In re Jeffrey Michael McCarthy
Attorney-Respondent

Commission No. 2025PR00047

Synopsis of Hearing Board Report and Recommendation
(July 2026)

The Administrator charged Respondent with neglecting two client matters; failing to reasonably inform, promptly respond to, and refund unearned fees to both clients; converting and comingling one client's funds and making a dishonest statement to that client; and knowingly failing to respond to the Administrator's lawful demands for information, in violation of Rules 1.3, 1.4(a)(3), 1.4(a)(4), 1.15(a), 1.15(b), 1.16(d), 8.1(b), and 8.4(c). Based on Respondent's admissions and the evidence, the Hearing Board found that the Administrator proved by clear and convincing evidence that Respondent violated Rules 1.3, 1.4(a)(3), 1.4(a)(4), and 8.1(b) by his neglect and inadequate communication in the two client matters and by his knowing failure to provide requested information during the disciplinary investigation. There was insufficient evidence to prove the other charges. The Hearing Board recommended a suspension for one year and until further order of the Court due to Respondent's Rule violations, significant aggravation including his three prior instances of similar misconduct, minimal mitigation, and relevant caselaw.

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

In the Matter of: **JEFFREY MICHAEL MCCARTHY,** Attorney-Respondent, No. 6208791.	Commission No. 2025PR00047

REPORT AND RECOMMENDATION OF THE HEARING BOARD

SUMMARY OF THE REPORT

Respondent admitted, and the Hearing Board found, that he neglected two client matters and failed to reasonably inform and promptly respond to those clients, in violation of Rules 1.3, 1.4(a)(3), 1.4(a)(4), and that he knowingly failed to respond to the Administrator's lawful requests for information during the disciplinary investigation, in violation of Rule 8.1(b). However, the Administrator did not prove by clear and convincing evidence that Respondent failed to refund unearned fees to the clients, converted and comingled client funds, or made a dishonest statement to a client, as proscribed by Rules 1.15(a), 1.15(b), 1.16(d), and 8.4(c). Respondent's misconduct was significantly aggravated by his three prior disciplinary sanctions for similar misconduct, along with other aggravating factors. There was minimal mitigation. The Hearing Board recommended that Respondent be suspended for one year and until further order of the Court.

INTRODUCTION

The hearing in this matter was held on April 14, 2026, at the Springfield office of the Attorney Registration and Disciplinary Commission (ARDC) before a panel of the Hearing Board

FILED

July 13, 2026

ARDC CLERK

consisting of John L. Gilbert, Chair, Christopher A. Nichols, and Elizabeth Delheimer. Tammy L. Evans represented the Administrator. Respondent was present and represented himself.

PLEADINGS AND MISCONDUCT ALLEGED

On August 26, 2025, the Administrator filed a three-count Complaint against Respondent, charging him with failing to act with reasonable diligence and promptness in representing a client, failing to keep the client reasonably informed about the status of the matter, failing to promptly comply with reasonable requests for information, and failing to refund an unearned fee (Counts I and III); using funds or property of clients or third persons for the lawyer's own purposes without authorization, failing to hold property of clients or third persons that is in a lawyer's possession in connection with a representation separate from the lawyer's own funds or property, and engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation (Count I); and knowingly failing to respond to a lawful demand for information from a disciplinary authority (Count II), in violation of Rules 1.3, 1.4(a)(3), 1.4(a)(4), 1.15(a), 1.15(b), 1.16(d), 8.1(b), and 8.4(c) of the Illinois Rules of Professional Conduct (2010). On September 30, 2025, Respondent filed an Answer in which he admitted some factual allegations and misconduct and denied other factual allegations and misconduct.

PRE-HEARING PROCEEDINGS

On November 19, 2025, the Administrator served Respondent with a First Notice to Produce, returnable within 28 days. (Notice of Filing, Nov. 19, 2025). Respondent had not complied by January 28, 2026, so the Administrator emailed him to request production by February 4. (Motion to Compel, Feb. 6, 2026, Ex. 1). Respondent replied that he "will definitely try." (Id.). On February 5, Respondent emailed the Administrator that he "lost track of time" and "will prioritize and get it out to you today." (Id. at Ex. 2). He still had not produced the documents when the Administrator filed her Motion to Compel on February 6 or when the Chair entered an

Order granting that motion on February 18, with a compliance deadline of March 4. (Id. at par. 5; Order, Feb. 18, 2026). Respondent responded to the First Notice to Produce on March 4. (Notice of Filing, Mar. 4, 2026).

EVIDENCE

The Administrator called Respondent as an adverse witness along with two other witnesses, and Administrator's Exhibits 1-5 were admitted into evidence. (Tr. 13-14). Respondent testified and called three additional witnesses. Respondent's Exhibits FR1-FR8, SO1-SO3, CF1-CF4, FP1-FP7, BO1-BO2, CR1-CR5, DC1-DC13, and KG1-KG9 were admitted into evidence, and Respondent's Exhibits JM1-JM2 were admitted under seal. (Tr. 13-14; Order, Apr. 17, 2026).

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Administrator bears the burden of proving the charges of misconduct by clear and convincing evidence. In re Thomas, 2012 IL 113035, ¶ 56. Clear and convincing evidence constitutes a high level of certainty, which is greater than a preponderance of the evidence but less stringent than proof beyond a reasonable doubt. People v. Williams, 143 Ill. 2d 477, 484-85, 577 N.E.2d 762 (1991). The Hearing Board assesses witness credibility, resolves conflicting testimony, makes factual findings, and determines whether the Administrator met the burden of proof. In re Winthrop, 219 Ill. 2d 526, 542-43, 848 N.E.2d 961 (2006).

I. Respondent is charged with neglecting K.G.'s legal matters, failing to reasonably inform and promptly respond to K.G., comingling and converting K.G.'s funds, failing to refund an unearned fee to K.G., and making a dishonest statement to K.G., in violation of Rules 1.3, 1.4(a)(3), 1.4(a)(4), 1.15(a), 1.15(b), 1.16(d), and 8.4(c) (Count I).

A. Summary

We find that the Administrator proved by clear and convincing evidence that Respondent failed to act with reasonable diligence and promptness in representing K.G. in the legal matters related to her deceased husband's estate, failed to keep K.G. reasonably informed about the status of her matters, and failed to promptly comply with K.G.'s reasonable requests for information. We find that this conduct violated Rules 1.3, 1.4(a)(3), and 1.4(a)(4). However, we find insufficient evidence to prove the Administrator's charges of comingling and converting client funds, failing to refund an unearned fee, and engaging in dishonest conduct under Rules 1.15(a), 1.15(b), 1.16(d), and 8.4(c).

B. Admitted Facts and Evidence Considered

Respondent and K.G. testified that they met at his office on April 14, 2021, regarding the estate of K.G.'s husband, who died in January 2021. (Tr. 36-38, 69-70). Respondent agreed to represent K.G. in completing paperwork to obtain her husband's company stock, pension, and life insurance, as well as in addressing the ownership of her house, which was held in joint tenancy with her husband. (Ans. at par. 3; Tr. 37-38, 51-55, 70-72; Resp. Ex. KG7). K.G. testified that, at their meeting, Respondent prepared a quitclaim deed to transfer the house into her name, but they did not record it because she was still considering putting the house into a trust for her stepson. (Tr. 54-55; Resp. Ex. KG5-KG6). Both K.G. and Respondent testified that she never hired him to prepare that trust. (Tr. 55, 78-80). Respondent testified, as documented in his exhibits, that he sent K.G.'s signed authorization forms to her husband's former employer on April 14, 2021. The employer responded with pension benefit forms that K.G. needed to fill out and return. Respondent testified that he spoke with K.G. over the next few months about completing those forms. (Tr. 80-81; Resp. Ex. KG2, KG9).

K.G. and Respondent testified that she paid him $2,500 on April 14, 2021, and the bank records indicate that he negotiated her check two days later. She understood that was her total cost for the work they discussed, whereas he claimed it was an initial retainer, against which he would bill at $350 per hour. (Tr. 37-39, 71-72; Adm. Ex. 1). K.G. testified that she did not remember Respondent going through the Employment Contract and Fee Agreement ("Contract") with her and circling items such as hourly billing rates, as their meeting was five years ago. Nonetheless, she identified her signature at the end of the Contract and her initials on this statement: "After careful consideration and full disclosure from the Firm, I acknowledge and agree that the retainer deposited with the Firm shall be treated as: [K.G.'s initials] Advance Retainer Deposit [blank line] Classic Retainer Deposit." (Tr. 50-51, 59-60; Resp. Ex. KG1 at 8). The Contract contained several pages of terms about fees, including a paragraph about the advance payment retainer:

> 1. Client shall deposit with the Firm an initial **advance payment retainer** in the amount of **<u>TWO THOUSAND FIVE HUNDRED DOLLARS and no/100 ($ 2,500.00) dollars</u>** upon Client's execution of this Agreement. Client understands that the monies paid for the above-mentioned retainer are immediate compensation and will be deposited into the Firm's operating and/or business accounts to be withdrawn at the discretion of the Firm, as the Client's matter progresses. Client understands that ownership of said retainer shall immediately pass to the Firm and it is intended that said funds shall not be subject to set-off or claim from Client's creditors. Client understands that this advance payment retainer is made in recognition of the Firm's commitment to represent Client, and in recognition of the Firm foregoing representation of the opposing party, alternate representation of other client's and /or representations that might conflict with the interests of Client. By executing this Agreement, Client recognizes that this advance payment retainer agreement is executed in lieu of a security payment retainer agreement, which requires that the retainer be placed in a trust account and only withdrawn as the fees are earned, and Client understands that the funds deposited herein shall not be deemed the property of the Client after the initial deposit. Any monies unused at the conclusion of the Firm's representation will be refunded to Client at the next billing cycle.

(Resp. Ex. KG1 at 1) (emphasis in original). Respondent testified that he and K.G. discussed her possible credit card debt, and using an advance payment retainer protected her attorney fees from creditors. (Tr. 71, 175-76; Resp. Ex. KG7).

According to the Contract, Respondent's firm agreed to represent K.G. in the administration of her husband's non-probate estate. (Resp. Ex. KG1 at 1). It was unclear whether a matter that arose after their initial meeting was included in that representation. K.G. testified that she called Respondent a few weeks later about stock that her mother-in-law had given to her husband. She wanted to transfer that stock into her name and cash it out. (Tr. 40-41). She followed

Respondent's instructions to drop off the paperwork while he was out of the office. (Tr. 41, 56-57). Respondent testified that K.G. did so, and he told K.G. or asked his secretary Kristine Holzwarth to tell K.G. that he could not assist with this stock because it was part of her mother-in-law's estate in Florida, where he was not licensed. (Tr. 73, 174). K.G. testified that Respondent never told her that or said whether or not he could transfer the stock for her. (Tr. 56-57).

K.G. testified that she called Respondent over 100 times over the following two to three years, but he never returned her calls. She did not have internet to send email, but she requested a refund in "a lot" of the messages she left with his answering service. (Tr. 41, 56-58; Adm. Ex. 1 at 1). Although Respondent claimed the number was "nowhere near a hundred," he testified that K.G. "made a lot more phone calls than [he] returned." (Tr. 75, 81). He admitted that K.G. attempted to contact him on several occasions between April 2021 and September 2023 and that he gave her no status updates until October 2023, except for during the first year. (Ans. at par. 7; Tr. 73-74).

Respondent testified that he stopped returning K.G.'s calls because he could not find her file. (Tr. 74-75). He explained, "it wasn't that I misplaced her file and I needed to go look for it. I looked for it and couldn't find it. It was nowhere it was supposed to be." (Tr. 75). He did not ask K.G. to recreate the file because he was "completely ashamed" and "mortified that [he] did not have any idea where [he] put her file." (Tr. 75-77). He did not expect Kristine to have it because she did not manage his files, but he still checked the secretary's desk after she stopped working for him, which she testified was in approximately 2023. (Tr. 125-26, 177-78). Respondent testified that he had an answering service for about a year after Kristine left, but he ignored their messages to call K.G. back. (Tr. 84-86).

When asked again about how his files could be missing for five and a half years while his clients called him repeatedly, Respondent testified,

> Well, I couldn't find [the files] for about six months is when I was looking for them. … I didn't know that I was missing them until I got the complaint. … I admit that they called over that period of time. But I can tell you, the last two years was probably – probably the last two years is when the files were gone. And I never once had a call to say, 'Hey, what's going on with my file' during that period of time.

(Tr. 179-80). Respondent admitted that his lack of communication with K.G. violated Illinois Rules of Professional Conduct 1.4(a)(3) and 1.4(a)(4). (Ans. at pars. 15(b)-(c)).

K.G. testified that, in October 2023, she called Respondent from her work phone, and he answered. She told him that she needed everything done that she paid for, and they scheduled a meeting on November 14, 2023, which K.G.'s friend R.S. also attended. (Tr. 41-43). According to K.G. and Respondent, she reported at the meeting that she had collected her husband's company stock with her banker's help, and Respondent promised to complete the rest of the work by Thanksgiving. (Ans. at par. 9; Tr. 43-45, 86). K.G. testified that the unfinished work included her husband's life insurance and pension and her mother-in-law's stock. (Tr. 43-44). Likewise, R.S. testified that the meeting was about what K.G. needed done with "her husband's stocks and … personal benefits." (Tr. 63-64). Respondent testified that he never agreed to represent K.G. regarding her mother-in-law's stock, but the other two remaining tasks required only 5 to 10 hours to complete, and he did not do them by Thanksgiving because he "gave priority to other things." (Ans. at par. 9; Tr. 86-88, 174). K.G. testified and her follow-up letter stated that she called Respondent over 20 times thereafter with no response. (Tr. 44-45; Adm. Ex. 2).

K.G. testified that she mailed the follow-up letter to Respondent on July 26, 2024, and sent another copy in August 2024. (Tr. 45-46; Adm. Ex. 2). It identified the four tasks that she hired Respondent to handle in April 2021, which he promised to finish by Thanksgiving 2023: her husband's company stock, pension, and life insurance and her mother-in-law's stock. (Tr. 46-47; Adm. Ex. 2 at 1). The letter stated that K.G. obtained her husband's company stock on June 12, 2023, but it had lost $16,223.15 by then; she collected his pension as of July 19, 2024; and she was still working on his life insurance. She hired another attorney, Paul Wheeler, to assist her with her mother-in-law's stock and with getting her paperwork and $2,500 back from Respondent. (Tr. 47-49, 58-59, 61-62; Adm. Ex. 2 at 2-3). Respondent testified that he did not receive K.G.'s letters. (Tr. 177).

K.G. testified that she reported Respondent to the ARDC after he did not respond to her letters. (Tr. 47-48). Respondent admitted that he received K.G.'s complaint from the Administrator in November 2024. (Ans. at pars. 17-18).[1] He testified that he eventually found K.G.'s file among the Z last names after going through every client file in his office, starting from A to Z. (Tr. 114-15). His Answer stated, "K.G.'s file was misplaced after a significant water intrusion in Respondent's office above the file room." (Ans. at par. 9). He testified that he did not know whether Kristine, who was dyslexic, misfiled it with the Zs or whether he moved it out of the way during the April 2023 water infiltration, but he acknowledged that K.G. retained him "far prior" to that incident. (Tr. 81-83, 115, 183).

On March 6, 2025, Respondent was served with a subpoena to appear for a sworn statement in this disciplinary investigation. (Ans. at par. 21). On March 14, 2025, Respondent sent K.G. a letter which stated, "Please accept my sincere apologies for not having processed your case in a timely manner," and included a check refunding her $2,500 retainer fee. (Ans. at par. 14; Tr. 48, 95, 113; Adm. Ex. 3; Resp. Ex. KG3). Respondent admitted that he did not perform the work that K.G. paid for regarding her husband's company stock, pension, and life insurance, even though it "could have been done easily within a year." (Ans. at pars. 6, 9, 10; Tr. 72, 170). He further admitted that this conduct violated Illinois Rule of Professional Conduct 1.3. (Ans. at par. 15(a)).

C. Analysis and Conclusions

Credibility

The Court has held that "[t]he Hearing Board is in the best position to observe the witnesses' demeanor and judge their credibility, resolve conflicting testimony, and render other fact-finding judgments." Winthrop, 219 Ill. 2d at 543. Accordingly, to the extent that Respondent and K.G.'s testimony conflicted, we find K.G. more credible and Respondent less credible because he gave varying explanations for his conduct, whereas her testimony was straightforward and consistent.

Respondent testified that he stopped returning K.G.'s calls after the first year because he knew he had lost her file, and he was ashamed that he could not find it. Then he looked for the file again in his secretary's desk after she left in 2023, and he did not respond to K.G.'s messages that he received from his answering service over the following year.

However, Respondent also admitted in his Answer that K.G.'s file went missing after a water intrusion in his file room, which he testified was in April 2023. He was unsure whether his dyslexic secretary misfiled it among the Z last names or whether he moved it to avoid the leaking water. Either way, Respondent ultimately testified that he did not know he was missing K.G.'s file until he got her complaint from the Administrator in November 2024. He testified that he spent six months looking for the file, which "probably" had been gone for two years, during which he never got a call inquiring about the case status.

Respondent gave two varying reasons for not returning K.G.'s calls: he was embarrassed that he lost her file in 2021 or 2022, which he looked for but could not find then or in 2023, so he knowingly ignored K.G.'s attempts to contact him through 2024; or her file got misplaced after the water intrusion in April 2023, which he did not realize until he got the complaint in November 2024 because K.G. had not called him for the past two years. The latter explanation contradicts

Respondent's testimony that he received messages from K.G. from 2021 to 2024 and that he met with K.G. and promised to finish her legal work in November 2023. Thus, we find that Respondent was aware or should have been aware of K.G.'s missing file and her numerous calls between 2021 and 2024, regardless of when and how he lost her file during that time. This conclusion is consistent with K.G.'s credible testimony that she called Respondent over 100 times during this period and only reached him once when she called from her work phone in October 2023.

Rule 1.3

Rule 1.3 requires a lawyer to act with reasonable diligence and promptness in representing a client. Ill. R. Prof'l Cond. R. 1.3. The Administrator charged Respondent with violating this Rule by conduct including failing to prepare a quit claim deed for K.G.'s martial home; complete the paperwork necessary to collect the death benefit from her husband's life insurance policy, pension, and company stock; transfer to K.G. title of the stock certificates that K.G.'s husband had inherited from his mother; and establish a living trust for K.G. Respondent admitted that he failed to complete some of the work K.G. hired him to do and that this conduct violated Rule 1.3. Based on Respondent's admissions and the supporting testimony and documentary evidence, we find that Respondent violated Rule 1.3.

The uncontroverted evidence demonstrated that K.G. retained Respondent in April 2021 to assist her with various tasks related to her deceased husband's estate and that Respondent never took the necessary actions to actualize the proceeds from the life insurance, pension, and company stock. K.G.'s banker helped her obtain the company stock in June 2023, and, after Respondent broke his promise to finish the remaining work by Thanksgiving 2023, K.G. hired another attorney. She collected the pension on her own as of July 2024, and it is unclear whether she ever obtained the life insurance money. Respondent admitted that this work should have taken 5 to 10 hours over no more than a year, but he lost K.G.'s file and failed to prioritize her matters, eventually refunding her attorney fees in March 2025.

We find that Respondent failed to act with reasonable diligence and promptness in representing K.G. Respondent allowed K.G.'s legal matters to languish for nearly four years rather than completing the brief work needed to obtain the proceeds from her husband's life insurance, pension, and company stock. His failure to act with reasonable diligence and promptness on these three matters violated Rule 1.3.

Additionally, we find that Respondent violated Rule 1.3 by failing to assist K.G. in transferring her mother-in-law's stock. Respondent admitted that K.G. dropped off the paperwork at his office a few weeks after their initial meeting, as he instructed, but they disagreed as to what happened after that. Respondent claimed that he told K.G. or told his secretary to tell K.G. that he could not represent her regarding this stock, but K.G. maintained that he never got back to her about it. K.G. and R.S. testified, and her follow-up letter in July and August 2024 confirmed, that she understood Respondent had promised to finish the work, including her husband's stocks, in November 2023. In contrast, Respondent claimed that they did not discuss her mother-in-law's stock at that meeting, and he never received either copy of K.G.'s letter.

Considering that we generally find K.G. to be more credible than Respondent, for the reasons explained above, and that her version of events was supported by an additional witness and a letter, whereas his testimony was uncorroborated, we find that Respondent failed to inform K.G. that he was not representing her regarding her mother-in-law's stock. We further find that K.G. reasonably believed Respondent was representing her when he asked her to drop off the stock paperwork shortly after she retained him to administer her husband's estate and then stopped communicating with her about all of her legal matters for years. We find that Respondent was or should have been aware that K.G. expected him to assist her with her mother-in-law's stock when she left him numerous phone messages between 2021 and 2024, met with him in November 2023, and sent him two follow-up letters in 2024.

It is undisputed that Respondent did not take action to transfer K.G.'s mother-in-law's stock from the time he received that paperwork in spring 2021 until he fully refunded her attorney fees in March 2025. We find that his inaction on this matter for nearly four years, which his client repeatedly brought to his attention, failed to meet the expected standard of diligence and promptness in Rule 1.3.

However, we do not find that Respondent failed to prepare a quit claim deed for K.G.'s marital home or establish a living trust for K.G., as there was no evidence in the record to support these allegations. On the contrary, K.G. testified that Respondent prepared the quit claim deed and advised her about a possible trust for her house during their initial meeting, but she did not hire him to prepare the trust. Therefore, we find no Rule 1.3 violation based on these facts.

Overall, we find that the Administrator proved by clear and convincing evidence that Respondent violated Rule 1.3 by failing to act with reasonable diligence and promptness in representing K.G. regarding her husband's life insurance, pension, and company stock and her mother-in-law's stock.

<u>Rules 1.4(a)(3) and 1.4(a)(4)</u>

Rule 1.4(a)(3) requires a lawyer to keep the client reasonably informed about the status of the matter, and Rule 1.4(a)(4) requires a lawyer to promptly comply with reasonable requests for information. Ill. R. Prof'l Cond. R. 1.4(a)(3)-(4). The Administrator charged Respondent with violating these Rules by conduct including failing to respond to K.G.'s requests for information regarding the status of the legal work that he agreed to perform on her behalf. Respondent admitted that he agreed to represent K.G. in collecting her husband's life insurance, pension, and company stock and that he failed to adequately communicate with her about those matters, in violation of

Rules 1.4(a)(3) and 1.4(a)(4). Based on Respondent's admissions and the supporting testimony and documentary evidence, we find that Respondent violated Rules 1.4(a)(3) and 1.4(a)(4).

We have already determined that the legal work at issue involved K.G.'s husband's life insurance, pension, company stock and her mother-in-law's stock. Although Respondent did not admit to failing to communicate about the mother-in-law's stock, we find that his silence extended to all four legal matters. Respondent disputed that K.G. called him over 100 times in the two to three years following their initial meeting, but he admitted that he knowingly disregarded her messages after the first year and provided no further status updates until he answered her call in October 2023. This uncontroverted evidence is enough to support our finding that Respondent failed to properly communicate with his client. We are even more convinced when we consider K.G.'s credible testimony and July 2024 letter documenting that Respondent never returned her calls after April 2021. <u>In re Smith</u>, 168 Ill. 2d 269, 279-82, 659 N.E.2d 896 (1995) (lawyer's failure to provide status updates and return calls to clients for 3 to 13 months violated Rule 1.4(a)).

We find that Respondent's dearth of communication did not keep K.G. reasonably informed about the status of her legal matters, nor did he promptly comply with her reasonable requests for information. Thus, we find that the Administrator proved by clear and convincing evidence that Respondent violated Rules 1.4(a)(3) and (a)(4).

<u>Rules 1.15(a) and 1.15(b)</u>

Rule 1.15 addresses the lawyer's safekeeping of client and third-party property. Ill. R. Prof'l Cond. R. 1.15. The Administrator charged Respondent with converting K.G.'s attorney fees by using her funds for his own purposes without authorization, in violation of Rule 1.15(a), and with comingling K.G.'s funds with his own, in violation of Rule 1.15(b). We find no misconduct under Rule 1.15 because we find that the Contract between K.G. and Respondent created an advance payment retainer, so her attorney fees became his property upon receipt.

First, we consider the comingling charge. Rule 1.15 requires a lawyer to hold client or third-party property that is in his possession in connection with a representation separate from his own property. Id.[2] Unlike a security retainer, which remains the property of the client until the lawyer earns the fees, "[a]n advance payment retainer is a present payment to the lawyer in exchange for the commitment to provide legal services in the future. Ownership of this retainer passes to the lawyer immediately upon payment; and the retainer may not be deposited into a client trust account because a lawyer may not commingle property of a client with the lawyer's own property." Id. at R. 1.15, Comment 3C.

Rule 1.15 requires that an advance payment retainer agreement be in writing and signed by the client and use the term "advance payment retainer." Id. at R. 1.15(c). It must also state the special purpose for the advance payment retainer and why it is advantageous to the client, that the retainer will become the lawyer's property upon payment and be deposited into the lawyer's general account rather than a client trust account, how the retainer will be applied for services and expenses, that unearned fees will be refunded to the client, and that the client has the option to employ a security retainer. Id. Each element is substantially present in K.G. and Respondent's Contract.

The Contract identified the $2,500 that K.G. paid in April 2021 as an advance payment retainer, which "is executed in lieu of a security retainer agreement." The payment is "immediate compensation and will be deposited into the Firm's operating and/or business accounts to be withdrawn at the discretion of the Firm, as the Client's matter progresses." The funds "shall not be deemed the property of the Client after the initial deposit," but any unused money will be refunded after the representation concludes. Respondent testified, as mentioned in the Contract, that the advance payment retainer was intended to protect K.G.'s attorney fees from creditors, which is a legitimate special purpose. Although K.G. testified that she did not remember reviewing the Contract's billing details five years prior, she acknowledged her signature at the end and her initials next to the selection of "Advance Retainer Deposit."

Considering the language of the Contract, Respondent and K.G.'s testimony, and the requirements of Rule 1.15, we find that K.G,'s $2,500 attorney fee constituted an advance payment retainer. Accordingly, we find that those funds became Respondent's property upon receipt and that he properly negotiated the check rather than depositing it into a client trust account. Therefore, we find that the Administrator did not prove by clear and convincing evidence that Respondent commingled K.G.'s funds with his own in violation of Rule 1.15.

Next, we consider the conversion charge. The Administrator charged Respondent under the current version of Rule 1.15(a), which became effective on July 1, 2023: "A lawyer must not, even temporarily, use funds or property of clients or third persons for the lawyer's own purposes without authorization." It is well established that the Court has interpreted this prohibition into the prior version of Rule 1.15, as an extension of the explicit prohibition on comingling. In re Karavidas, 2013 IL 115767, ¶¶ 29, 62-64, 999 N.E.2d 296. In the present case, Respondent negotiated K.G.'s $2,500 check in April 2021, presumably used the money for his own purposes sometime thereafter, and fully refunded K.G. in March 2025. Regardless of which version of Rule 1.15 is applied, we find no conversion in this conduct.

Conversion involves the unauthorized use of funds belonging to a client or third party. The Administrator charged Respondent with using for himself a retainer fee that he was supposed to be holding on K.G.'s behalf, but this charge is based on the incorrect premise that they had a security retainer agreement. We have already concluded that the $2,500 paid by K.G. became Respondent's property immediately upon receipt because they had an advance payment retainer agreement. By definition, Respondent could not have converted K.G.'s attorney fees because they no longer belonged to her. Alternatively, the Administrator argued that an advance payment retainer that was earned upon receipt is still converted if the attorney never completes the work he was paid to do and that this conversion cannot be undone by a refund years later. The Administrator did not cite any caselaw to support this proposition, nor did we discover any in our research. Therefore, we find that the Administrator did not prove by clear and convincing evidence that Respondent converted K.G.'s funds in violation of Rule 1.15.

Rule 1.16(d)

Rule 1.16(d) provides, "[u]pon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interests, such as … refunding any advance payment of fee or expense that has not been earned or incurred." Ill. R. Prof'l Cond. R. 1.16(d). The Administrator charged Respondent with violating this Rule by failing to refund K.G.'s $2,500 attorney fee payment from April 2021. However, the Complaint also alleged and Respondent admitted that he sent K.G. a check for $2,500 on or about March 14, 2025. While it is unclear when K.G. first began requesting a refund in her phone messages to Respondent, we find that her July 26, 2024, letter informed him that she had hired another attorney to help get her money back. Thus, we find that the refund occurred at least seven months after K.G. requested it.

Nonetheless, "evidence of a delay in refunding unearned fees does not establish a violation of Rule 1.16(d) when the refund has been completed prior to hearing." In re Jankura, 2018PR00052, M.R. 030583 (Jan. 21, 2021) (Hearing Bd. at 8-9). Because Respondent fully refunded K.G.'s attorney fees over a year before the hearing in this matter on April 14, 2026, we find that the Administrator did not prove by clear and convincing evidence that Respondent violated Rule 1.16.

Rule 8.4(c)

Rule 8.4(c) prohibits engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation. Ill. R. Prof'l Cond. R. 8.4(c). This includes any conduct that is calculated to deceive, including the suppression of truth and the suggestion of what is false. In re Gerard, 132 Ill. 2d 507, 528, 548 N.E.2d 1051 (1989). The Administrator charged Respondent with violating this Rule by making a false statement to K.G. during their November 14, 2023, meeting that he would prepare the necessary documents to collect her husband's pension and life insurance, transfer K.G.'s mother-in-law's stock to her, prepare a quit claim deed for the marital home, and establish a living trust by Thanksgiving. We find that Respondent did not violate Rule 8.4(c).

We previously determined that Respondent prepared the quit claim deed during his initial meeting with K.G. on April 14, 2021, and that she never hired him to create a trust for her house. There was no evidence that these topics were discussed during the November 2023 meeting, so we decline to find that Respondent made any related false statements.

We also found that the unfinished work addressed during the November 2023 meeting was K.G.'s husband's pension and life insurance and her mother-in-law's stock, despite Respondent's assertion that the mother-in-law's stock was not included. Respondent admitted that he promised to complete the 5 to 10 hours of remaining work by Thanksgiving, but he failed to prioritize it. While it is undisputed that Respondent did not follow through, the critical question is whether he knew at the time he made the promise that he would not take the required action by the future deadline. In re Gauza, 08 CH 98, M.R. 26225 (Nov. 20, 2013) (Hearing Bd. at 42).

The Hearing Board may make reasonable inferences from circumstantial evidence when determining whether misconduct occurred. In re Discipio, 163 Ill. 2d 515, 524, 645 N.E.2d 906 (1994). This is because "motive and intent are rarely proved by direct evidence, but rather must be inferred from conduct and the surrounding circumstances." In re Stern, 124 Ill. 2d 310, 315, 529 N.E.2d 562 (1988). In order to determine whether Respondent's statement had dishonest intent, we consider his history of promising future action and only sometimes following through. For example, he prepared the quit claim deed at their initial meeting, contacted K.G.'s husband's former employer to gather the necessary pension benefit forms shortly thereafter, and met with K.G. in November 2023 as scheduled. But he also ignored K.G.'s numerous calls and failed to work on her husband's company stock, pension, and life insurance and her mother-in-law's stock for multiple years. When considering his overall conduct, we are not convinced that Respondent meant to mislead K.G. Rather, in the absence of clear evidence to the contrary, we are inclined to believe Respondent's explanation that he intended to finish K.G.'s case by his self-imposed deadline, but, over the following weeks, he neglected her matters in favor of other priorities.

Because Respondent's statement lacked the required dishonest intent, we find that the Administrator did not prove by clear and convincing evidence that Respondent violated Rule 8.4(c).

II. Respondent is charged with failing to respond to a lawful demand for information from a disciplinary authority, in violation of Rule 8.1(b) (Count II).

D. Summary

We find that the Administrator proved by clear and convincing evidence that Respondent failed to respond to the Administrator's May 16 and June 26, 2025, letters that lawfully demanded information related to this disciplinary investigation. We find that Respondent's conduct violated Rule 8.1(b).

E. Admitted Facts and Evidence Considered

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

Respondent admitted that he received a letter from Administrator's counsel on November 15, 2024, that informed him about K.G.'s complaint and requested his written response within seven days. (Ans. at pars. 17-18; Joint Stip. at par. 19). On November 18, Respondent emailed Administrator's counsel, acknowledging receipt of the letter and stating he would respond by the end of the week. (Ans. at par. 18). As of December 16, Respondent had not replied to the letter, so Administrator's counsel sent him a follow-up email. (Ans. at par. 19). On January 14 and 25, 2025, Administrator's paralegal emailed Respondent again, informing him that the Administrator would subpoena his appearance at the ARDC office if he did not respond to the investigation. (Ans. at par. 19). On January 27, Respondent emailed Administrator's counsel, informing her that he had been ill and stating he would respond within 48 hours, but he did not do so. (Ans. at par. 19).

On March 5 and 6, Administrator's counsel and investigator served Respondent by email and substitute service with a subpoena to appear for a sworn statement. (Ans. at par. 21). Respondent provided a two-page written response to K.G.'s allegations on March 14 and appeared for a sworn statement on March 27. (Ans. at pars. 22-23).

On May 16, Administrator's counsel sent a letter to Respondent, requesting additional information including a copy of K.G.'s file. (Joint Stip. at par. 25). On June 26, Administrator's counsel sent Respondent another letter, renewing her request with a copy of the previous letter. (Joint Stip. at par. 27). Respondent admitted that he received these letters on or about the dates they were sent, but he did not provide any of the requested information by August 6, when this matter was referred to the Inquiry Board. (Ans. at par. 28; Joint Stip. at pars. 26, 28). The Administrator requested most of the same information again in her First Notice to Produce on November 19. Respondent did not comply until March 4, 2026, after the Chair granted the Administrator's Motion to Compel. (Tr. 97-98). Respondent admitted that his failure to respond to the May 16 and June 16, 2025, letters violated Rule 8.1(b). (Ans. at par. 29(h)).

F. Analysis and Conclusions

Rule 8.1(b) prohibits knowingly failing to respond to a lawful demand for information from a disciplinary authority. Ill. R. Prof'l Cond. R. 8.1(b). The Administrator charged Respondent with violating this Rule by conduct including failing to respond to the Administrator's May 16 and June

26, 2025, letters. In Respondent's Answer and the parties' Joint Stipulation, he admitted that he received but did not respond to those two letters. In fact, he did not produce the requested information until nearly 10 months later, when compelled by the Chair's Order. Respondent admitted that his conduct violated Rule 8.1(b), and we agree that the Administrator proved this charge by clear and convincing evidence.

III. Respondent is charged with neglecting D.C.'s legal matter, failing to reasonably inform and promptly respond to D.C., and failing to refund an unearned fee to D.C. in violation of Rules 1.3, 1.4(a)(3), 1.4(a)(4), and 1.16(d) (Count III).

A. Summary

We find that the Administrator proved by clear and convincing evidence that Respondent failed to act with reasonable diligence and promptness in representing his client D.C. in the division of her ex-husband's railroad retirement benefits, failed to keep D.C. reasonably informed about the status of her matter, and failed to promptly comply with D.C.'s reasonable requests for information. We find that this conduct violated Rules 1.3, 1.4(a)(3), and 1.4(a)(4). However, we find insufficient evidence to prove that Respondent failed to refund an unearned fee to D.C. under Rule 1.16(d).

B. Admitted Facts and Evidence Considered

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

D.C. testified by evidentiary deposition and Respondent admitted that, on April 7, 2020, he agreed to represent her in obtaining an allocation order, also referred to as a qualified domestic relations order (QDRO), to divide her ex-husband R.J.'s railroad retirement benefits. (Ans. at par. 30; Tr. 99; Adm. Ex. 5 at 7-8). D.C. testified that she told Respondent this was her second divorce, and she already had a QDRO from her first divorce from P.O. Respondent could not find that document in the online court records, so he said he would verify that the QDRO was still active in the P.O. case and get back to her. (Adm. Ex. 5 at 25-27). As for the R.J. matter, D.C. paid Respondent $2,000 for attorney fees and $155 for filing fees. (Ans. at par. 30; Tr. 99-100; Adm. Ex. 5 at 8-10, 28-31, 45). Respondent testified that this job should have taken six and a half hours in total, including giving notice to R.J., filing a motion to amend the 2015 pro se divorce judgment so the language would comply with the Railroad Retirement Board's requirements, and sending the updated allocation order to the Railroad Retirement Board. (Tr. 111-13; Resp. Ex. DC5, DC6). Respondent admitted that he only filed his appearance and appeared in court in the divorce case on April 14, 2020, and did not complete the remaining four to five hours of work. (Ans. at pars. 31, 45; Tr. 87-88, 111-13; Resp. Ex. DC6 at 1).

Respondent and D.C.'s testimony conflicted about his advice during their initial meeting on April 7, 2020. Respondent testified that he told D.C. she would not qualify for benefits until age 62, "but she still, to this date, doesn't grasp that." (Tr. 101-02, 109). He explained that he did not prioritize her matter because he knew he had "a couple of years to work with" before she turned 62. (Tr. 109). However, according to D.C., they "didn't have any conversations about the number being 62 and not 60." (Adm. Ex. 5 at 35-36). Rather, Respondent emphasized that this was a time sensitive matter, which he promised to complete in the next five months so she would start receiving payments when she turned 60 in September 2020. (Adm. Ex. 5 at 10-11, 34-36).

D.C. testified that Respondent told her all correspondence would be done through an email program called MyCase, so she signed up for MyCase but got no messages. (Adm. Ex. 5 at 10). D.C. started calling Respondent in June 2020 because she was "very concerned about getting this done before September," but she always reached his secretary Kristine. (Adm. Ex. 5 at 10-11). Because Respondent never returned D.C.'s phone calls, D.C. started messaging him through MyCase. (Adm. Ex. 5 at 11).

On September 10, 2020, D.C. wrote, "I have called and asked if you can please correspond with me and let me know what is going on from time to time. I haven't heard from you. I would appreciate some update soon regarding my 2 pension benefits, one from [P.O.] and from [R.J.]. Thank you." (Joint Stip. at par. 34; Adm. Ex. 5 at 12-13, 46). The next day, Respondent replied that he had prepared the QDRO but was waiting for approval from the pension administrator. (Ans. at par. 34; Adm. Ex. 5 at 13, 46). On September 29, 2020, D.C. sent Respondent another message:

> In April when I first came to see you, you told me this was a time sensitive matter and that it was a good thing that I came in early. I understand thing [*sic*] have been delayed because of covid but this is taking quite a bit longer than I expected. My birthday has already past [*sic*], so im [*sic*] 60 years old and that is when my benefits are suppose [*sic*] to begin. Is there any news you can tell me? Anything going to happen soon? Waiting patiently [D.C.]

(Ans. at par. 35; Tr. 100; Adm. Ex. 5 at 14, 47). That day, Respondent replied that he just got back from Florida and "will follow up tomorrow to see where we are." (Ans. at par. 36; Adm. Ex. 5 at 15, 47). Respondent testified that he did not correct D.C.'s error about being eligible for benefits at age 60 because he did not have her file in front of him, so he "just assumed what she was saying was valid." (Tr. 101-04, 109-10, 172-73). D.C. testified that Respondent did not write back, so she wrote on October 8, "Did you find anything out yet.??" (Adm. Ex. 5 at 15, 47).

On January 25, 2021, D.C. messaged Respondent again:

> Is your office open? Are you well? I dont know whats going on cause your [*sic*] not responding to me. Is there anything needed on my end to pursue this matter or is it just a waiting game. Am I not suppose [*sic*] to be receiving my benefits form [*sic*] Tier 1 or 2 at the age of 60 as you explained to me I would back in April????

(Ans. at par. 37; Adm. Ex. 5 at 15-16, 48). Respondent admitted that he did not respond to D.C. about the status of her QDRO between September 30, 2020, and February 8, 2021. On February 9, Respondent replied to her message from two weeks prior:

> Sorry Denise - just saw this message. I still haven't heard back from pension administrator. I will follow up this afternoon. I believe Covid has been slowing things down drastically - still waiting on a check to a client for a QDRO sent in on

> July 25. I have doctor's appointment this afternoon but will be back after 3:00 if you want to call.

(Ans. at par. 39; Adm. Ex. 5 at 17, 48). D.C. testified that she called Respondent and left a follow-up message. (Adm. Ex. 5 at 17).

Respondent and D.C.'s testimony conflicted about their communications over the following years. Respondent testified that he "didn't receive a communication from [D.C.] after, probably, 2022," when he stopped subscribing to the client communication portal because no one was using it. (Tr. 177). He had an answering service for about a year after Kristine left in 2023, and he received their messages to call D.C. but did not return her calls. (Tr. 84-86, 125). He also admitted that he did not attempt to contact D.C. between April 2024 and April 2025, but he claimed that he spoke with her during that time. (Ans. at par. 43).

Respondent testified that he lost D.C.'s file after the first couple of years because it was mislabeled D.O., using the last name of her first ex-husband instead of her current last name. (Tr. 105-09; Resp. Ex. DC3). He and Kristine testified that water-damaged files, including this one, got moved to a basement storage room after the water infiltration in the file room. (Tr. 105-08, 130-35, 138-39; Resp. Ex. DC4). Respondent testified that he did not realize he was missing D.C.'s file until he got the complaint from the Administrator and, during the two previous years, he "never once had a call to say, 'Hey, what's going on with my file?'" (Tr. 177, 180). He admitted that his failure to adequately communicate with D.C. violated Rules 1.4(a)(3) and 1.4(a)(4). (Ans. at pars. 46(i), 46(j)).

In contrast, D.C. testified that, between February 2021 and February 2025, she repeatedly called Respondent's office and spoke with his secretary or left messages. (Tr. 17-18). In February 2025, Respondent answered her call and said he had her QDRO "'right here as we speak.'" (Tr. 18). She expressed her frustration at waiting so long, and he asked her to call back in mid-March, when everything would be done. She did so and left a message. A week later, she left another message, saying, "I'm done with this. I've had enough. I want my money back." (Tr. 19). She also left messages in April 2025 and mid-2025. (Tr. 18, 20).

D.C. testified that she next spoke with Respondent in September 2025, when he called to say that his secretary misplaced the files, he was looking all over for them, and he found them in the basement. (Tr. 20). He offered to complete her case at no charge, but she declined and asked for a refund. (Tr. 20, 37). Respondent admitted that he did not prepare a QDRO or allocation order for D.C. during the five and a half years after she retained him, even though her case "could have been done easily within a year." (Ans. at par. 45; Tr. 87-88, 170). On or about September 27, 2025, Respondent mailed D.C. a letter stating, "This delay has been entirely on me as it is my fault that we misplaced your file." The letter included a check for $2,155, and D.C. testified that she received that refund. (Joint Stip. at par. 46; Tr. 110-11; Adm. Ex. 5 at 20-23, 49-53; Resp. Ex. DC7, DC8). Respondent admitted that his lack of diligence with D.C.'s QDRO violated Rule 1.3. (Ans. at par. 46(i)).

C. Analysis and Conclusions

Credibility

Respondent and D.C.'s testimony conflicted about his advice at their initial meeting and about their communications on the status of her QDRO. As it is the Hearing Board's role to assess witness credibility and resolve conflicting testimony, we find D.C. more credible and Respondent less credible on both of these topics. Winthrop, 219 Ill. 2d at 543.

D.C. testified that Respondent advised her at their April 2020 meeting that she would be eligible for railroad retirement benefits when she turned 60 in September 2020 and that he would complete her case by then. She reminded him of this advice in her MyCase messages in September 2020 and January 2021. In contrast, Respondent claimed that D.C. failed to grasp his advice that the eligibility age was 62, and he did not correct her error in September 2020 because he did not have her file in front of him when he responded. However, we cannot believe Respondent's explanation when he failed to follow up for the next several months and then ignored D.C.'s age concern again when he responded to her January 2021 message. His repeated silence on this issue, as documented in the messages, leads us to conclude that Respondent likely knew he had promised to complete her case by September 2020, contrary to his testimony.

Additionally, we find that Respondent made false representations to D.C. about his progress on her matter when he knew he had done nothing beyond filing his appearance and appearing in court on April 14, 2020. Respondent admitted to sending D.C. a MyCase message on September 11, 2020, that he prepared her QDRO but was waiting for approval from the pension administrator. He admitted to sending her another message on February 9, 2021, that he still had not heard back from the pension administrator. These statements contradict Respondent's admission that he did not prepare D.C.'s QDRO during the five and a half years after she retained him.

D.C. gave us no reason to doubt her testimony, whereas Respondent's admissions and the undisputed exhibits demonstrate that Respondent was dishonest with D.C. twice about his work on her QDRO. For this reason, we find credible D.C.'s testimony that she repeatedly left messages for Respondent with no response between June 2020 and February 2025; that he falsely claimed he had her QDRO "'right here'" when he answered her call in February 2025; and that he did not respond to her follow-up phone messages in March, April, and the middle of 2025. We do not believe Respondent's conflicting testimony that D.C. never called him about the status of her file during the two years before he got the complaint in 2025.[3] This testimony also contradicts Respondent's statement in the Answer that he spoke with D.C. between April 2024 and April 2025, which further undermines his credibility.

Rule 1.3

Rule 1.3 requires a lawyer to act with reasonable diligence and promptness in representing a client. Ill. R. Prof'l Cond. R. 1.3. The Administrator charged Respondent with violating this Rule by conduct including failing to prepare a QDRO for D.C. so that she could receive benefits from her ex-husband's railroad pension. Respondent admitted that he did not prepare a QDRO or allocation order for D.C. during the five and a half years after she retained him and that this conduct violated Rule 1.3. Based on Respondent's admissions and the supporting testimony and documentary evidence, we find that Respondent violated Rule 1.3.

We find that Respondent met with D.C. on April 7, 2020, and agreed to represent her in obtaining a QDRO or allocation order to divide her ex-husband's railroad retirement benefits. As explained in the Credibility section above, we find that Respondent advised D.C. that he would complete the work by September 2020. Despite the urgency of this task and his client's multiple follow-up calls and MyCase messages, Respondent admittedly took no action after filing his appearance and appearing in court on April 14, 2020. We find it particularly troubling that, according to Respondent, the remaining work would have taken only four to five hours and could have been completed easily within a year. We find that Respondent failed to act with reasonable diligence and promptness when he still had not finished D.C.'s QDRO five years after it was due.

We find that the Administrator proved by clear and convincing evidence that Respondent violated Rule 1.3 in his representation of D.C.

Rules 1.4(a)(3) and 1.4(a)(4)

Rules 1.4(a)(3) and (a)(4) require a lawyer to keep the client reasonably informed about the status of the matter and to promptly comply with reasonable requests for information. Ill. R. Prof'l Cond. R. 1.4(a)(3)-(4). The Administrator charged Respondent with violating these Rules by conduct including failing to respond to D.C.'s inquiries about the status of the QDRO. Although

Respondent denied that D.C. attempted to reach him during parts of her five-and-a-half-year representation, he admitted that he ignored some of her messages and that his conduct violated Rules 1.4(a)(3) and 1.4(a)(4). Based on Respondent's admissions and the supporting testimony and documentary evidence, we find that Respondent violated Rules 1.4(a)(3) and 1.4(a)(4).

Respondent admitted that he did not respond to D.C. about the status of her QDRO between September 30, 2020, and February 8, 2021, despite his promise to follow up on September 30. During those four months, D.C. sent two more MyCase messages requesting an update. When Respondent finally replied on February 9, 2021, he repeated his prior false statement that he was waiting for the pension administrator to respond to the QDRO he prepared. Respondent also admitted that he ignored the messages from his answering service to call D.C. back for about a year between 2023 and 2024 and that he did not attempt to contact D.C. between April 2024 and April 2025. These admissions are enough for us to find that Respondent failed to keep his client D.C. reasonably informed about the status of her matter and failed to promptly comply with her reasonable requests for information. We are even more convinced when we consider D.C.'s credible testimony that she repeatedly called Respondent to no avail between June 2020 and the middle of 2025, except for one answered call in February 2025, during which Respondent falsely claimed that he had her QDRO in front of him.

We find that the Administrator proved by clear and convincing evidence that Respondent violated Rules 1.4(a)(3) and 1.4(a)(4) in his representation of D.C.

Rule 1.16(d)

Rule 1.16(d) requires a lawyer to take reasonably practicable steps to protect a client's interests upon termination of representation, including refunding an unearned fee. Ill. R. Prof'l Cond. R. 1.16(d). The Administrator charged Respondent with violating this Rule by failing to refund the $2,155 fee that he received from D.C. in April 2020. D.C. credibly testified that she informed Respondent in her March 2025 phone message that she was “done with this” and wanted her money back. The undisputed evidence showed that Respondent agreed to provide a full refund and did so in September 2025. Just as we declined to find a Rule 1.16(d) violation in regard to K.G., we decline to find that Respondent failed to refund an unearned fee to D.C when he fully refunded D.C.’s attorney and filing fees several months before the April 2026 hearing in this matter. Jankura, 2018PR00052 (Hearing Bd. at 8-9).

We find that the Administrator did not prove by clear and convincing evidence that Respondent violated Rule 1.16.

EVIDENCE OFFERED IN MITIGATION AND AGGRAVATION

Aggravation

K.G. testified that her financial situation was “very bad” when she retained Respondent because she was only making $18 per hour, was too young to collect Social Security, and had lost her husband’s income. (Tr. 38-39). She would not have had to borrow money to pay her taxes if she had received the life insurance proceeds. (Tr. 49-50). In her July 2024 letter to Respondent, she wrote:

> I am working 2 jobs to support myself …. I had to cancel my internet, TV, cable, etc. to keep on top of my bills. I would not have this problem if you did what I paid you to do for me. Then I had to pay Paul Wheeler 600$ [*sic*] to talk and try to get my paperwork and money that I paid you back. I am sick to my stomach about all this.

(Tr. 47; Adm. Ex. 2 at 3). K.G. testified that her experience with Respondent made her feel “so upset,” and her friend R.S. testified that she was “distraught” about it. (Tr. 49, 65-66).

D.C. testified that she told Respondent she had “no more funds” after paying the $2,000 flat fee during their initial meeting. She denied that he reviewed the retainer agreement with her before signing, as she would not have hired him for $350 per hour. (Adm. Ex. 5 at 32-34, 54-63). D.C. has been “literally sick to [her] stomach” and unable to sleep because of her experience with

Respondent. (Adm. Ex. 5 at 23). She is now 65 years old and has lost 5 years of pension money because the railroad does not provide back pay. (Adm. Ex. 5 at 24). When asked why she did not get another attorney to finish her QDRO, she explained, "I have just a bad taste for attorneys. … I have that money entitled coming to me, but I've just been so torn apart about this that I don't want to deal with it right now. I can't." (Adm. Ex. 5 at 24).

Respondent testified that he has been a solo practitioner since 1999. His concentrations include family law, estate planning, and probate. (Tr. 68-69). He claimed that he was unaware of K.G. and D.C.'s financial situations, but he admitted "it was their money for me to do a job that I did not do." (Tr. 87-88).

As for the recommended sanction, Respondent argued, "Losing a license for misplacing two (2) files does not comport when the harm is fully mitigatable and reversible. Suspending Respondent for these two (2) mistakes coupled with previous unrelated discipline over the past twenty-four (24) years should not tarnish the fact that Respondent has thousands of satisfied clients over the same period." (Resp. Report & Argument Regarding Prior Discipline, Apr. 29, 2026).

<u>Mitigation</u>

Respondent testified that K.G. and D.C. represented 5% of his caseload of 40 to 50 clients, and he "should have done better" than to lose track of their cases. (Tr. 173). Respondent promised to reimburse K.G.'s stock loss, as she "didn't deserve to lose that $16,000 and at the end of the day, that's entirely on me." (Tr. 170-71, 174-75). He claimed that R.J. was still obligated to divide his pension with D.C., regardless of whether there was a QDRO, so her case was "fixable." (Tr. 172). He reiterated his offer to help D.C. finalize her QDRO, but he recognized that she had lost trust in attorneys and was not moving forward with her case because of how he acted. (Tr. 171). Respondent testified, "I don't have an excuse. At the end of the day, they expected more of me, and I let them down." (Tr. 171). He argued that his unintentional mistake, which lacked selfish motive, should be considered in mitigation. (Tr. 202-03).

Respondent provided two explanations for his misconduct in Count II. First, he could not find K.G.'s file after he and his secretary relocated client files due to water damage in his file room in April 2023. Second, he was juggling his caseload as a solo practitioner while dealing with health issues. (Ans. at pars. 19, 23; Tr. 170, 172-74, 179-83; Resp. Ex. CR1-CR5, FP1-FP7, FR1-FR8). Respondent testified that he had two weeklong hospitalizations in the second half of 2024, an outpatient surgery in December 2024, and a major surgery in January 2025 with a five-week recovery period. (Tr. 92-98, 168-69). Medical records documented his hospitalization in August to September 2024 and his surgery in January 2025. (Resp. Ex. JM 1 at 60-62, 70-71). He testified that he also got lockjaw in June 2025, which made eating difficult for a month and half. (Tr. 168-69).

When asked how his health issues prevented him from responding to the Administrator's investigation, Respondent testified that he fell so far behind on work from his hospitalizations that he had to drop out of cases. (Tr. 92). Yet he acknowledged that he went to eight of his son's college and amateur golf competitions between July 2024 and July 2025, including caddying for his son in December 2024 and traveling to Alabama and Missouri in March 2025. (Ans. at par. 22; Tr. 93-96). Respondent testified, "I can tell you most everything the ARDC asked for me to do, I did late" or, in the case of responding to the May 16 and June 26, 2025, letters, did not do. (Tr. 97).

Kristine Holzwarth testified that she has known Respondent for 15 to 17 years, since he successfully handled her divorce case and appeal pro bono while she was suffering from a serious health issue. (Tr. 120-23). She later worked as his secretary for about 10 years, until approximately 2023. (Tr. 123-26). She acknowledged that her dyslexia caused her to transpose numbers when taking messages over the phone. (Tr. 141-42). Kristine described Respondent as "[v]ery focused and hard-working," as he was at the office 12 hours a day, and she referred friends to him without hesitation. (Tr. 139-40). He also represented multiple pro bono clients over their years working together. (Tr. 140).

Will County Judge Donald DeWilkins testified that he has known Respondent for about 25 years, including Respondent's regular court appearances during his 5 years on the bench and their previous interactions in private practice. (Tr. 148-49). He has had no concerns about Respondent's ethical standards, level of diligence, or representation of clients throughout the years they have known each other. (Tr. 149).

Ronald Coomer testified that he has known Respondent for about 45 years, as a friend since childhood and as his personal and business attorney since Respondent entered private practice. (Tr. 153-60). He said Respondent is at the office "all the time," and they frequently have business calls as early as 6:00 or 7:00 in the morning. (Tr. 155-56). He stated that Respondent does "[a] lot" of pro bono work, and he has no concerns about Respondent's diligence or ethics. (Tr. 158-59).

Prior Discipline

Respondent has been licensed to practice law in Illinois since 1992. He was previously disciplined three times.

In the first case, Respondent's neglect caused a client's personal injury complaint to be time-barred, which he failed to tell the client; his payment of an incorrect filing fee and failure to appear at a hearing caused dismissal of another client's judicial review of denied driving privileges; and he failed to refund an unearned fee. In re McCarthy, 02 CH 97, M.R. 18769 (Sept. 19, 2003) (Petition to Impose Discipline on Consent at 1-3). He violated Rules 1.1 (competence), 1.3 (diligence), 1.4(a) (communication), 1.16 (prompt refund of unearned fee), and 8.4(a)(5) (prejudice to the administration of justice) of the Illinois Rules of Professional Conduct (1990), as well as Supreme Court Rule 771. Id. at 3. In mitigation, Respondent had no prior discipline, fully refunded the fee at issue, and "hired a new secretary and an associate to help handle his caseload and ensure that he does not miss future filing deadlines," as his "misconduct stems from his lack of office management skills." Id. at 3-4, 6. He was suspended for 60 days, stayed entirely by one year of probation with conditions including completion of a law office management program and a professional responsibility course. Id. at 4-5.

In the next case, Respondent ignored two clients' numerous attempts to contact him, including over 40 phone calls and two letters from one client, while their matters lingered for months in one case and over three years in the other. In re McCarthy, 09 CH 7, M.R. 24585 (Sept. 20, 2011) (Hearing Bd. at 17-20; Review Bd. at 8). He missed one client's child support arrearage hearing and failed to tell the other client that his inaction caused her divorce case to be dismissed. Id. Both clients had to hire new counsel to complete his unfinished work. Id. Additionally, Respondent failed to respond to the Administrator's two letters requesting information and a subpoena for his appearance and production of documents. Id. (Hearing Bd. at 21). He blamed his noncompliance on his busy litigation practice, computer problems, and mistakenly misplacing one client's documents in the wrong case file. Id. (Hearing Bd. at 13, 22). However, instead of informing the Administrator of these issues and requesting an extension, "he did nothing." Id. (Review Bd. at 9). Several months later, Respondent told the Administrator that he would respond by the end of the week, but he did not follow through. Id. (Hearing Bd. at 22).

Respondent violated Rules 1.2(a) (abiding by client's decisions on objectives of representation), 1.3 (diligence), 1.4(a) and 1.4(b) (communication), 1.16(e) (prompt refund of unearned fee), 3.2 (expediting litigation), 8.1(a)(2) (failure to respond to lawful demand for information from disciplinary authority), and 8.4(a)(5) (prejudice to the administration of justice) of the Illinois Rules of Professional Conduct (1990); Commission Rule 53 (failure to provide requested information during disciplinary investigation); and Supreme Court Rule 770. Id.

(Hearing Bd. at 18-22). In mitigation, Respondent did not act based on a corrupt or dishonest motive. Id. (Hearing Bd. at 25). In aggravation, he harmed his clients, engaged in a pattern of negligent wrongdoing over several years, and had similar prior discipline. Id. (Hearing Bd. at 25-26). The Hearing and Review Boards rejected Respondent's request for probation with law practice management training, as his "previous sanction of probation did not have a significant impact upon his conduct or his awareness of his ethical responsibilities." Id. (Review Bd. at 11). He was suspended for six months and until he refunded the divorce client's retainer fee, as she received no benefit from his representation. Id. (Review Bd. at 12-13).

In the third case, Respondent failed to timely file briefs in a family law appeal despite receiving three extensions of time. As a result, the appellate court barred his client from filing a responsive brief to the ex-wife's appeal and dismissed the client's cross-appeal, which Respondent failed to tell his client. In re McCarthy, 2017PR00051, M.R. 029303 (May 24, 2018) (Petition to Impose Discipline on Consent at 2-4). The court also denied Respondent's motion for leave to file late, which he claimed was due to a computer malfunction. Id. at 3-4. Respondent's conduct violated Rules 1.3 (diligence) and 1.4(a) and 1.4(b) (communication) of the Illinois Rules of Professional Conduct (2010). Id. at 4. In mitigation, he provided pro bono and community service. In aggravation, he had been disciplined twice before. Id. at 4-5. Respondent was suspended for six months and until further order of the Court, stayed entirely by two years of probation with conditions including completion of a law office management program and the ARDC professionalism seminar. Id. at 9-11.

RECOMMENDATION

A. Summary

Based on the proven misconduct, the significant factors in aggravation, and the minimal amount of mitigation, the Hearing Board recommends that Respondent be suspended for one year and until further order of the Court.

B. Analysis

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

Of the several aggravating factors in this case, we find most significant that Respondent has been previously disciplined three times for similar misconduct over the past 23 years. In re Banks, 2020PR00068, M.R. 031115 (Mar. 25, 2022) (Hearing Bd. at 12); In re Blank, 145 Ill. 2d 534, 554, 585 N.E.2d 105 (1991). He should have had a heightened awareness of his ethical obligations after his license was suspended for six months and on probation for three years, during which he took two professional responsibility courses and completed two law office management programs. In re Storment, 203 Ill. 2d 378, 401, 786 N.E.2d 963 (2002). Yet he engaged in the same type of misconduct again. As in the present matter, he violated the ethical rules on diligence and communication in all three prior cases and failed to respond to the Administrator's investigatory request in one of those cases. Because Respondent still has not changed his ways, we give his similar prior misconduct significant weight in aggravation.

Additionally, Respondent's behavior has followed a pattern over more than two decades across all of his disciplinary cases, including the five years at issue here. In re Samuels, 126 Ill. 2d 509, 531, 535 N.E.2d 808 (1989) (pattern of neglect over several years is aggravating). He repeatedly failed to keep clients informed and respond to their numerous attempts to reach him, caused harm to his clients by his inaction on their legal matters, delayed refunds of unearned fees, made empty promises to clients and the Administrator, failed to timely comply with the Administrator's investigations, and blamed his misconduct on everything from computer malfunctions to misfiled documents to lack of adequate support staff. We find his pattern of conduct to be aggravating.

We also find aggravating that Respondent was an experienced attorney at the time of his misconduct, having been licensed since 1992 and a solo practitioner since 1999. In re Fox, 122 Ill. 2d 402, 409, 522 N.E.2d 1229 (1988). K.G. and D.C.'s legal issues fell within his concentrations in family law, estate planning, and probate, and he admitted that their cases could have been done easily within a year by spending 5 to 10 more hours on each case, yet their matters remained unfinished after four to five years.

Moreover, we find aggravating that Respondent caused actual harm to his clients. In re Saladino, 71 Ill. 2d 263, 276, 375 N.E.2d 102 (1978). K.G. and D.C. credibly testified about the emotional distress and financial harm they experienced. K.G. had to pay another attorney $600 to finish her case while she was struggling to pay her bills, and D.C. has been unable to move forward with her unfinished QDRO because of her lost trust in lawyers. In re Smith, 05 CH 59, M.R. 21378 (Mar. 19, 2007) (Hearing Bd. at 33-34) (client was harmed when attorney's unexplained delay caused needless anxiety and lost trust and by the expense and inconvenience of hiring another attorney). Respondent admitted that his delay in collecting K.G.'s husband's company stock caused her to lose over $16,000 in stock value. Meanwhile, D.C. has already missed out on three to five years' worth of railroad pension payments, depending on whether she was actually eligible at age 62 or 60. Even if Respondent is correct that she can recover these funds from R.J., that would require D.C. to spend more time and potentially more attorney fees to be made whole.

Finally, we find aggravating Respondent's long delay in making restitution to his clients. He repaid the unearned attorney fees to K.G. nearly four years after she retained him and only after the Administrator subpoenaed him for a sworn statement. Then he repaid D.C. five and a half years after she retained him and only after he was served with the Complaint, which alleged misconduct for his failure to refund unearned fees. While Respondent's delay did not constitute a violation of Rule 1.16 because he repaid his clients before the hearing in this matter, it is still an aggravating factor. In re Jankura, 2018PR00052, M.R. 030583 (Jan. 21, 2021) (Hearing Bd. at 8-9, 11-12); Fox, 122 Ill. 2d at 410.

In mitigation, we find that Respondent has a history of providing pro bono services, as corroborated by his former secretary and his longtime friend and client. In re Gordon, 122 Ill. 2d 540, 546, 524 N.E.2d 547 (1988). We give minimal weight to the character testimony because the witnesses spoke about their personal experiences with Respondent, in which he was diligent and ethical, but they did not address his reputation in the legal community or his reputation for truthfulness.

We find somewhat mitigating, as to Count II only, that Respondent's file room sustained water damage in April 2023 and that he suffered from serious medical issues during the disciplinary investigation in 2024 and 2025. We give this factor limited weight because the Administrator sent the requests at issue in Count II more than two years after the water incident and several months after Respondent recovered from surgery. In the meantime, Respondent had ample time and opportunity to find or recreate K.G.'s file before the Administrator requested it.

We also acknowledge that Respondent did not act with a selfish motive, as none was alleged or proven, which is somewhat mitigating. In re Jordan, 157 Ill. 2d 266, 276, 623 N.E.2d 1372 (1993). However, we cannot agree with his characterization of the misconduct in Counts I and III as an unintentional mistake when K.G. and D.C. made him aware of his unfinished work repeatedly over four to five years, and he chose to ignore his obligations to them.

We do not find mitigating that Respondent's former secretary was dyslexic. Respondent admitted that he received K.G. and D.C.'s messages from his secretary, an answering service, and MyCase. The problem was not his secretary's propensity to transpose numbers but rather his pattern of ignoring client messages from any source. As for the misfiled documents, Respondent was ethically responsible for ensuring that his nonlawyer assistant's conduct was compatible with the Rules and for taking reasonable remedial action for any noncompliance. Ill. R. Prof'l Cond. R. 5.3. Still, he failed to find or recreate the two client files that he knew were missing for years.

Nor do we find mitigating Respondent's attempts to accept responsibility and express remorse. He admitted that he had no excuse for neglecting K.G. and D.C.'s brief legal matters, despite regularly working long hours at the office, because he did not prioritize them. We find this explanation to be quite unsatisfying, especially when Respondent had already been disciplined for the same type of misconduct three times before and should have known better. We further find that Respondent's long-delayed refunds to K.G. and D.C. demonstrate that his remorse was not genuine, as he made no restitution efforts for four to five years, until after his conduct was under investigation by the ARDC. Overall, we find minimal mitigation, which is greatly outweighed by the significant aggravation in this case.

As for the recommended sanction, the Administrator requested a suspension for two years and until further order of the Court (UFO). She cited cases that resulted in suspensions for 18 months to two years UFO for attorneys who engaged in a pattern of neglecting client matters, in addition to other misconduct, and had similar prior discipline. Banks, 2020PR00068; In re Forsberg, 07 CH 119, M.R. 23257 (Sept. 22, 2009); In re Gomric, 96 SH 216, M.R. 14271 (Jan. 29, 1998). Respondent requested that he be allowed to continue practicing with law practice management support. He did not cite any caselaw.

We reject Respondent's sanction request because he has now neglected and ignored clients for the fourth time despite two previous probations with law practice management support. Rather, we recommend a suspension for one year UFO. The Administrator's cited cases support a lengthy suspension UFO, but differences in the egregiousness of the misconduct and in mitigation and aggravation justify an initial suspension of one year, rather than 18 months or two years, for Respondent.

Banks was suspended for two years UFO and until restitution was made. He neglected a client's criminal appeal and, in that case, failed to adequately communicate, failed to hold security retainer fees in his client trust account, spent those fees without earning them, charged and collected an unreasonable fee, failed to promptly deliver funds belonging to a third party, and failed to comply with the Administrator's request for information. Banks, 2020PR00068 (Hearing Bd. at 6-10). Although Banks' misconduct was limited to one client matter compared to Respondent's two, it was serious because it involved a criminal appeal and, like Respondent, caused financial harm. Id. at 12. Both neglected their clients, poorly communicated, and failed to comply with the Administrator's investigation, but Banks additionally overcharged and mishandled attorney fees, which makes his misconduct more egregious.

Both attorneys were previously disciplined three times for similar misconduct, which weighs significantly in favor of a lengthy suspension UFO. Id. at 12-13. However, unlike Respondent, Banks only made partial restitution and was sanctioned for not producing the client's file, despite an order compelling production, which is more aggravating. Also, Banks had no mitigation whereas Respondent had some. Id. Because Banks's misconduct was more egregious and aggravated with less mitigation, we recommend an initial suspension of one year instead of two, although Respondent's prior discipline still merits a suspension UFO.

Forsberg was suspended for two years UFO for neglecting four client matters and failing to adequately communicate; failing to promptly return client funds or unearned fees in two of those matters; failing to abide by the client's objectives, withdraw from a case after being discharged, and return client documents in one of those matters; briefly practicing law while removed from the master roll of attorneys; and not responding to the Administrator's requests for information. Forsberg, 07 CH 119 (Hearing Bd. at 20-26). In mitigation, she had several psychiatric disorders that affected her ability to follow the Rules but did not excuse her actions. Id. at 29-30. It was significantly aggravating that she had been disciplined recently for similar misconduct. Id. at 28.

Although Respondent violated many of the same Rules, Forsberg had additional misconduct that involved more clients. Because her misconduct was more egregious, Respondent's initial suspension should be shorter than Forsberg's two years. Both attorneys merited a suspension UFO for different reasons. Respondent had been disciplined on three prior occasions, whereas Forsberg failed to attend her disciplinary hearing and suffered from insufficiently treated mental health conditions, in addition to her recent prior discipline. Id. at 33-34. Overall, Forsberg supports a suspension for one year UFO for Respondent.

Gomric had been disciplined three times for client neglect and other misconduct, and his license was already suspended for two years UFO when his fourth disciplinary case was decided. Gomric, 96 SH 216 (Hearing Bd. at 14-15, 23). He neglected three more client matters, including failing to file lawsuits timely and failing to communicate adequately with clients over the course of 7 to 10 years. He also entered into unwritten contingent fee agreements and made numerous knowing misrepresentations to his clients about the status of their matters. Id. at 16-18. The

Hearing Board found that Gomric engaged in "a pattern of serious client neglect for over 25 years" and a pattern of dishonesty, as he made misrepresentations to clients in two of the disciplinary cases and repeatedly testified falsely at his hearing. Id. at 22-23. He was suspended for an additional 18 months UFO. Id. at 25.

Respondent also engaged in a pattern of serious client neglect for 23 years, but he does not have the same history of dishonesty as Gomric. There was no proven dishonest misconduct in any of Respondent's four disciplinary matters, although we found that he made three misrepresentations to D.C. about the status of her QDRO. This difference supports a shorter initial suspension of one year instead 18 months for Respondent. We still recommend that Respondent, like Gomric, be suspended until further order of the Court because he has failed to change his conduct and abide by the ethical rules despite three chances over more than two decades.

We find it particularly concerning that Respondent sees no similarity between his prior misconduct and the present matter, nor does he believe that his "mistakes" with K.G. and D.C. merit suspension when he has had thousands of other satisfied clients over 24 years. Every client deserves their lawyer's compliance with the Rules of Professional Conduct, regardless of how long or successful the lawyer's career has been. Yet Respondent failed these two clients and still does not appreciate the emotional and financial harm that he caused, which he described as "fully mitigatable and reversible." Respondent's attitude inspires no confidence that he is willing or able to conform his conduct to the ethical rules. In re Houdek, 113 Ill. 2d 323, 327, 497 N.E.2d 1169 (1986). Therefore, we find that a lengthy suspension UFO is necessary to protect the public, maintain the integrity of the legal profession, and safeguard the administration of justice from reproach.

Considering the proven misconduct, significant aggravating factors including Respondent's history of similar prior misconduct, minimal mitigation, and relevant caselaw, we recommend that Respondent, Jeffrey Michael McCarthy, be suspended for one year and until further order of the Court.

Respectfully submitted,

John L. Gilbert
Christopher A. Nichols
Elizabeth Delheimer

CERTIFICATION

I, Michelle M. Thome, Clerk of the Attorney Registration and Disciplinary Commission of the Supreme Court of Illinois and keeper of the records, hereby certifies that the foregoing is a true copy of the Report and Recommendation of the Hearing Board, approved by each Panel member, entered in the above entitled cause of record filed in my office on July 13, 2026.

/s/ Michelle M. Thome

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

4937-8427-1037, v. 1

[1] The paragraph numbering in Counts II and III of Respondent's Answer are misaligned with the Complaint. However, he accurately copied the text of each paragraph before stating each answer, so there is no substantive error. For clarity, we cite to the paragraph numbering used by Respondent when referring to his Answer.

[2] The Administrator charged Respondent with comingling under the current version of Rule 1.15(b), which became effective on July 1, 2023: "A lawyer must hold funds or property of clients or third persons that is in the lawyer's possession in connection with a representation separate from the lawyer's own funds or property." The prior version, which became effective on July 1, 2015, had substantively the same language and was found in Rule 1.15(a): "A lawyer shall hold property of clients or third persons that is in a lawyer's possession in connection with a representation separate from the lawyer's own property." K.G. paid Respondent $2,500 in April 2021, and he fully refunded her payment in March 2025, so the period at issue potentially spans both Rule versions. Regardless of which version is used, we would reach the same conclusion on the comingling charge. However, for consistency, we cite to the language and subsection numbering of the prior version of Rule 1.15, which was in effect at the time K.G. retained Respondent.

[3] It is unclear whether Respondent meant D.C.'s complaint to the ARDC or the Complaint. The record does not indicate whether or when the Administrator provided D.C.'s complaint to Respondent during the investigation of this matter. Nonetheless, the record shows that Respondent was served with the Complaint in August 2025. We can reasonably infer that D.C. complained to

the ARDC sometime between March 2025, when she first notified Respondent that she wanted a refund, and August 2025. In any event, we do not believe Respondent's testimony that D.C. never called him during the two years before he got the complaint, as we have found that D.C. called Respondent repeatedly between 2021 and 2025, including the call he answered in February 2025.