STATE OF VERMONT
PROFESSIONAL RESPONSIBILITY PROGRAM

In re: Theodore Studdert-Kennedy, Esq.
PRB File No. 021-2022

Decision No. 259

PROCEDURAL HISTORY

On June 15, 2022, Special Disciplinary Counsel (SDC) filed a Petition of Misconduct alleging that Respondent engaged in seven violations of the Vermont Rules of Professional Conduct. Respondent filed an Answer on July 20, 2022, admitting to many of the facts alleged, but denying that he engaged in professional misconduct.

On April 28, 2023, the parties jointly submitted stipulated findings of fact, proposed conclusions of law, and recommended sanctions. The parties recommended the Hearing Panel find that Respondent engaged in five violations of the Vermont Rules of Professional Conduct and impose a public reprimand for two violations and a private admonition for three violations. The parties' proposal involved one decision for the violations resulting in a public reprimand and one decision for the violations resulting in a private admonition. The Panel accepted the parties' proposed findings of fact, conclusions of law, and recommended sanctions and issued two separate decisions, one public and one private, on August 22, 2023.

The Vermont Supreme Court reviewed the decisions on its own motion and issued an opinion and order on May 3, 2024, vacating the decisions and remanding this matter for further proceedings consistent with its opinion. The Supreme Court held, in part, "The issuance of two disciplinary decisions concerning one petition of misconduct was inconsistent with the purposes of the Vermont Rules of Professional Conduct, the theoretical framework for sanctions set forth

in the ABA Standards for Imposing Lawyer Sanctions, and with our case law." *In re Studdert-Kennedy*, 2024 VT 24, ¶ 11. The Court explained,

> Examining misconduct piecemeal minimizes the harm that results from multiple instances of misconduct, and it does not further the goals of the professional-conduct rules. It does not allow for a full accounting of the charged conduct, which then undermines proper consideration of the application of aggravating and mitigating circumstances to the highest presumptive sanction associated with the most serious misconduct.

Id. ¶ 15.

The Hearing Panel held a remote evidentiary hearing on September 25, 2024, and November 19, 2024. The parties submitted post-hearing memoranda on January 6, 2025. The Panel is issuing this decision consistent with the Supreme Court's guidance and pursuant to Rule 13(D)(5)(c) of Administrative Order No. 9.

FINDINGS OF FACT

Respondent Theodore Studdert-Kennedy, Esq., has been licensed to practice law in Vermont since 2000. He was also licensed to practice law in Massachusetts in 1994. Respondent has practiced family law to varying degrees throughout his legal career. He has no prior record of professional misconduct as an attorney. Two Vermont attorneys who have practiced family law consider him fair and conscientious. Among other employment, Respondent has worked for the Vermont Department for Children and Families, the Vermont Health Care Administration,[1] the Vermont Department of Public Service, and Homeowner Options for Massachusetts Elders.

Respondent represented defendant Rustum Boyce (husband) in divorce proceedings initiated by plaintiff Delna Khambatta (wife) on August 17, 2017. Husband and wife had two

[1] The Health Care Administration was a division of the Department of Banking, Insurance, Securities and Health Care Administration, which is now the Department of Financial Regulation. *About Us*, State of Vermont Department of Financial Regulation, https://dfr.vermont.gov/about-us (last visited Mar. 1, 2025).

children who were minors during the pendency of the divorce proceedings. Husband and wife were simultaneously also involved in divorce proceedings in India, where they were married.

Facts Related to Final Divorce Hearing

On May 6, 2021, the Washington Unit of the Vermont Superior Court Family Division ("trial court") issued a notice directing the parties to appear via Webex for the final contested divorce hearing on June 3, 2021. The notice stated, "If any side wishes to present documents or other proposed exhibits to the Court, it shall file them with the Court at least 7 days prior to the hearing and shall send copies to the other parties in sufficient time for that side to have copies of the proposed exhibits by that same time." SDC's Ex. 3.

On June 1, 2021, Respondent filed with the trial court an affidavit from husband. In the affidavit, husband stated that he would not participate in the divorce hearing because he believed the court did not have jurisdiction over the matter, and appearing at the hearing could be construed as submitting to its jurisdiction. With the affidavit, Respondent filed a letter with the court, stating in part:

> Defendant wrote to me, on the day exhibits were Ordered to have been exchanged in advance of the presently scheduled Dissolution Hearing on 6/3/21: "Please find attached my affidavit. On advice of Indian counsel, I will not participate in the Dissolution Hearing for the reasons outlined in the affidavit. Please file this affidavit in court."

SDC's Ex. 5.

The next day, Respondent emailed the trial court, stating in part:

> I want to please make doubly sure that his Honor and this Honorable Court know that I have been recently instructed (on 5/28) by my client, who relied on the advice of his Indian counsel, not to participate in the Dissolution Hearing scheduled for tomorrow starting at 9 am for six hours. I very much regret the short notice and deeply respect that this Honorable Court is very busy and could likely have used these blocked-off hours tomorrow on other matters. I will nonetheless remain the attorney of

> record for Mr. Boyce for purposes of Court communications/Orders, Ex Parte or otherwise, going forward.

SDC's Ex. 7.

Later that day, the trial court entered an order stating, "The court understands defendant does not intend to attend the hearing. As to his attorney, attention should be given to Rule 15(f) V.R.F.P.[ ] Leave to withdraw has not been given, nor sought." SDC's Ex. 8.

Respondent reviewed Vermont Rule of Family Procedure 15(f) (which governs the appearance and withdrawal of attorneys in the Family Division), reviewed Vermont Rule of Professional Conduct 1.16 (regarding terminating representation), and consulted with a colleague who advised him to attend the hearing. Respondent did not file a motion for leave to withdraw from representing husband. He did not attend the hearing. He did not offer any evidence in advance of the hearing.

Facts Related to Post-Hearing Reply

On June 17, 2021, following the hearing at which she introduced evidence, wife filed proposed findings of fact, conclusions of law, and requests for relief. On June 21, 2021, Respondent filed a reply to her submission on behalf of husband.

In the reply, Respondent acknowledged that his client did not participate in the divorce proceedings. Respondent further stated that, without submitting to the court's jurisdiction, his client was "constrained" to file the reply because wife's submission was "replete with false statements" about his assets and their value, as well as her own finances. SDC's Ex. 10 ¶ 6. Respondent accused wife of perjury in the reply.

Respondent specifically disputed many of wife's proposed findings of fact and made numerous specific factual allegations. For example, he stated that wife alienated the children

with her "aggressive temperament and humiliating behavior," and they refused to interact with her. *Id.* ¶ 8(iv)-(v). He stated that wife broke into husband's house in Vermont and likely "siphoned away" valuable personal property. *Id.* ¶ 8(vi). He disputed that husband owned rental property in Mumbai worth $10 million. He stated that the funds in husband's bank account in the Isle of Jersey had depreciated significantly. Regarding the trial court's December 17, 2019, order that husband pay wife $1,000 per day until he returned the children to Vermont, Respondent stated, "This court's order is completely perverse, bad in law and Defendant has obtained protection from enforcement thereof from the Hon'ble Bombay High Court since it is against the children's interest." *Id.* ¶ 8(xxv).

Respondent did not cite to any testimony, exhibits, or other documents in the record to support the factual statements he made in the reply. Respondent knew the factual statements were not supported by any admissible evidence in the record. He nonetheless filed the reply at his client's request. Wife filed a response to the reply.

The trial court issued findings of fact and conclusions of law, awarding wife the relief she requested, including $175,000 in attorney fees, on July 6, 2021. The trial court noted that Respondent, "without the court's permission and without withdrawing from the proceeding under rule, was not present" at the final divorce hearing. Resp.'s Ex. 11. The court further stated that it did not consider the factual contentions in Respondent's reply because husband had intentionally waived any challenges to the evidence presented at hearing.

Facts Related to Interlocutory Order on Jurisdiction

One of the defenses Respondent raised on behalf of husband in the divorce proceedings was that the Vermont trial court did not have jurisdiction to adjudicate the dispute between husband and wife, only a court in India did. On September 13, 2017, Respondent filed a motion

to dismiss the proceedings for lack of jurisdiction. The trial court denied the motion in a decision entered on March 22, 2018.

On April 20, 2018 (29 days after the trial court decision), Respondent filed a notice of appeal from the decision with the Vermont Supreme Court. He did not research the procedural requirements for challenging the decision before filing the notice of appeal. On May 4, 2018, the Supreme Court denied the motion on grounds there was no final judgment, and Respondent did not obtain permission from the trial court to file an interlocutory appeal.

On May 7, 2018 (46 days after the trial court decision), Respondent filed a motion with the trial court, requesting in part that the court either grant permission to appeal the decision or reconsider it. In the two-page motion, Respondent explained that he thought the decision was final and therefore inadvertently failed to seek permission from the court to appeal it within 14 days, as required by V.R.A.P. 5(b)(5)(A). Respondent argued that granting permission to appeal would not "unduly or irreparably prejudice or harm the parties," and proceeding would be "an unnecessary a waste of judicial resources." SDC's Ex. 15. Otherwise, Respondent did not include any legal authority or argument supporting the request for permission to appeal or for reconsideration.

On June 13, 2018, the trial court denied the motion on grounds the "timely filing of an appeal is jurisdictional," and further noted, "the issue subject to appeal has recently been considered by the Supreme Court under very similar circumstances." SDC's Ex. 16.

Facts Related to Orders Regarding Sale of Marital Home and Appointment of Attorney for Children

In an entry order dated September 12, 2019, the trial court ordered husband and wife to work together to sell their marital home in Vermont. The court noted that husband and wife had agreed to sell the home.

On June 23, 2020, wife filed a motion requesting sole authority to sell the marital home because husband was not cooperating in the process. On July 6, 2020, Respondent filed an opposition to the motion. He stated that husband had changed his mind about selling the home. He asked the court to deny wife's request and instead order the reasonable appraised value of the home be deposited in escrow pending the outcome of the final property division hearing. In an entry order dated July 15, 2020, the court granted wife's motion, giving her sole authority to sell the marital home.

On July 28, 2020, Respondent filed a motion asking the trial court to reconsider the order and also appoint an attorney to represent the children's interests in the home. In the motion, Respondent incorporated by reference and renewed the July 6, 2020, opposition he filed. He restated some of the facts from the opposition. He also stated that husband held the title to the marital home, that husband paid the mortgage on the home to date and would pay the property taxes, and that wife was not experiencing financial hardship. Respondent's legal argument in support of the requests was, "Equitable distribution, as proposed hereinabove, of the property can be made without disturbing separate property as expressly contemplated in 15 V.S.A. Sec. 751(a)… the long-term best interests of the children remain paramount as contemplated by 15 V. S.A. Sec. 665(a)." SDC's Ex. 20. Otherwise, Respondent did not include any legal authority or legal argument supporting the requests or explain why reconsideration was appropriate.

In an entry order dated August 6, 2020, the court denied the motion to appoint an attorney for the children. In a separate entry order dated August 6, 2020, the court gave wife 21 days to file a response to the motion for reconsideration. On August 18, 2020, wife filed an opposition to the motion. In an order dated September 2, 2020, the trial court denied Respondent's motion.

On May 6, 2021, after entering into a purchase and sale agreement for the marital home, wife filed a motion to modify the trial court's July 15, 2020, entry order to clarify that she had power of attorney to sign all documents necessary to carry out the sale of the home. On May 11, 2021, Respondent filed an opposition to the motion. In the opposition, he again asked the court to order the reasonable appraised value of the home be placed in escrow pending the outcome of the property division hearing in the matter "as arguably required by 15 V.S.A. Sec. 75," and to appoint an attorney for the children to protect their interests in the home. SDC's Ex. 24. Otherwise, he did not include legal authority or argument supporting the requests. Wife filed a reply opposing the requests on May 12, 2021, pointing out that Respondent failed to raise any new evidence justifying them.

In an entry order dated May 13, 2021, the court denied the motion to appoint an attorney for the children, noting, "This issue has been addressed by the court previously and no new reason has been advanced sufficient for the court to reconsider the question of testimony from the children." SDC's Ex. 26. In an order dated May 18, 2021, the court gave wife power of attorney to execute all documents necessary to effectuate the sale and transfer of the marital home.

Facts Related to Minor Children's Testimony

On August 29, 2019, an attorney representing the children, 13 and 15 years old at the time, filed a motion asking the trial court to allow them to testify on their own behalf regarding

parental rights and responsibilities and parent-child contact. In an entry order dated October 29, 2019, the trial court denied the motion, concluding that the probative value of the children's testimony did not outweigh the potential detriment to them from being called as witnesses. The court explained:

> [T]he Court has concerns whether the children's testimony would be reliable. The children were scheduled to vacation in India when Father refused to return them to Vermont, citing new employment. They have not lived in India for any significant period of time and their mother, community, friends and school remain in Vermont. They are now alone, with Father, in India. Even if the children were to testify that they did not wish to return to Vermont, the court would not find their testimony probative as, from the Court's perspective, they have little choice but to testify they wish to stay in India with Father given their current situation.

SDC's Ex. 28.

Notwithstanding that ruling, one week later, on November 5, 2019, without first seeking the court's permission, Respondent filed affidavits from both children in support of a renewed motion to honor an Indian court's order to stay the Vermont divorce proceedings. In the affidavits, the children expressed a desire to stay in India with their father and to limit contact with their mother. Respondent did not solicit or prepare the affidavits, which were executed by the children in India. He filed them after receiving them from his client.

CONCLUSIONS OF LAW

Special 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). Clear and convincing evidence in the record establishes that Respondent engaged in professional misconduct as follows.

I. Rule 1.1 (Competence)

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. It also includes adequate preparation." *Id.*, cmt. 5. "[I]important legal skills, such as the analysis of precedent, the evaluation of evidence and legal drafting, are required in all legal problems." *Id.*, cmt. 2.

Respondent violated Rule 1.1 when he submitted untimely and procedurally-deficient filings with no legal authority or argument in an attempt to appeal the trial court's March 22, 2018, decision denying his client's motion to dismiss the divorce proceedings for lack of jurisdiction. *See In re Vigue*, PRB File No. 2018-034, Decision No. 216, at 5 (June 6, 2018) ("A lawyer's duty to provide competent representation extends to the advice given to clients relating to procedural requirements and the lawyer's compliance with such requirements."). Respondent's attempts to appeal the decision demonstrate that he lacked the legal knowledge, skill, thoroughness, and preparation expected of a competent attorney. Respondent failed to use methods and procedures that met the standards of competent attorneys, including researching, understanding, and following the procedural requirements for appealing a trial court order denying a motion to dismiss, as well as researching, understanding, and presenting to the court the substantive legal standards for waiving jurisdictional deadlines and allowing interlocutory appeals.

The trial court's decision was an interlocutory order and not a final judgment. To challenge the order, the Vermont Rules of Appellate Procedure clearly required Respondent to

file a motion for permission to appeal with the trial court within 14 days. *See* V.R.A.P. 5(b)(1), (5). Respondent failed to do so, instead filing a notice of appeal directly with the Supreme Court 29 days after entry of the order. Respondent filed a motion with the trial court for permission to appeal the interlocutory order 46 days after its entry and only after the Supreme Court dismissed the appeal. Respondent did not cite any legal authority or include any legal argument supporting his request for the trial court to waive the 14-day deadline to file the motion. Respondent did not cite any legal authority or include any legal argument supporting his request for the trial court to permit an interlocutory appeal.

Respondent conceded that he made procedural errors resulting in the appeal being dismissed but argued that the errors were isolated and did not constitute incompetent representation. He further argued that competent representation did not require him to include any legal authority or argument in the motion.

To the contrary, "[k]nowledge of and compliance with [ ] procedural requirements was reasonably necessary for Respondent to provide competent representation to his client." *See Vigue*, PRB File No. 2018-034, Decision No. 216, at 6. The evidence shows that Respondent filed an untimely appeal directly with the Supreme Court because he lacked basic legal knowledge regarding the difference between an interlocutory order and a final decision in a matter. His lack of knowledge was reflected in the motion he subsequently filed with the trial court seeking permission to appeal. SDC's Ex. 15 ("The defendant's counsel, thinking the decision entered on March 22, 2018 was final, inadvertently failed to first file a motion for permission to appeal…"). During the merits hearing, SDC asked Respondent about his understanding of the difference between an interlocutory appeal and an appeal after final judgment. Respondent testified, "I understood that [the trial court's] jurisdictional decision was

final. I didn't think that the whole matter was over. I mean, obviously, the whole matter wasn't over. It was very much at the beginning; this was very early on." Tr. of Sep. 25, 2024 Hrg. ("Sep. 25 Tr.") at 82:25-83:4.

As Respondent acknowledged, "the rule of competency specifically contemplates lawyers educating themselves…, and unfortunately, in this matter, I didn't educate myself thoroughly on interlocutory appeal before I filed this notice. But I did subsequently." Sep. 25 Tr. at 81:17-20, 82:19-23. The Panel agrees that Respondent's failure to take any steps to educate himself as to the proper manner of appealing the trial court's order violated Rule 1.1.

The evidence further shows that Respondent failed to include any legal authority or argument in the late-filed motion for interlocutory appeal he subsequently filed with the trial court because he lacked basic legal knowledge regarding the requirements for a motion and because he failed to use basic legal skills, such as researching and analyzing court rules and legal precedent and drafting legal arguments, in preparing the motion.

In his post-hearing memorandum to the Hearing Panel in this matter, Respondent argued the motion was procedurally sufficient because Vermont is a simple pleading state, citing Vermont Rule of Civil Procedure 8(a), which governs pleadings.[2] Respondent's testimony during the merits hearing was consistent with this argument. For example, explaining why he did not include any legal authority or argument, he testified, "The court's educated. The court knows the standard… it wasn't for me to supplant my decision or to somehow school the court on how they're supposed to deal with interlocutory requests." Sep. 25 Tr. at 91:19-92:4; *see also id.* at 91:17-19 ("And there's no necessity under our simple pleading to say, oh, you have to look at this standard."), 92:24-93:3 ("[W]e have a simple pleading rule and… [a pleading] doesn't have

[2] The Vermont Rules of Civil Procedure apply to divorce proceedings, unless otherwise specified in the Vermont Rules of Family Procedure. *See* V.R.F.P. 40(a)(2).

to take a particular form. It doesn't need citations unless they're warranted. It doesn't – all you got to do is be able to tell the court what you want."), 95:9-10 ("There's no obligation in the pleading to recite the standard to the court.").

Respondent appears to fundamentally misunderstand what is required to provide competent representation as an advocate. First, his reliance on Vermont Rule of Civil Procedure 8(a) is misplaced. This rule concerns claims for relief set forth in "an original claim, cross-claim, or third-party claim." Vt. R. Civ. P. 8(a). The "short and plain statement" set forth in this rule does not apply to motion practice. By contrast, Vermont Rule of Civil Procedure Rule 7(b) applies to motions and requires citation to applicable law. "An application to the court for an order shall be by motion which… shall state with particularity the grounds therefor including a concise statement of the facts and law relied on." Vt. R. Civ. P. 7(b).

Competent representation requires legal knowledge, skill, thoroughness, and preparation, which Respondent failed to exercise in handling his client's legal problem (challenging the trial court's denial of the motion to dismiss). He failed to use the methods and procedures a competent attorney advocating for his client's position to a court would, such as inquiring into and analyzing the legal element of the problem, analyzing precedent, and drafting legal arguments.

The Hearing Panel concludes that Respondent failed to use the legal skills and methods required of competent attorneys, including researching and applying court rules and legal precedent regarding waiving a jurisdictional deadline or permitting an interlocutory appeal, in violation of Rule 1.1.

II. Rule 3.1 (Meritorious Claims and Contentions)

A lawyer may not "bring or defend a proceeding, or assert or controvert an issue therein, unless there is a basis in law and fact for doing so that is not frivolous, which includes a good faith argument for an extension, modification or reversal of existing law." V.R.Pr.C. 3.1. "The advocate has a duty to use legal procedure for the fullest benefit of the client's cause, but also a duty not to abuse legal procedure. The law, both procedural and substantive, establishes the limits within which an advocate may proceed." *Id.*, cmt. 1. Lawyers must "inform themselves about the facts of their clients' cases and the applicable law and determine that they can make good faith arguments in support of their clients' positions. Such action is not frivolous even though the lawyer believes that the client's position ultimately will not prevail. The action is frivolous, however, if the lawyer is unable either to make a good faith argument on the merits of the action taken or to support the action taken by a good faith argument for an extension, modification or reversal of existing law." *Id.*, cmt. 2

A. Post-Hearing Reply Challenging Wife's Proposed Findings of Fact

Respondent did not submit any evidence on behalf of his client in advance of or during the final divorce hearing, which he did not attend because he believed his attendance at the final divorce hearing would submit his client to jurisdiction of the Vermont Superior Court. He nonetheless filed a post-hearing reply to wife's proposed findings of fact and conclusions of law that included specific factual allegations that he knew had no evidentiary support. By doing so, Respondent violated Rule 3.1. *See Brunswick v. Statewide Grievance Committee*, 931 A.2d 319, 334 (Conn. 2007) (holding that attorney violated Rule 3.1 by "persisting in the allegations… once he knew that he had no evidence to support those allegations").

There is no dispute the factual allegations in the reply had no evidentiary support and could have no evidentiary support after further investigation or discovery. Indeed, Respondent admitted he "knew that there was no admissible evidence in the post-final hearing reply." Tr. of Nov. 19, 2024 Hrg. ("Nov. 19 Tr.") at 42:13-14. He argued in his post-hearing memorandum to the Hearing Panel that it was nonetheless appropriate for him to file the post-hearing reply based on a "good faith understanding that doing so on his client's behalf… would be beneficial to his client's factual and legal interests." Resp.'s Mem. at 11; *see also* Nov. 19 Tr. at 45:15-22 ("It was specifically advised that this post-hearing reply… that it was advantageous to my client's issue to put this on the record. It wasn't because I thought it was admissible. We knew that it wasn't admissible.").

Respondent appears to argue that it was acceptable for him to file the reply at his client's direction precisely because there was no evidentiary basis for the factual contentions in the reply and it would be disregarded by the Vermont court. *See* Sep. 25 Tr. at 70:8-12 ("… it wouldn't have any evidentiary impact in this case – but it wasn't – it wasn't filed for that purpose... it was filed for a purpose of the instruction of [husband's] Indian counsel."), 70:17-8 ("I decided that it would be treated… as harmless error."); *see also* Resp.'s Mem. at 11 (Respondent "determined it was not frivolous to file the Reply and same would not affect the substantial rights of the parties."). Whether it was harmless error or not to submit inadmissible factual allegations is not relevant to the question of whether Respondent violated Rule 3.1.

An attorney is not excused from the rule prohibiting filing a pleading, written motion, or other document that includes contentions without any factual basis simply because he believes that doing so will in some way benefit his client. The attorney must, after informing himself about the facts of the case, be able to certify that any factual contentions he makes are

supportable. Indeed, by signing and filing a document with the court, the attorney is certifying that, "to the best of [his] knowledge, information, and belief, formed after an inquiry reasonable under the circumstances… the allegations and other factual contentions have evidentiary support, or, if specifically so identified, are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery." Vt. R. Civ. P. 11(b).

Respondent was aware the factual assertions in the reply had no evidentiary support, and there was no good faith argument he could make that the trial court could or should consider the unsupported factual allegations. Accordingly, the Hearing Panel concludes that Respondent violated Rule 3.1.

B. Motion Challenging Interlocutory Order on Jurisdiction

On May 7, 2018, 46 days after the court's ruling on his motion to dismiss and following a procedurally-improper attempt at a direct appeal, Respondent filed an untimely motion asking the trial court for permission to appeal its decision denying husband's motion to dismiss the divorce proceedings for lack of jurisdiction. In the same motion, he also asked the trial court to reconsider its decision to deny the motion to dismiss. He did not cite any authority supporting a waiver of the 14-day jurisdictional deadline to file a motion for permission to appeal an interlocutory decision. He did not identify the legal standard for granting an interlocutory appeal or make a good faith argument for an interlocutory appeal under that standard. And he did not make a good faith argument supporting reconsideration of the trial court's decision or even cite the legal standard for reconsideration.

During the merits hearing and in his post-hearing memorandum to the Hearing Panel, Respondent failed to articulate arguments based in law and fact supporting the requests. Respondent provided no legal authority or argument that the trial court had authority to waive a

jurisdictional requirement for appealing an interlocutory order just because the moving party's counsel mistakenly believed the interlocutory order was a final decision. On the contrary, he acknowledged there was no basis in law and fact for such a waiver. *See* Sep. 25 Tr. at 120:16-18 ("And so the court really kind of was bound to look at the standard and deny me as I see it.")

Respondent provided no legal authority or argument that, even if the motion had been timely filed, the trial court should permit an interlocutory appeal. Under the Vermont Rules of Appellate Procedure, a trial court must permit an interlocutory appeal if two elements are met: "(A) the order or ruling involves a controlling question of law about which there exists substantial ground for difference of opinion; and (B) an immediate appeal may materially advance the termination of the litigation." V.R.A.P. 5(b)(1). Respondent testified that he "thought that at least B applied." Sep. 25 Tr. at 92:1. Given the trial court's reliance on a recent Supreme Court decision in denying the motion to dismiss, Respondent should have been aware that he would need to explain in at least *some* detail how A could apply. *See* SDC Ex. 16 (denying husband's request because "the issue subject to appeal has recently been considered by the Supreme Court under very similar circumstances" in *Maghu v. Singh,* 2018 VT 2, 206 Vt. 413, 181 A.3d 518). But again, he did not cite the relevant standard or make any argument under either prong.

With respect to Respondent's basis for seeking the trial court's reconsideration of its decision, the Vermont Rules of Civil Procedure do not specifically provide for a trial court to reconsider an interlocutory order beyond granting permission to appeal, and Respondent provided no basis in law and fact for the trial court to reconsider its decision when he missed the deadline to request permission to appeal. The Panel also notes that the factual basis Respondent included in the motion – that a court in India issued an order enjoining the divorce proceedings

after the trial court denied husband's motion to dismiss – was legally irrelevant to the issue of jurisdiction under *Maghu v. Singh*.

Under the applicable standard for jurisdiction, such an order is immaterial. The trial court determined that the applicable standard for jurisdiction was whether wife was domiciled in Vermont. Citing *Maghu v. Singh*, the court rejected husband's arguments about the relevance of another jurisdiction's matrimony laws. *See* SDC Ex. 12, at 6-7 ("*Singh* was not determined by analyzing whether Sikh matrimony laws allowed the parties to get divorce outside of India, but rather, it turned squarely upon whether the plaintiff was domiciled in Vermont and met the jurisdictional requirements for divorce."). The existence or non-existence of such an order from a court in India was immaterial to the court's decision given this legal standard, and Respondent offered no legal authority or good faith argument indicating otherwise.

The Hearing Panel concludes that Respondent filed the untimely motion for permission to appeal or for reconsideration without basis in law and fact, in violation of Rule 3.1.

C. Submissions Regarding Sale of Marital Home and Appointment of Attorney for Children

Respondent filed an opposition to wife's motion requesting sole authority to sell the marital home, asking the trial court to deny the request and instead order the reasonable appraised value of the home be deposited in escrow pending the outcome of the final property division hearing. After the court entered an order granting wife's motion, Respondent filed a motion requesting the court reconsider its order and also appoint an attorney for the children. The two-page motion incorporated by reference the opposition and made several additional, unsupported, and conclusory factual statements. It did not include any legal standards, authority, or argument supporting reconsideration or include any legal argument or cite any case law

supporting the relief requested. The motion did not point to any change in the facts or the law that warranted reconsideration of the court's decision. With little to no explanation, Respondent cited only 15 V.S.A. § 751(a) as supporting the request for the reasonable appraised value of the home to be deposited in escrow and 15 V.S.A. § 665(a)[3] as supporting the request for an attorney for the children to be appointed.

Wife subsequently filed a motion asking the court to modify its order granting her sole authority to sell the marital home to clarify that she had power of attorney to sign documents necessary to effectuate its sale. Respondent filed an opposition to the motion in which he requested for the third time that the trial court order the reasonable appraised value of the home be deposited in escrow and for the second time that the trial court appoint an attorney for the children. In the opposition, Respondent represented—without providing evidence—that wife decided to sell the home for less than the amount husband offered to put in escrow pending the final property division hearing. He did not, however, include any legal standards, argument, or case law explaining how this fact warranted the relief requested – which had already been denied by the court twice – other than stating it was "arguably required by 15 V.S.A. Sec. 751." SDC's Ex. 24, at 2.

In denying that he filed submissions without any non-frivolous basis in law and fact in his post-hearing memorandum to the Panel, Respondent again relied primarily on his belief that he was under no obligation to cite any legal authority or make any legal argument because Vermont is a simple pleading state. Once again, Respondent misunderstands the requirements

[3] 15 V.S.A. § 665(a) provides in full: "In an action under this chapter, the court shall make an order concerning parental rights and responsibilities of any minor child of the parties. The court may order parental rights and responsibilities to be divided or shared between the parents on such terms and conditions as serve the best interests of the child. When the parents cannot agree to divide or share parental rights and responsibilities, the court shall award parental rights and responsibilities primarily or solely to one parent."

and standards for pleadings under Vt. R. Civ. P. 8 and motions and other applications to the court under Vt. R. Civ. P. 7(b). He wholly failed to articulate any good faith basis in law and fact supporting the motions. The Panel therefore concludes that he had none.

By repeatedly asking the trial court to reverse its prior decisions without any good faith argument for reversal, Respondent filed submissions without any basis in law and fact, in violation of Rule 3.1.

D. Submission of Minor Children's Testimony

SDC alleged that Respondent violated Rule 3.1 by filing affidavits from the children without explaining why doing so was not a violation of 15 V.S.A. § 594 and V.R.F.P. 7(d). Rule 3.1 prohibits an attorney from asserting or controverting an issue in a proceeding without basis in law and fact. Respondent did not assert or controvert an issue simply by filing the children's affidavits with the court. He therefore did not violate Rule 3.1 when he filed the children's affidavits.

II. Rule 3.4(c) (Fairness to Opposing Party and Counsel: Disobeying Obligation to Tribunal)

A lawyer may not "knowingly disobey an obligation under the rules of a tribunal except for an open refusal based on an assertion that no valid obligation exists." V.R.Pr.C. 3.4(c)

A. Failure to Attend Final Divorce Hearing

Despite receiving notice of the final divorce hearing, as well as the trial court's entry order stating, "The court understands defendant does not intend to attend the hearing. As to his attorney, attention should be given to Rule 15(f) V.R.F.P. Leave to withdraw has not been given, nor sought," Respondent failed to appear at the divorce hearing or move to withdraw from

representing his client. Respondent knowingly disobeyed an obligation under the trial court's rules and orders.

Respondent's argument that he complied with the court's entry order by reviewing and considering V.R.F.P. 15(f) is unavailing. Interpreting the order as anything other than a directive to appear at the hearing or seek to withdraw from representation is simply not reasonable.

Respondent represented to the court and in this disciplinary matter that his client instructed him not to attend the hearing. The evidence shows otherwise. In response to SDC's questioning during the merits hearing, Respondent admitted that he merely interpreted his client's refusal to attend the divorce hearing to extend to him. *See* Sep. 25 Tr. at 42:16-43:23 ("I understood it to also be me, because I – I have a representational capacity, and there's no role for me if – if my client's not there at an evidentiary hearing."), 43:9-44:9 (Q: "This letter doesn't state that you aren't going to show up at the hearing. This letter states that your client is not going to show up at the hearing, correct?" A: "Well, again, that's a distinction you're making. I saw them to be one and the same. I have a representational role."). He also testified that he made a decision not to attend the hearing because attending would amount to his client "submitting to the jurisdiction of the court at the final dissolution hearing." Sep. 25 Tr. at 62:23-63:2.

Respondent had a duty to attend the hearing, per the notice of hearing and the court's entry order, even if husband had instructed him not to attend, until the court permitted him to withdraw his appearance in the proceeding. An attorney is not permitted to disregard his professional obligations in deference to a client. *See* V.R.Pr.C. 1.2, cmt. 1 ("Paragraph (a) confers upon the client the ultimate authority to determine the purposes to be served by legal representation, *within the limits imposed by law and the lawyer's professional obligations*.") (emphasis added).

As noted in the court's entry order, Respondent had the option of filing a motion for leave to withdraw from representing husband pursuant to V.R.F.P. 15(f). Upon a showing of good cause, such as a conflict between an attorney's obligations to obey court rules and orders and his client's instructions, a court must grant leave to withdraw. *See* V.R.F.P. 15(f)(3) ("[T]he court shall grant leave to withdraw only on motion, after notice and hearing, for good cause shown."); *see also* V.R.Pr.C. 1.16 (A lawyer "shall withdraw from the representation of a client if… the representation will result in violation of the rules of professional conduct or other law.").

Respondent testified that he made a decision not to seek withdrawal at the time because he was concerned it would affect his client's ability to appeal as a matter of right[4] and because he was concerned it would have a material adverse effect on his client's interests in the divorce proceedings in India. *See* Sep. 25 Tr. at 57:23-25, 51:25-52:10, 54:5-13, 55:12-22; Nov. 19 Tr. at 89:8-16 ("The respondent reviewed the Court's entry order and the rule cited therein, as well as the rule concerning terminating representation, carefully and determined that he was not yet permitted to withdraw, as it would have been materially adverse to his client's interest to do so and because his client still wanted him to stay on as his counsel to ensure that he could pursue his appeal as a matter of right.")

Respondent provided no reasonable basis for believing that his client could not appeal as a matter of right if he sought to withdraw, however. And while Vermont Rule of Professional Conduct 1.16 allows an attorney to withdraw if there is no material adverse effect on his client, the rule in no way prohibits withdrawal if there is a material adverse effect on this client when one of six other circumstances exist, including when the client insists on taking action with

[4] Respondent subsequently testified, "…did I think that his appeal right would go away if I withdrew? Well, of course it wouldn't go away." He indicated, rather, that he did not withdraw because his client wanted him to stay on to represent him pursuing the appeal as of right. Nov. 19 Tr. at 88:19-89:7.

which the lawyer has a fundamental disagreement or where there is other good cause,[5] such as the client instructing his attorney to violate a court rule or order.

Respondent also testified during the merits hearing that he was concerned his attendance at the hearing would submit his client to the jurisdiction of the Vermont court. Respondent's attendance at the hearing is not a factor in the court's determination of jurisdiction over Respondent's client. It was not reasonable for Respondent to believe that it was. It is also inconsistent with Respondent's post-hearing submission of a reply brief challenging the wife's proposed findings of fact.

The Hearing Panel concludes that, by failing to attend the final divorce hearing or move to withdraw from representing husband, Respondent violated Rule 3.4(c).

B. Submission of Minor Children's Testimony

Respondent knew of the trial court's written decision prohibiting testimony from the children. Respondent subsequently filed sworn affidavits from the minor children. Respondent argued that he was under no obligation to refrain from doing so because an affidavit is not testimony, and therefore the court's order disallowing their testimony did not disallow their affidavits.

Testimony is "[e]vidence that a competent witness under oath or affirmation gives at trial *or in an affidavit* or deposition." TESTIMONY, Black's Law Dictionary (12th ed. 2024) (emphasis added). In its decision, the court specifically noted, "*Any* testimony that they would prefer to remain in India with Father only further alienates them from their mother." SDC's Ex.

[5] A lawyer may withdraw from representing a client if one of seven enumerated circumstances exists, including that "(1) withdrawal can be accomplished without material adverse effect on the interests of the client," or that "(4) the client insists upon taking action that the lawyer considers repugnant or with which the lawyer has a fundamental disagreement," or that "(7) other good cause for withdrawal exists." V.R.Pr.C. 1.16.

28, at 2 (emphasis added). Respondent had an obligation under the trial court's order to refrain from submitting testimony, whether oral or written, from the children for purposes of establishing where they wanted to live.

In its decision, the trial court stressed that the children's wishes were properly conveyed through their attorney and guardian ad litem. *See* SDC's Ex. 28, at 2 ("Both the GAL and children's attorney have shared with the Court that the girls wish to remain in India, which the Court accepts. There is no need for the girls to testify directly on this point."). Yet Respondent submitted written testimony from both children expressing negative opinions about wife and stating they wanted to live with husband in India.

Respondent's decision to submit written testimony directly from the children was an end run around his obligation to abide by the court's order precluding their testimony. Respondent's testimony that he did not understand that an affidavit contains testimony is not credible. The evidence shows that he filed the affidavits not because he genuinely failed to understand that an affidavit contains written testimony but because he believed the children "wanted to be heard." Sep. 25 Tr. at 188:11-13, 193:23-24 ("I think it's sad, and that's not a legal term either, that the kids were never heard from."), 197:3-6 ("These kids were not being damaged by their voice being heard. Quite the contrary. I believe that they were injured by not having their voice heard.").

The Panel concludes that, by filing affidavits from the children despite the court's decision denying a motion for the children to provide testimony, Respondent knowingly disobeyed an obligation under the rules of a tribunal, in violation of Rule 3.4(c).

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 Hearing Panel's determination of sanctions is guided by the ABA Standards for Imposing Lawyer Discipline ("ABA Standards"). *See In re Andres*, 2004 VT 71, ¶ 14, 177 Vt. 511, 857 A.2d 803 (mem.). The ABA Standards call for the 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 Vermont Rules of Professional Conduct. *See also* ABA Standards (1986, amended 1992), § 3.0. "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.

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, Theoretical Framework, at 5. Among the duties lawyers owe to clients is the duty of competence. *Id.* Lawyers also have a duty to the general public to exhibit the highest standards of honesty and integrity because the public is "entitled to be able to trust lawyers to protect their property, liberty, and their lives." *Id.* Lawyers also have duties to the legal system; lawyers "are officers of the court, and must abide by the rules of substance and procedure which shape the administration of justice." *Id.* Finally, lawyers owe duties 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, 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, 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.*, 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. *See id.* § 9.22.

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, § 9.32.

II. Presumptive Sanctions

A. Violation of Rule 1.1 (Competence)

Duty: Respondent breached an obligation to his client to provide competent representation when he filed untimely appeals regarding jurisdiction that were procedurally and substantively deficient.

Mental State: Respondent's mental state was one of negligence. The evidence does not show that Respondent acted with "a conscious awareness of the conduct underlying the violation;" rather, it shows that he "failed to heed a substantial risk that a violation would result from" his failure to educate himself on the standards and procedures for appealing an interlocutory order – a failure that was "a deviation from the standard of care that a reasonable lawyer would exercise in the situation." *See* ABA Standards, Theoretical Framework, at 5.

Injury: Respondent's violation of Rule 1.1 resulted in actual or potential injury to his client. By failing to file a timely motion for permission to appeal the trial court's order denying husband's motion to dismiss for lack of jurisdiction, husband lost the opportunity to end the divorce proceedings at an early stage and avoid increased attorney fees and costs.

Presumptive Sanction: The presumptive sanction for this violation is reprimand. Reprimand is generally appropriate when an attorney, "demonstrates failure to understand relevant legal doctrines or procedures and causes injury or potential injury to a client." ABA Standards, § 4.53.

B. Three Violations of Rule 3.1 (Meritorious Claims and Contentions)

Duty: Respondent is an officer of the court. By filing pleadings without basis in law and fact, Respondent violated an obligation he owed to the legal system to abide by the procedural and substantive rules that shape the administration of justice. *See* ABA Standards, Theoretical Framework, at 5; *see also id.* § 6.2 (setting forth presumptive sanctions for abuse of the legal process, including failure to bring a meritorious claim). He also violated an obligation he owed to the public "to exhibit the highest standards of honesty and integrity" and "not to engage in conduct involving dishonesty, fraud, or interference with the administration of justice." *Id.* at 5.

Injury: Each of Respondent's violations of Rule 3.1 caused actual or potential injury to his client, the opposing party, the legal system, the public, and the legal profession. Wife incurred attorney fees for her counsel to address the meritless submissions, which the court subsequently ordered husband to pay. The trial court and the Supreme Court spent unnecessary time and judicial resources reviewing and addressing the meritless submissions and wife's responses to the meritless submissions. And the public had reason to lose confidence in the legal profession because Respondent misrepresented that any factual contentions he made were supported by admissible evidence and that any legal claims he made were warranted by existing law or a nonfrivolous argument for a change in existing law. *See* Vt. R. Civ. P. 11(b). Filing frivolous contentions and claims "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, 189 Vt. 470, 22 A.3d 461).

1. Post-Hearing Reply Challenging Wife's Proposed Findings of Fact

Mental State: Respondent filed the reply knowing that there was no admissible evidence supporting the factual contentions at his client's direction. He did not file the meritless reply to accomplish a particular result, as he knew the court would not consider the unsupported contentions. Therefore, his mental state was one of knowledge, not intent.

Presumptive Sanction: The presumptive sanction for this violation is suspension. "Suspension is generally appropriate when a lawyer knows that he or she is violating a court order or rule, and causes injury or potential injury to a client or a party, or causes interference or potential interference with a legal proceeding." ABA Standards, § 6.22; *see also* ABA Annotated Standards for Imposing Lawyer Sanctions (2d ed. 2019) ("ABA Annotated Standards"), § 6.22, ann., at 358 (citing *People v. Bontrager*, 407 P.3d 1235 (Colo. O.P.D.J. 2017) (suspending attorney in part for advancing claims that lacked substantial justification in violation of Colo. RPC 3.1)).

2. Motion Challenging Interlocutory Order on Jurisdiction

Mental State: The evidence in the record is insufficient to establish that Respondent knew there was no basis in law and fact for him to challenge the trial court's interlocutory order denying husband's motion to dismiss for lack of jurisdiction. Rather, it appears that Respondent made little to no effort to determine or understand the applicable legal standards for filing the interlocutory appeal or for seeking reconsideration of the trial court's decision. Accordingly, the Panel concludes Respondent's state of mind was one of negligence because he "failed to heed a substantial risk that a violation would result from his conduct." *See Fink*, 2011 VT 42, ¶ 38.

Presumptive Sanction: The presumptive sanction for this violation is reprimand. "Reprimand is generally appropriate when a lawyer negligently fails to comply with a court

order or rule, and causes injury or potential injury to a client or other party, or causes interference or potential interference with a legal proceeding." ABA Standards, § 6.23.

3. Submissions Regarding Sale of Marital Home and Appointment of Attorney for Minor Children

Mental State: Respondent's mental state in filing repeated requests for the trial court to deny wife's request to sell the marital home, order the reasonable appraised value of the home be deposited in escrow pending the outcome of the final property division hearing, and appoint an attorney for the minor children to assert their wishes regarding the marital home was also one of negligence. Here, too, it appears that Respondent did little to nothing to determine whether the law and facts supported the requests, which led to his failure to heed a substantial risk that there was no basis in law and fact for his requests.

Presumptive Sanction: The presumptive sanction for this violation is reprimand. "Reprimand is generally appropriate when a lawyer negligently fails to comply with a court order or rule, and causes injury or potential injury to a client or other party, or causes interference or potential interference with a legal proceeding." ABA Standards, § 6.23.

C. Two Violations of Rule 3.4(c) (Fairness to Opposing Party and Counsel: Disobeying Obligation to Tribunal)

Duty: As with his violations of Rule 3.1, Respondent violated obligations he owed to the public and the legal system to abide by the procedural and substantive rules that shape the administration of justice when he violated Rule 3.4(c). *See* ABA Standards, Theoretical Framework, at 5; *see also id.* § 6.2 (setting forth presumptive sanctions for abuse of legal process, including failure to obey an obligation under the rules of a tribunal); ABA Annotated

Standards, § 6.0, ann., at 299 ("The public expects lawyers, as officers of the court, to abide by the substantive and procedural rules and laws.").

1. Failure to Attend Final Divorce Hearing

Mental State: Respondent's mental state in failing to appear at the final divorce hearing was one of knowledge because he acted with the "conscious awareness of the nature or attendant circumstances of his or her conduct." *See* ABA Standards, Theoretical Framework, at 6. He was aware of the trial court's notice of hearing. He was aware of the trial court's entry order reminding him of his obligation to appear at the hearing or move to withdraw from representation. Exercising poor judgment, he made a conscious decision not to appear at the hearing in deference to his client.

Injury: Respondent's failure to appear at the hearing caused actual or potential injury to his client, the public, the legal system, and the legal profession. Respondent's failure to attend the hearing caused his client potential injury. Without diminishing his client's position that the trial court did not have jurisdiction, had Respondent participated in the hearing, he would have been able to raise procedural or evidentiary objections to benefit his client. In addition, by its very nature, Respondent's violation of a court order interfered with a legal proceeding and harmed the legal system and the public's perception of the legal profession.

Presumptive Sanction: The presumptive sanction for this violation is suspension. "Suspension is generally appropriate when a lawyer knows that he or she is violating a court order or rule, and causes injury or potential injury to a client or a party, or causes interference or potential interference with a legal proceeding." ABA Standards, § 6.22.

2. Submission of Minor Children's Testimony

Mental State: Respondent's mental state in filing the children's affidavits was one of knowledge because he acted with the "conscious awareness of the nature or attendant circumstances of his or her conduct." *See* ABA Standards, Theoretical Framework, at 6. He was aware of the requirements of 15 V.S.A. § 594 and V.R.F.P. 7(d) for minor children to provide testimony, as well as the trial court's decision precluding the children's testimony and explaining the reasons therefor. He made a conscious decision to file their affidavits because he thought the children had a right to have their testimony heard in the divorce proceedings. Respondent's argument that he did not consider an affidavit to be testimony is not credible and nevertheless does not change that he had a conscious awareness of the circumstances of his conduct.

Injury: Respondent's submission of the children's affidavits caused injury or potential injury to the opposing party, the children, the public, the legal system, and the legal profession. As the trial court noted in prohibiting the children's testimony, "Any testimony that they would prefer to remain in India with Father only further alienates them from their mother." SDC's Ex. 28, at 2; *see also Davis v. Hunt*, 167 Vt. 263, 267, 704 A.2d 1166, 1169 ("The purpose of [15 V.S.A. § 594(b)], moreover, is to protect children faced with the dilemma of testifying simultaneously for one parent and against the other."); V.R.F.P. 7, Reporter's Notes (15 V.S.A. § 594(b) "recognizes that the act of testifying for or against one parent, and requests by a parent for such testimony, are often harmful to children."). Respondent harmed both wife and children by submitting the children's testimony after the court had held it inadmissible for reasons contemplated by the statute and rule. And as noted in the section above, by its very nature, Respondent's violation of a court order interfered with a legal proceeding and harmed the legal system and the public's perception of the legal profession.

Presumptive Sanction: The presumptive sanction for this violation is suspension. "Suspension is generally appropriate when a lawyer knows that he or she is violating a court order or rule, and causes injury or potential injury to a client or a party, or causes interference or potential interference with a legal proceeding." ABA Standards § 6.22.

III. Aggravating and Mitigating Factors

The following aggravating factors apply: multiple offenses, refusal to acknowledge wrongful nature of conduct, vulnerability of victim, and substantial experience in practice of law.

The following mitigating factors apply: absence of a prior disciplinary record, absence of a dishonest or selfish motive, full and free disclosure to disciplinary board or cooperative attitude toward proceedings, and character or reputation.

Significantly, Respondent engaged in multiple violations (one violation of Rule 1.1, three violations of Rule 3.1, and two violations of Rule 3.4(c)). His multiple violations do not amount to a pattern of misconduct, however. *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 has also practiced law for decades. At the time of the violations, Respondent had more than 25 years of experience as an attorney, including nearly 20 years of experience as a Vermont attorney. *See* ABA Annotated Standards, § 9.22, ann., at 581 ("Substantial years of practice can be considered an aggravating factor under Standard 9.22(i) because a lawyer with a great deal of experience should know better than to engage in misconduct.").

Of particular concern is Respondent's refusal – or inability – to appreciate the wrongful nature of his conduct. Although Respondent admitted that he made "isolated" procedural

mistakes in pursuing an interlocutory appeal of the trial court's order regarding jurisdiction, he has not acknowledged the wrongful nature of his conduct. He repeatedly and incorrectly argued that his client's instructions trumped his obligations to the legal system and the public. He repeatedly and incorrectly relied on Vermont's notice pleading standard to excuse his failure to present any legal or factual basis in his submissions to the court. He minimized his mistakes and the injury or potential injury they caused his client, the opposing party, the public, the legal system, and the legal profession.

Respondent's position that he was not responsible for the content of any court submissions he did not draft is astonishing. The Vermont Rules of Civil Procedure provide that, by submitting any document to the court, an attorney "is certifying that to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances" that the legal contentions in the document are warranted by existing law or by a nonfrivolous argument for a change in existing law and that the factual contentions have or are likely to have evidentiary support. Vt. R. Civ. P. 11(b). Yet Respondent disclaimed responsibility for the baseless factual contentions in the post-hearing reply he filed with the court. *See* Sep. 25 Tr. at 73:16 ("I didn't write it. I can't be held responsible."), 69:18-21 ("I'm the lawyer. I'm the representative. I don't control all the content."). He even minimized his role in and responsibility for improperly submitting testimony from the minor children. *See*, *e.g.*, Sep. 25 Tr. at 187:2-4 ("…as if somehow these affidavits have anything to do with me. They have nothing to do with me. I am a representative of a client in a court."). This position is particularly troubling, given the vulnerability of the minor children whose affidavits he filed; indeed, the statute, court rule, and order Respondent violated were specifically designed to protect children because of their vulnerability.

On the other hand, Respondent has no documented history of professional misconduct as an attorney. *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"). He also spent much of his career in public service, working for government agencies and non-profit organizations, and two witnesses testified he was fair and conscientious in their professional interactions with him. There was also no evidence Respondent acted with dishonest or selfish motives.

Respondent also cooperated with these disciplinary proceedings, including by reaching the agreed resolution the Supreme Court subsequently reversed. Respondent's cooperation with the disciplinary process, however, carries little weight "because attorneys have an independent professional duty to cooperate with disciplinary investigations under Rule 8.1(b)." *See Bowen*, 2021 VT 7, ¶ 45. The Hearing Panel's finding with respect to cooperation is also tempered by his evasiveness and at times combative demeanor, as well as his inappropriate comments to and about SDC during the merits hearing. *See, e.g.,* Sep. 25 Tr. at 184:19-185:25 ("And honestly, I saw your background. You have been a GAL a little bit, Attorney Carleton."); Nov. 19 Tr. at 99:22-24 ("Attorney Carleton, perhaps, was doing his job, as I pointed out, I think, in some places, not very carefully. But he nonetheless would not relent."), 117: 9-12 ("I don't trust the special disciplinary counsel. I just don't. And so – and I never will. So – I think this has been an awful matter. It should never have been brought.").

On balance, the four aggravating factors outweigh the four mitigating factors and warrant an upward adjustment to the presumptive sanction.

IV. Sanctions Imposed

In determining final sanctions, the Hearing Panel is mindful of the Supreme Court's guidance in its decision remanding this matter. "Each alleged violation must be considered separately within a decision to evaluate the factors above and arrive at a presumptive sanction which may then be altered after consideration of aggravating and mitigating factors." *Studdert-Kennedy*, 2024 VT 24, ¶ 14. "Respondent's conduct must be considered as a whole, with the most onerous presumptive sanction then subject to a consideration of aggravating and mitigating circumstances." *Id.* ¶ 36. 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." *Id.* ¶ 14 (quoting ABA Standards, Theoretical Framework, at 7).

Respondent engaged in six instances of professional misconduct. The presumptive sanction for Respondent's violation of Rule 1.1 is reprimand. Suspension is the presumptive sanction for one of Respondent's violations of Rule 3.1, and reprimand is the presumptive sanction for his other two violations of Rule 3.1 The presumptive sanction for each of Respondent's two violations of Rule 3.4(c) is suspension.

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.).

Respondent is suspended from the practice of law for a period of nine months.[6] Considering all of the circumstances, including the aggravating and mitigating factors, this period of suspension is necessary not to punish Respondent but to protect the public from harm, maintain confidence in the legal profession, and deter future misconduct. Specifically, the Panel finds that a shorter period of suspension is inadequate to ensure that Respondent understands and appreciates the wrongful nature of his conduct and obtains the legal knowledge, skill, and judgment necessary to provide clients competent representation that complies with the procedural and substantive rules that shape the administration of justice.

The Panel recognizes that the final sanction imposed should be 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)). Indeed, the Panel did not identify any prior cases involving multiple violations of Rule 1.1, 3.1, and 3.4(c) under similar circumstances. A suspension of nine months, however, does not appear inconsistent with prior disciplinary determinations.

Respondent's conduct warrants a significantly more severe sanction than attorneys who received a public reprimand for violating Rule 1.1 or Rule 3.4, in large part because Respondent engaged in six violations – three of them knowingly – and because Respondent does not

[6] The Hearing Panel declines to impose additional requirements on Respondent, such as undergoing an evaluation of his fitness to practice law, as SDC requested. Particularly in light of Respondent's move to Italy and retirement, the measures seem unnecessarily punitive. Should Respondent seek reinstatement, of course, he will have to establish that he "has the moral qualifications, competency, and learning required for admission to practice law in the state, and the resumption of the practice of law will be neither detrimental to the integrity and standing of the bar or the administration of justice nor subversive of the public interest and that [he] has been rehabilitated." A.O. 9, Rule 26(D).

recognize the wrongful nature of his conduct. *See*, *e.g.*, *In re Adams*, PRB File Nos. 2019-014, 015, Decision No. 225 (Apr. 24, 2019) (reprimanding attorney for negligently violating Rule 1.1 and Rule 1.3 when she twice failed to attend bankruptcy court hearings); *Vigue*, PRB File No. 2018-034, Decision No. 216 (reprimanding attorney for negligently violating Rule 1.1 and Rule 1.3 when he twice filed motions that did not comply with procedural requirements, failed to attend merits hearing, and advised client not to attend merits hearing); *In re Pannu*, PRB File No. 2011.029, Decision No. 136 (Jan. 31, 2011) (reducing presumptive sanction of suspension to reprimand for attorney who knowingly violated Rule 3.4(c), Rule 3.4(e), and Rule 8.4(d) when he introduced irrelevant and inadmissible evidence in a criminal case, disobeying court's pre-trial ruling, because there were no aggravating factors and several mitigating factors, including attorney's inexperience, restitution, and self-reporting).

A number of attorneys have faced six-month suspensions for violations related to their duties to provide diligent, competent representation. *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 Shepperson*, 164 Vt. 636, 674 A.2d 1273 (1996) (reducing sanction from disbarment to six-month suspension for attorney who he filed several inadequate and incomprehensible legal briefs); *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); *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). The Panel views Respondent's conduct as a whole to require a longer suspension of nine months. In addition to falling below the standards of competent attorneys, he filed three meritless submissions and knowingly violated two court orders. Despite decades of experience practicing law, Respondent seems to have a fundamental misunderstanding of his obligations as a legal professional and officer of the court.

Respondent's violations, however, are less egregious than those of attorneys who faced longer suspensions. For example, in *In re Cobb*, PRB Nos. 099-2020, 103-2020, Decision No. 246 (May 24, 2022), the hearing panel imposed a 15-month suspension on an attorney who violated his duties of competence and diligence to a client, which not only caused potential harm to the client's case but also actual harm to the client by depriving him of in-person contact with his children for several months. Mr. Cobb also engaged in misconduct when he knowingly disclosed confidential client information, intentionally disclosed confidential juvenile court information, and intentionally provided false information to disciplinary counsel.

Similarly, in *Manby*, 2023 VT 45, the Supreme Court imposed as 12-month suspension on an attorney who violated Rule 1.1 (competence), Rule 1.4(b) (communication), and Rule 1.14(a) (client with diminished capacity) in representing an elderly client with dementia in estate planning matters. The Supreme Court noted that Mr. Manby's violations were flagrant and "magnified by [his client's] particularly vulnerable state, [his] extensive experience in this area of the law and dealing with elderly clients, [his] lack of recognition of the gravity of these transgressions, the troubling circumstances under which he accepted a $1000 gift from [his client's son], and the significant harm [he] caused." 2023 VT 45, ¶ 65.

Respondent's conduct here is not as egregious or injurious as Mr. Cobb's or Mr. Manby's and therefore warrants a less severe sanction. Like Mr. Manby, however, Respondent "poses a serious risk to potential future clients and public trust in the legal profession," *see id.*, given his extensive experience in family law and his inability to recognize the nature and gravity of his misconduct.

* * *

ORDER

Based upon the evidence in the record, 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 that Respondent violated Vermont Rules of Professional Conduct 1.1, 3.1, and 3.4(c), and he is SUSPENDED from the practice of law for a period of nine (9) 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: March 6, 2025

Hearing Panel No. 8

By: _____
Jennifer E. McDonald, Esq., Chair

By: _____
Jonathan T. Rose, Esq.

By: _____
Beth Anderson, Public Member