage in any other illegal or improper conduct." *Id.*

The parties agree, and the evidence supports, that Respondent's mental state was one of knowledge. In December 2019, Respondent knowingly filled in the notary clause on the deed after discovering that he had neglected to do so five years earlier, "without the conscious objective or purpose to accomplish a particular result" that is required for an intentional mental state. *See* ABA Standards, Part II, Theoretical Framework, at 6. The evidence supports a finding that Respondent did not intend to achieve a particular result, merely believing it was proper to

belatedly complete the necessary formality of deed notarization to reflect that he had received Robinson's acknowledgment of his signature five years earlier.[2]

Respondent's conduct caused potential injury to the Bellimers, Ding, and the general public, and actual injury to the legal system. It was reasonably foreseeable that his conduct could subject the Bellimers to liability for slander of title. Indeed, Ding contacted the Bellimers regarding a slander of title claim; the evidence does not show, however, that they suffered actual injury by paying compensation for such a claim. It was reasonably foreseeable that Respondent's conduct could create a cloud on Ding's title to the property he bought from Robinson, which had the potential to impede Ding selling or refinancing the property. It was also reasonably foreseeable that Respondent's conduct could mislead the general public, including prospective buyers, lenders, or taxing authorities, regarding Ding or the Bellimers' property. Respondent's dishonest conduct also caused actual injury to the legal system. *See Wysolmerski*, 2020 VT 54, ¶ 30 (Attorney's false notarization of client's signatures harmed the legal system.)

Two provisions of the ABA Standards that call for different presumptive sanctions potentially apply to Respondent's violation. "Reprimand is generally appropriate when a lawyer knowingly engages in [non-criminal] conduct that involves dishonesty, fraud, deceit, or misrepresentation and that adversely reflects on the lawyer's fitness to practice law." ABA Standards, § 5.13. "Suspension is generally appropriate when a lawyer knowingly engages in conduct that is a violation of a duty owed as a professional and causes injury or potential injury to a client, the public, or the legal system." ABA Standards, § 7.2. In light of Supreme Court precedent, the Panel concludes suspension is the appropriate sanction for Respondent's violation.

[2] The Hearing Panel distinguishes Respondent's reason for belatedly completing the notary clause from his reason for belatedly recording the August 2014 deed in December 2019, which was to establish Robinson's intent to grant the Bellimers a right of way easement to provide vehicular and pedestrian access to a portion of their property.

See Wysolmerski, 2020 VT 54, ¶ 30 (finding § 7.2 of the ABA Standards applied to attorney's false notarization of client's signatures on affidavits submitted to court, resulting in presumptive sanction of suspension).

2. Blaming Robinson for Omitting the Bellimers' Right of Way Easement in December 2014 Deeds

Attorneys owe a duty of candor to their clients. ABA Standards, Part II, Theoretical Framework, at 5. Respondent violated this duty when he dishonestly suggested to Audie Bellimer that Robinson deliberately omitted reference to the Bellimers' right of way easement from the December 2014 deeds. Respondent's dishonesty also breached his duty to the general public to "exhibit the highest standards of honesty and integrity." *See id*.

Respondent's mental state in attempting to deceive Audie Bellimer was one of intent. He acted with the conscious objective of shifting blame from himself to Robinson for omitting the Bellimers' right of way easement from the December 2014 deeds.

Respondent's conduct caused potential injury to the Bellimers and actual injury to the legal profession. It was reasonably foreseeable that Respondent's misleading statements could result in the Bellimers not seeking or receiving compensation for the loss of the easement as part of their malpractice claim. The Bellimers did, however, receive such compensation, presumably because they did not believe Respondent was without blame for the loss of the easement. Respondent caused actual harm to the reputation of the legal profession by engaging in this dishonest conduct. *See In re Adamski*, 2020 VT 7, ¶ 38, 211 Vt. 423, 228 A.3d 72.

The presumptive sanction for engaging in fraud, deceit, or misrepresentation toward a client is suspension when the lawyer "knowingly deceives a client, and causes injury or potential

injury." ABA Standards, § 4.6. The presumptive sanction is disbarment when a lawyer "knowingly deceives a client with the intent to benefit the lawyer or another, and causes serious injury or potentially serious injury to a client." ABA Standards, § 4.6. The Hearing Panel agrees with the parties that this is one of Respondent's most serious violations – Respondent knowingly attempted to deceive a client with the intent to benefit himself. Because his deception did not cause serious injury to the client, however, the Panel finds that suspension rather than disbarment is warranted.

III. Aggravating and Mitigating Factors

The following aggravating factors apply here:

- Dishonest or selfish motive: Respondent engaged in dishonest conduct in an attempt to conceal his own mistakes in drafting the December 2014 deeds.
- Multiple offenses: Respondent committed two violations of Rule 1.1, one violation of Rule 1.7, and two violations of Rule 8.4(c).
- Substantial experience in practice of law: Respondent has more than 40 years of experience practicing transactional law, including land transactions, as a licensed Vermont attorney.

The following mitigating factors apply here:

- Absence of a prior disciplinary record: There is no dispute that Respondent has no documented history of professional misconduct as an attorney.
- Full and free disclosure to disciplinary board or cooperative attitude toward proceedings: Respondent cooperated with these disciplinary proceedings, appearing for deposition, admitting substantially to the material facts alleged, and negotiating in good faith to reach an agreed resolution.

- Character or reputation: Transactional attorneys in central and southern Vermont consider Respondent a competent, trustworthy, honest, and ethical attorney.

On balance, the three aggravating factors and three mitigating factors present here neither warrant an upward nor a downward adjustment to Respondent's sanction. Significantly, Respondent engaged in multiple violations, one of which was motivated by self-interest, and has practiced law for more than 40 years. On the other hand, Respondent has no record of prior misconduct during his long career. *See In re Manby*, 2023 VT 45, ¶ 57 (finding absence of prior complaints or discipline throughout attorney's long career was important mitigating factor); *Robinson*, 2019 VT 8, ¶ 69 (agreeing that "generally, a lack of prior disciplinary history is persuasive in favor of leniency"). Respondent's cooperation with the disciplinary process carries little weight, however, "because attorneys have an independent professional duty to cooperate with disciplinary investigations under Rule 8.1(b)." *See Bowen*, 2021 VT 7, ¶ 45.

IV. Sanctions Imposed

The Hearing Panel agrees with the parties that suspending Respondent from the practice of law for six months is necessary and sufficient to protect the public from harm, maintain confidence in the legal profession, and deter future misconduct.

Respondent engaged in five instances of professional misconduct. The presumptive sanction for each of Respondent's two violations of Rule 1.1 is reprimand. The presumptive sanction for Respondent's violation of Rule 1.7 is suspension. The presumptive sanction for each of Respondent's two violations of Rule 8.4(c) is suspension.

Where there are multiple counts of misconduct, the sanction "should at least be consistent with the sanction for the most serious instance of misconduct among a number of violations; it might well be and generally should be greater than the sanction for the most serious

misconduct." ABA Standards, Part II, Theoretical Framework, at 7. Generally, a "suspension should be for period of time equal to or greater than six months." ABA Standards, § 2.3. In most cases, "short-term suspensions with automatic reinstatement are not an effective means of protecting the public because rehabilitation cannot be shown in less than six months and a six-month duration is needed to protect client interests." *In re Blais*, 174 Vt. 628, 631, 817 A.2d 1266 (2002) (mem.) (quotations and citations omitted); *see also* A.O. 9, Rule 26(B), (D) (A lawyer who is suspended for at least six months must apply for reinstatement and prove they meet reinstatement requirements.).

Importantly, a six-month suspension appears consistent with prior disciplinary determinations. *See Manby*, 2023 VT 45, ¶ 58 ("The panel and this Court also look to sanctions imposed in similar prior disciplinary cases to achieve consistency."). However, "meaningful comparisons of attorney sanction cases are difficult as the behavior that leads to sanction varies so widely between cases." *Robinson*, 2019 VT 8, ¶ 74 (quoting *In re Strouse*, 2011 VT 77, ¶ 43, 190 Vt. 170, 34 A.3d 329 (per curiam)). In recommending a six-month suspension, the parties provided a detailed review of Vermont disciplinary matters imposing sanctions for violations related to an attorney's duties to provide diligent, competent representation, avoid conflicts of interest, and maintain honesty. The Panel discusses the most pertinent cases here.

Six-month suspensions have been imposed on attorneys engaging in comparable misconduct under comparable circumstances. *See*, *e.g.*, *In re Hongisto*, 2010 VT 51, 998 A.2d 1065 (imposing six-month suspension on attorney who failed to diligently represent client, reasonably communicate with client, or return client's paperwork at termination of representation); *In re Gilmond*, PRB File Nos. 2017-048, 2017-049, 2017-050, Decision No. 211 (Feb. 5, 2018) (imposing six-month suspension on attorney who failed to diligently complete

lawsuit settlement agreement for defendant client, failed to inform client's liability insurer that lawsuit had been settled and payment was due under settlement agreement, and knowingly misrepresented to opposing counsel that payment under settlement agreement was forthcoming); *In re Wenk*, PCB File No. 96.50, Decision No. 14 (Oct. 16, 2000) (imposing six-month suspension on attorney who neglected to file suit for client homeowner's association to collect unpaid homeowner's assessments and misrepresented to client that suit had been filed and was proceeding).

It appears there has been a single disciplinary case in Vermont that involves an attorney falsely notarizing a signature. In *Wysolmerski,* 2020 VT 54, the Supreme Court disbarred an attorney, in part, for falsely notarizing his client's signature on three affidavits, for which the presumptive sanction was suspension. The attorney also violated Rule 3.3(a)(1) by submitting his own misleading affidavit to a court and Rule 1.4(a)(3) by failing to inform his client that he would not prepare and file a brief in support of the client's appeal. The Court determined that disbarment was warranted because "the collective weight of respondent's very substantial experience in the practice of law; the pattern of misconduct at issue; the multiple instances of misconduct; his dishonest motive; and his history of serious misconduct, very similar to the conduct at issue here, overwhelms the scant mitigation afforded by his cooperation, limited expression of remorse, and the stress of his personal problems." *Id*. at ¶ 51-52.

The aggravating factors that warranted disbarment in *Wysolmerski* are not present here. Respondent has no prior disciplinary history, nor has he displayed a pattern of misconduct, despite engaging in multiple acts of misconduct. *See In re Wenk,* 165 Vt. 562, 564-65, 678 A.2d 898 (1996) (finding multiple offenses but no pattern of misconduct where only one client was involved); *In re Bucknam*, 160 Vt. 355, 366, 628 A.2d 932 (1993) (finding no pattern of

misconduct because, "although there were multiple offenses, they were restricted to one client-couple."). Respondent's misconduct here involved one related set of clients in one related set of land transactions, rather than a series of similar misconduct involving multiple unrelated clients.

On the other hand, Respondent's violations warrant a longer suspension than attorneys who faced shorter suspensions of four and five months for somewhat comparable violations. For example, the Supreme Court affirmed a five-month suspension for an attorney who, while going through a divorce and law firm breakup, violated two disciplinary rules for five instances of neglecting to file or otherwise pursue litigation matters for clients and three instances of misrepresenting the status of these matters to clients, causing one client actual harm in the form of temporarily diminished employment opportunities. *In re Blais*, 174 Vt. 621, 817 A.2d 1266 (1997). Here, Respondent's conduct violated three disciplinary rules, was not impacted by personal or emotional problems, and caused more significant client harm in the form of the Bellimers' permanent loss of the right of way easement.

Similarly, the Court imposed a five-month suspension on an attorney who violated two disciplinary rules by drafting a deed and will that conveyed his elderly client's home and personal estate to himself without the client's informed written consent to what was a clear conflict of interest. *In re Kulig*, 2022 VT 33, 282 A.3d 926. The attorney violated a duty he owed to his client, acted knowingly, and caused actual and potential harm to the client, her potential beneficiaries, and the legal profession; however, he also secured the client's property and disclaimed any interest in the client's estate after her death. *Id.* at ¶¶ 41-46. Here, Respondent violated three disciplinary rules in five separate instances, and his conduct resulted in actual client harm in the form of the Bellimers' permanent loss of their right of way easement, as well as harm to the public and the legal profession, justifying a longer suspension.

Finally, a hearing panel imposed a four-month suspension on an attorney who, while going through a stressful law firm breakup, violated two disciplinary rules by neglecting one client's uninsured motorist coverage lawsuit, resulting in dismissal, deceiving the client about status of lawsuit, and failing to timely file a lawsuit to collect on a promissory note for a second client, causing it to be time-barred. The hearing panel found that a four-month suspension was sufficient because the attorney lacked any dishonest or selfish motives for his conduct, and he had already taken steps to improve how he handled litigation cases. *In re Sunshine*, PRB File Nos. 2001.001, 2001.075, Decision No. 28 (Dec. 5, 2011). Here, Respondent's conduct violated three disciplinary rules, was not impacted by personal or emotional problems, and was, in part, motivated by selfishness, and therefore warrants a longer suspension.

* * *

ORDER

Based upon the submissions of the parties and the findings of fact, conclusions of law, and sanctions analysis set forth above, the Hearing Panel ORDERS, JUDGES, and DECREES as follows:

1. Respondent violated Vermont Rules of Professional Conduct 1.1, 1.7, and 8.4(c).
2. Respondent is SUSPENDED from the practice of law for a period of six (6) months. The suspension shall take effect thirty (30) days from the date of this Decision to allow Respondent an opportunity to comply with the requirements of A.O. 9, Rule 27.

Dated February 6, 2025.

Hearing Panel No. 6

By: _____
David A. Berman, Esq., Chair

By: _____
Elizabeth Hawkins Miller, Esq.

By: _____
Nicole Junas Kavlin, Public Member