In re Stephen Erhard Eberhardt
Attorney-Respondent

Commission No. 2022PR00079

Synopsis of Hearing Board Report and Recommendation
(April 2024)

The Administrator filed a one-count Complaint against Respondent charging him with filing frivolous claims and engaging in conduct that had no substantial purpose other than to embarrass and burden the Village of Tinley Park and persons affiliated with its governance. The Hearing Board found that the Administrator proved the charges of misconduct by clear and convincing evidence. After considering the nature of the misconduct and the factors in aggravation and mitigation, the Hearing Board recommended that Respondent be suspended for six months and until he completes the ARDC Professionalism Seminar and pays all sanctions upheld on appeal of the underlying matter.

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

FILED
April 19, 2024
ARDC CLERK

In the Matter of:

STEPHEN ERHARD EBERHARDT,

Attorney-Respondent,

No. 6181963.

Commission No. 2022PR00079

REPORT AND RECOMMENDATION OF THE HEARING BOARD

SUMMARY OF THE REPORT

The Hearing Panel found that Respondent filed frivolous pleadings that were intended to embarrass and burden persons employed by and affiliated with the Village of Tinley Park. The Hearing Panel recommends that Respondent be suspended for six months and until he completes the ARDC Professionalism Seminar and pays all sanctions upheld on appeal in the underlying matter.

INTRODUCTION

The hearing in this matter was held remotely by video conference on October 3, October 4, and October 5, 2023, before a Panel of the Hearing Board consisting of Kenn Brotman, Chair, Melissa J. Kuffel, and Gerald M. Crimmins. Scott Renfroe and Kate Levine represented the Administrator. Respondent was present and was represented by James A. Doppke.

PLEADINGS AND ALLEGED MISCONDUCT

On September 30, 2022, the Administrator filed a one-count Complaint against Respondent, charging him with bringing a proceeding or asserting issues therein when there was no basis for doing so that was not frivolous and, in representing a client, using means that had no

substantial purpose other than to embarrass, delay or burden others, in violation of Rules 3.1 and 4.4(a) of the Illinois Rules of Professional Conduct (2010). In his Answer, Respondent admitted some of the factual allegations but denied that his pleadings were frivolous or that he intended to embarrass, burden or delay anyone.

EVIDENCE

The Administrator presented testimony from seven witnesses. The Administrator's Exhibits 1-39 were admitted. Respondent testified on his own behalf and presented testimony from one additional witness. Respondent's Exhibits 1-13, 17-20, 22, 25, 30, 31, 33 and 35 were admitted.

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, 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). As the trier of fact, we may consider circumstantial evidence and draw reasonable inferences from the evidence presented. In re Green, 07 SH 109, M.R. 23617 (March 16, 2010).

Respondent is charged with filing frivolous claims against Patrick Walsh and using means that had no substantial purpose other than to embarrass, delay or burden Walsh, the Village of Tinley Park and others, in violation of Rules 3.1 and 4.4(a).

A. Summary

The Administrator proved that Respondent filed frivolous claims and, while representing himself, used means that had no substantial purpose other than to embarrass, harass, and burden the Village of Tinley Park and individuals associated with its governance.

B. Evidence Considered

Background

Respondent has been licensed to practice law in Illinois since 1982. He is a former police officer and assistant Cook County State's Attorney. (Tr. 366-68). In 1992, he started his own practice focused on criminal defense. (Tr. 370). He is a former resident of the Village of Tinley Park ("the Village" or "Tinley Park") but has lived in Florida since November 2021. (Tr. 371, 517, 612). As of the time of this hearing, he still maintained a law office in Tinley Park (Tr. 464, 517, 612).

Respondent has been involved in Tinley Park politics since at least 2009. (Ans. at par. 1). In 2012, he was appointed to the Village's emergency management agency. (Tr. 383). In 2013, he ran for mayor but was not elected. (Tr. 515). During that election, the opposing candidate criticized Respondent's practice of law and posted online about the dissolution of Respondent's first marriage. (Tr. 516). In 2017, the Village mayor appointed Respondent to the position of emergency management agency coordinator, but the Village Board rejected the appointment and Respondent never served in that position. (Tr. 428-29).

Since 2014, Respondent has filed at least 26 lawsuits in state and federal courts against the Village and its elected officials, employees, volunteers, residents, and attorneys. In many of those

cases, Respondent was the only plaintiff. He has also filed approximately 150 requests that the Village produce records under the Freedom of Information Act (FOIA). (Ans. at par. 2).

Patrick Carr has served as the village manager for Tinley Park since 2021. He was previously the assistant village manager and the director of emergency management. (Tr. 169). Carr is the chief administrative officer for the Village's daily activities. (Tr. 171-73).

Carr initially had a cordial relationship with Respondent. However, after the Board declined to hire Respondent, he began filing more lawsuits, ethics complaints, and FOIA requests. (Tr. 177, 195). Carr testified that Respondent filed numerous ethics complaints about Carr that contained false information, questioned his integrity and stated he had lied. The complaints were public, and they came up when Carr applied for other jobs during that time period. (Tr. 178, 181). Respondent has named Carr as a defendant at least six times and has sought damages amounting to millions of dollars. The Village and its insurer have paid to defend Carr. (Tr. 191-92).

Attorney Terica Ketchum was the Village FOIA coordinator from 2016 until 2018 and the FOIA compliance coordinator from 2018 until 2021. (Tr. 225). As the FOIA coordinator, she was responsible for reviewing and responding to FOIA requests and redacting responsive records. As the compliance coordinator, she performed the same duties and was also responsible for ensuring the Village's compliance with the Open Meetings Act. (Tr. 227).

Ketchum knows Respondent as a frequent maker of FOIA requests. When she first communicated with him, their conversations were cordial. Over time, the volume of Respondent's requests increased, and their interactions became more hostile. (Tr. 229). Ketchum eventually stopped communicating with Respondent by phone and would only communicate with him by email. (Tr. 230).

Ketchum testified that she made sure Respondent was provided all of the records to which he was entitled. (Tr. 232). There were occasions when Respondent was not satisfied with the Village's FOIA production, and he filed complaints with the Illinois Attorney General Public Access Counselor. When he did so, the Village had the opportunity to respond to the Public Access Counselor or request clarification. (Tr. 212, 215-16, 233). If the Public Access Counselor directed the Village to produce additional information, the Village complied with the Public Access Counselor's direction. No binding opinions by the Public Access Counselor were made against the Village. (Tr. 212, 215-16, 234).

Respondent named Ketchum as a defendant in a lawsuit in both her official capacity and her individual capacity. She interpreted this conduct as a "personal dig" and believed she provided Respondent with all of the non-exempted records to which he was entitled. (Tr. 231-32). Respondent also posted a picture of Ketchum on social media with a statement suggesting she spent too much time in her private practice instead of responding to his FOIA requests. This caused her to feel appalled and violated. (Tr. 235).

Kenneth Shaw is an elected member of the Village Board and was previously on the Village planning commission. (Tr. 351). He has known Respondent since early 2016, when they were involved in an organization that challenged a proposed development in the Village. (Tr. 352).

Respondent named Shaw as a defendant in one case before Shaw became an elected official. (Tr. 357). According to Shaw, Respondent attempted to serve his wife with the complaint when she and her children were in their car, by blocking Shaw's driveway with his vehicle. (Tr. 358). Shaw testified his wife was "horribly shaken" by the encounter. (Tr. 359). Respondent denied blocking Shaw's driveway. He testified he was parked down the block from Shaw's house, and it was the process server who blocked the driveway. Respondent further testified that the

process server asked Respondent to be present as a witness in case anyone made false accusations against him. (Tr. 497).

Shaw has also been the subject of FOIA requests from Respondent (Tr. 355). In early 2023, Respondent submitted a FOIA request to the school district where Shaw's daughters are enrolled, asking for records about Shaw's payment of out of district tuition. (Tr. 356). Respondent testified that his request was relevant because Shaw was a candidate for elected office. Respondent sought to investigate whether Shaw was improperly using an address other than his own to enroll his daughters in a school district where they did not reside. (Tr. 499). Respondent acknowledged that he resided in Florida in 2023 and did not vote in that election. (Tr. 543-44).

Attorney Patrick Walsh was retained by the Village in 2019 to represent it in matters filed by Respondent. (Tr. 44-46). Walsh testified that Village officials were concerned about the "flurry" of Respondent's lawsuits, FOIA requests, and ethics complaints. (Tr. 50-52).

After Walsh began representing the Village, Respondent named him as a defendant in two lawsuits, one filed in federal court, and one filed in state court. Walsh feels Respondent sought to intimidate him by serving him at home with Walsh's minor son present and by including his minor son's full name in a pleading. (Tr. 95-96). In Walsh's view, Respondent's acts were designed to harm those he considered to be his political adversaries. (Tr. 86). Walsh submitted a request for the ARDC to investigate Respondent's conduct. (Tr. 59).

Attorney Thomas J. Condon, Jr. represented defendants, including the Village, in five to ten lawsuits filed by Respondent. All of those cases, except for one that was still pending, were dismissed on the pleadings. (Tr. 264-67). Condon testified that his interactions with Respondent were professional, initially, but after 2016 they became acrimonious. Respondent named Condon as a defendant in two lawsuits. (Tr. 275).

Attorney Paul O'Grady is the managing member of Peterson, Johnson & Murray LLC. (Tr. 329). His firm has served as the Village attorney under three mayors. (Tr. 341). Respondent has sued O'Grady numerous times, as well as four other attorneys in his firm. (Tr. 334, 336). O'Grady blocked Respondent from sending him email because Respondent was sending accusatory and threatening emails to him and others in his law firm. (Tr. 334, 338-39). His firm set up a separate email account for communications with Respondent. (Tr. 335). Respondent denied sending harassing emails to any of Mr. O'Grady's employees or calling them insulting names. (Tr. 495).

Eberhardt v. Moylan et. al., 17 L 11231

On November 7, 2017, Respondent filed a complaint in the Circuit Court of Cook County against 13 persons and entities involved in Tinley Park political races, seeking damages for invasion of privacy, defamation, and tortious interference with prospective economic advantage. On September 18, 2018, the court dismissed the claims against 11 defendants with prejudice. The defendants whose claims were not dismissed had not filed motions to dismiss. (Adm. Ex. 2). In a memorandum opinion, the Hon. John H. Ehrlich noted that Respondent's "subscription to the-more-I-write-the-more-I-antagonize-my-opponent school of litigation indicates that he does not care about wasting the scarcest of judicial resources—time." Judge Ehrlich denied the defendants' request for sanctions against Respondent but warned that he risked incurring sanctions in the future if he did not comply with his duty to investigate the substantive law and determine whether it supported his claims. (Adm. Ex. 2).

Eberhardt v. Village of Tinley Park et. al, 1:20-cv-01171 (Eberhardt I)

On February 18, 2020, Respondent filed in the United States District Court for the Northern District of Illinois a 19-count, 102-page complaint with 384 pages of attached exhibits against the Village, Walsh, and others. Respondent alleged that the Village was not properly producing documents pursuant to FOIA requests and was improperly restricting speech during Village board

meetings. (Tr. 439). He also alleged that the appointment of Walsh's law firm to represent the Village was improper because the Village Board was required to approve the appointment and did not do so. (Adm. Ex. 4).

On April 16, 2020, Walsh sent a safe harbor notice to Respondent, pursuant to Rule 11 of the Federal Rules of Civil Procedure, explaining why there was no basis for liability against him in Respondent's complaint.[i] On August 14, 2020, attorney Patrick M. Griffin, who began representing Walsh in 2020, sent Respondent another safe harbor notice on Walsh's behalf. (Tr. 68-69, 144; Adm. Ex. 5).

On September 10, 2020, Walsh moved to dismiss Respondent's claims against him, based in part on Village Ordinance 2017-O-012 ("the purchasing ordinance"), which permitted the Village Manager to engage the services of attorneys without the Village Board's approval for services not exceeding $20,000. (Adm. Ex. 5). The court dismissed Respondent's complaint without prejudice on February 10, 2021. (Adm. Ex. 6).

On February 22, 2021, Respondent filed an amended complaint, consisting of 16 counts against 11 defendants, including Walsh. Respondent again alleged that the appointment of Walsh's law firm to represent the Village was unlawful. Respondent did not name Walsh's firm as a defendant despite the fact that it was the firm, and not Walsh individually, who was appointed to represent the Village. (Adm. Ex. 7). Respondent's claims against Walsh were based on state law and were included in the amended complaint based on supplemental jurisdiction. Respondent sought declaratory and injunctive relief, disgorgement of fees the Village paid to Walsh or his firm, and $250,000 in punitive damages. (Adm. Ex. 7).

On or about April 2, 2021, pursuant to the court's admonition that the parties act civilly and explore settlement, Respondent sent Griffin and Condon a letter about exploring the possibility

of settlement. Griffin did not respond to the letter because he and Walsh determined there was no reasonable possibility of settlement. (Tr. 154-55).

On March 31, 2021, Griffin sent Respondent a third safe harbor notice, indicating he would seek to dismiss the amended complaint's claims against Walsh based on the same arguments made in the motion to dismiss the original complaint. (Adm. Ex. 12). On April 7, 2021, Griffin filed a motion on Walsh's behalf to dismiss the amended complaint. (Adm. Ex. 9).

On September 2, 2021, the court dismissed Respondent's federal claims with prejudice and dismissed his pendant state law claims without prejudice to Respondent pursuing them in state court. In dismissing the federal claims, the court ruled that Respondent lacked standing and failed to state plausible claims for relief. (Adm. Ex. 10).

Walsh moved for sanctions against Respondent, which the court granted on August 18, 2022. In the court's sanction order, the Hon. Charles R. Norgle ruled that Respondent violated Rule 11 because his "frivolous claims against Walsh were brought with inadequate investigation to the relevant law and facts." (Adm. Ex. 14). Judge Norgle further determined that "the frivolity of Eberhardt's claims is evident in multiple ways," including his failure to acknowledge the existence of the purchasing ordinance negating his claims, and the absence of subject matter jurisdiction and standing. Based on Respondent's conduct during the pendency of the case, his litigious history with the Village, and his insistence on pursuing baseless litigation despite warnings, Judge Norgle concluded that "Eberhardt's actions speak for themselves, and they scream bad faith." Walsh was awarded sanctions against Respondent in the amount of $26,951.22. (Adm. Ex. 14.).

Respondent filed a motion for reconsideration, asserting that Walsh misrepresented the history of Respondent's litigation with the Village in his motion for sanctions and that his due

process rights were violated because the court did not conduct an evidentiary hearing on that issue. When asked whether he had an opportunity to bring Walsh's alleged misrepresentations to Judge Norgle's attention, Respondent answered that the page limit for his response prevented him from doing so. (Tr. 582-83).

The Hon. Rebecca Pallmeyer denied the motion for reconsideration, upholding Judge Norgle's determination that Respondent filed meritless claims against Walsh and "failed to investigate the law that governed his claim or in fact actively concealed the existence of an Ordinance that defeated it." (Adm. Ex. 17). Respondent appealed Judge Pallmeyer's order. As of the hearing in this matter, that appeal remained pending before the United States Court of Appeals for the Seventh Circuit.

Respondent testified in this proceeding that the purchasing ordinance that was part of the basis for Judge Norgle's sanction order was not in effect. (Tr. 444).

Eberhardt v. Village of Tinley Park, 1:20-cv-03269 (Eberhardt II)

On June 3, 2020, Respondent filed a complaint in the United States District Court for the Northern District of Illinois, alleging that the Village, Village officials, and three attorneys from Peterson, Johnson & Murray improperly limited his right to participate in Village board meetings. This complaint consisted of 25 counts and 675 paragraphs and was 110 pages long. (Adm. Ex. 20). The court dismissed the complaint without prejudice for failing to make a short and plain statement of Respondent's claims. In doing so, the Hon. Gary Feinerman stated that the complaint's "tangled mix of factual and legal assertions is so lengthy, repetitive, and jumbled as to make it impossible for Defendants or the court to ascertain which facts are relevant to which claims and to which defendant(s)." (Adm. Ex. 22). Respondent filed an amended complaint, which Judge Feinerman dismissed on November 9, 2020, because it was materially identical to and duplicative of

Respondent's complaint in Eberhardt I. Judge Feinerman noted that the lawsuits involved overlapping defendants, facts, asserted legal rights, and requested relief. (Adm Ex. 24).

Respondent testified that he filed Eberhardt II because he believed the allegedly improper conduct by the Village was continuing and, in his view, Eberhardt I was "languishing." (Tr. 456-58).

Eberhardt v. Glotz, 2021IL065042

On May 10, 2021, Respondent filed suit in the law division of the Circuit Court of Cook County against the Village, Walsh, and others. (Adm. Ex. 26). He subsequently filed an amended complaint and a second amended complaint. (Adm. Exs. 27, 28). The second amended complaint reiterated Respondent's claims that the defendants improperly sought to silence speech at public meetings and on social media and that Walsh's appointment was unlawful. (Adm. Ex. 28). On January 6, 2023, the Hon. Mary Kathleen McHugh dismissed all counts in the second amended complaint with prejudice. (Adm. Ex. 30).

Eberhardt v. Village of Tinley Park et. al., 2021CH03867

On August 2, 2021, Respondent filed a 105-page complaint in the chancery division of the Circuit Court of Cook County, consisting of 21 counts, 632 numbered paragraphs, and 500 pages of exhibits against the Village, Carr, Condon, O'Grady, and others. (Adm. Ex. 32). This lawsuit again alleged violations of FOIA and the Open Meetings Act and sought declaratory and injunctive relief, fees and costs, and millions of dollars in punitive damages from the defendants. After the initial complaint was dismissed, Respondent filed an amended complaint with substantially the same claims. (Adm. Exs. 34, 35). At the time of this hearing, a motion to dismiss the amended complaint was pending. (Adm. Ex. 38).

Respondent denied that the length and style of his pleadings were intended to burden or harass the defendants or the courts. He testified that he needed several hundred paragraphs to

explain the background facts of the case before Judge Norgle. (Tr. 453, 459). He testified that he named Village employees or officials as defendants in their individual capacities because they acted outside of the scope of their employment by purposely violating the law. (Tr. 469). He named Terica Ketchum as a defendant in his FOIA-related lawsuits so that the court had jurisdiction over the person who controlled the records at issue. (Tr. 602). Respondent acknowledged that the Village is the entity responsible for the public records. (Tr. 603).

Since moving to Florida, Respondent has conducted online research and obtained police communications tapes and information from police officers about the daughter of Village Mayor Glotz. (Tr. 521). He filed a FOIA request with the Village a few weeks prior to this hearing. (Tr. 194). Although he is no longer a Tinley Park taxpayer, he believes it is appropriate to make inquiries about the Village mayor because he receives anonymous letters and phone calls about improprieties being committed in the Village. (Tr. 522). As of three weeks before this hearing, Respondent posted comments about the Village on social media. (Tr. 519-20).

Respondent testified that his use of FOIA requests was valuable in obtaining favorable results in several of the cases he filed. (Tr. 411-419). He obtained a monetary award from the Village for his clients in one case involving water meter readings. He settled some cases based upon the Village's agreement to change certain practices or policies. (Tr. 532).

Diane Galante, a Tinley Park resident and former Village trustee, testified that the Village Board treated Respondent, and her, unfairly when they disagreed with what the Village Board was doing. (Tr. 618, 620-21). Galante was blocked from attending closed board session meetings because she disagreed with what the other board members were doing, particularly with respect to Respondent. (Tr. 631). She provided affidavits to Respondent that he used in some of his litigation.

(Tr. 634, 635). Respondent had named Galante as a defendant in one of his lawsuits due to her position as trustee, but he dismissed her after she executed the affidavits. (Tr. 644).

C. Analysis and Conclusions

Rule 3.1

A lawyer shall 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. Ill. Rs. Prof'l. Conduct R. 3.1 (2010). Rule 3.1 provides an exception when a lawyer makes a good-faith argument for an extension, modification, or reversal of existing law, but the issues before us do not involve any such arguments.

The Administrator charged Respondent with filing frivolous claims against Walsh in Eberhardt I. A violation of Rule 3.1 occurs when an attorney pursues a claim that clearly lacks legal merit. In re Martin 2011PR00048, M.R. 26610 (May 16, 2014) (Hearing Bd. at 34). Respondent was required to inform himself of the applicable law and determine whether he could make good-faith arguments in support of his positions. Rule 3.1, Comment [2]; In re Novoselsky, 2015PR00007, M.R. 030416 (Sept. 21, 2020) (Hearing Bd. at 26). We apply an objective standard of what a reasonably prudent attorney acting in good faith would believe at the time he or she asserted the claim. In re Stolfo, 2016PR00133, M.R. 029728 (March 19, 2019) (Hearing Bd. at 10). We may consider a court's determination that a pleading was frivolous and its imposition of sanctions, but those rulings are not binding upon us. See In re Owens, 144 Ill. 2d 372, 379, 581 N.E.2d 633 (1991) ("[a]lthough a civil judgment may not be the only factor of consideration of a Hearing Board, it nevertheless may be a component in the greater whole of the Board's decision"). Having carefully considered all of the evidence, we find there was no factual or legal basis for Respondent's claims against Walsh, and the lack of merit would have been apparent to a reasonable attorney acting in good faith.

The claims at issue were based on the allegedly unlawful appointment of Walsh's firm to represent the Village without obtaining approval from the Village Board. Judge Norgle undertook a thorough analysis of Respondent's claims and the applicable law, which we have considered in conjunction with our own review of Respondent's pleadings and the relevant testimony in this matter. Judge Norgle set forth three reasons why Respondent's claims were frivolous, and we agree with his analysis. First, Respondent ignored the purchasing ordinance expressly allowing the Village Manager to engage an attorney without board approval for services not exceeding $20,000. We find that this purchasing ordinance negated the premise of Respondent's claims that Walsh's appointment was unlawful. Walsh cited the purchasing ordinance in his motion to dismiss the original complaint, so there is no question that Respondent was aware of it. We are not persuaded by Respondent's testimony that the purchasing ordinance had been superseded or was not in effect. He presented no evidence to corroborate that testimony.

Respondent also failed to allege facts in his amended complaint that established supplemental jurisdiction and standing. His claims against Walsh were based on alleged violations of Illinois law and municipal ordinance, which Respondent asserted were related to his claims under federal law against the Village and others. As Judge Norgle noted, "supplemental jurisdiction is available over claims which share a common nucleus of operative fact—at least a loose factual connection—with the claims over which the Court has original jurisdiction." Curry v. Revolution Labs, LLC, 949 F.3d 385, 389 n.3 (7th Cir. 2020). Judge Norgle concluded that Respondent's complaint as to Walsh "involved no connection with his federal claims whatsoever." For the reasons set forth by Judge Norgle, we agree with this conclusion.

We also concur with Judge Norgle's ruling that Respondent failed to establish that he had standing to bring his claims against Walsh. Respondent did not allege that he suffered a concrete

injury in fact as a result of the appointment of Walsh's firm, nor did he allege an injury that was fairly traceable to Walsh's conduct. See Lujan v. Defs. Of Wildlife, 504 U.S. 555, 560-61 (1992). As both Judge Norgle and Judge Pallmeyer noted, Village officials, not Walsh, were responsible for the method by which his firm was appointed. Judge Norgle and Judge Pallmeyer accurately noted that Respondent "barely allege[d] any conduct by Walsh, and none that is 'fairly traceable' to any injury."

Respondent's failure to allege facts sufficient to establish jurisdiction and standing, along with his failure to acknowledge the purchasing ordinance that negated his claims, were fundamental flaws that demonstrated inadequate investigation into the applicable law. We find that a reasonably prudent attorney faced with these glaring deficiencies would not have pursued the unlawful appointment claims against Walsh. Respondent's claims were clearly frivolous and constituted a violation of Rule 3.1(a).

Rule 4.4(a)

In representing a client, a lawyer shall not use means that have no substantial purpose other than to embarrass, delay, or burden a third person. Ill. Rs. Prof'l. Conduct R. 4.4(a) (2010). Rule 4.4(a) applies when a lawyer represents him or herself, as Respondent did in the matters at issue. See In re Gomez, 2020PR00064, M.R. 031256 (Sept. 21, 2022) (Hearing Bd. at 8-9). We consider Respondent's behavior and its purpose to determine whether he violated this Rule. The repeated filing of baseless pleadings may warrant finding a Rule 4.4(a) violation. Stolfo, 2016PR00133.

While representing himself, Respondent filed meritless claims, duplicative lawsuits, and improperly sued people in their individual capacities for conduct they undertook on behalf of the Village. We find that Respondent's sole purpose in doing so was to burden and harass.

We give significant weight to the findings in Eberhardt I regarding Respondent's motivations, as Judge Norgle presided over the matter for eighteen months and had ample

opportunity to review and consider Respondent's conduct and pleadings. Based on Respondent's history of filing voluminous, meritless pleadings and persisting after being warned that his conduct was sanctionable, Judge Norgle determined that Respondent's actions "scream[ed] bad faith" and were undertaken "for the improper purpose of being a nuisance to the Village and its officials, including Walsh." We agree. Respondent's decision to pursue his claims against Walsh without adequate investigation into the law, despite three Rule 11 notices from Walsh and admonishments from the court, demonstrates his intent to harass and burden Walsh.

Respondent's conduct in filing Eberhardt II further supports our finding of bad faith. Judge Feinerman determined there was significant overlap between Eberhardt I and Eberhardt II with respect to the named defendants, the alleged facts, the asserted legal rights, and the requested relief. We find no legitimate reason for Respondent's filing of Eberhardt II while Eberhardt I was pending in the same court. Respondent's impatience with Eberhardt I's progress is not a sufficient reason for filing a duplicative lawsuit. Eberhart II was part of Respondent's steady stream of unnecessary and excessively voluminous lawsuits and was emblematic of his efforts to bury the Village under a mountain of allegations and legal expenses.

We find Respondent's targeting of Terica Ketchum for alleged violations of FOIA by the Village to be additional evidence of bad faith. FOIA gives courts jurisdiction over public bodies, not individuals. (5 ILCS 140/11(d) and 140/2(a)). Respondent acknowledged that the Village was the entity responsible for public records. Despite the applicable law, Respondent sued Ketchum in her individual capacity. We conclude from this that Respondent had no valid purpose for suing Ketchum and did so to burden her and be a nuisance.

Although Respondent denied intending to harass or burden anyone, the evidence set forth above demonstrates otherwise. Moreover, Respondent's conduct since he moved out of state

shows that his behavior stemmed from personal animosity instead of a legitimate legal purpose. Even though Respondent has lived in Florida since 2021, he has recently submitted FOIA requests to the Village and posted online comments about the Village. We recognize that he has the right to do so, but the fact that he continues to involve himself in Tinley Park politics when he does not live there undermines his testimony that he was merely seeking to enforce his rights as a citizen of Tinley Park and reinforces our findings that he acted in bad faith. For these reasons, we find that the Administrator proved by clear and convincing evidence that Respondent violated Rule 4.4(a).

EVIDENCE IN AGGRAVATION AND MITIGATION

Aggravation

The Administrator's witnesses testified to how Respondent's conduct negatively affected them. Patrick Walsh felt extremely upset that Respondent falsely accused him of improper conduct and made those allegations in federal court, where Walsh practices. (Tr. 60-62). Terica Ketchum felt appalled that Respondent sued her for doing her job and felt violated when he posted her picture on social media and suggested she was not doing her job properly. (Tr. 235). Patrick Carr testified that being sued by Respondent was stressful and affected his family and his prospects for progression in his career. (Tr. 183-84, 192). Thomas Condon similarly testified that Respondent's conduct affected him professionally because he had to disclose that he was a defendant in a lawsuit when he applied for an associate judge position. (Tr. 275-76). Paul O'Grady testified that Respondent's conduct caused attorneys to leave his firm and the remaining attorneys to refuse assignments involving Respondent. (Tr. 334, 337). Kenneth Shaw testified that Respondent's conduct made him feel targeted and that Respondent's service of process on his wife was "straight up intimidation." (Tr. 357-59).

Respondent testified that he regretted that the witnesses felt upset, but he referred multiple times to Judge Ehrlich's statement that "if you're going to be in the rough and tumble of politics you have to have somewhat of a thick skin." (Tr. 523, 537-38, 591-92). When Judge Ehrlich made this statement, he was referring to Respondent in denying Respondent's defamation claims against certain political opponents. (Adm. Ex. 2). In Respondent's view, the same principle "goes both ways," and applies to the Administrator's witnesses in this case. (Tr. 523). But several of the named defendants in Respondent's actions were not "in the rough and tumble of politics." They are civil servants or lawyers employed or engaged by the Village, not politicians. Respondent further testified that he was forced to file lawsuits because of the Village's actions. (Tr. 523).

When asked whether anything Judge Norgle stated in his sanction order would cause Respondent to handle himself differently in the future, Respondent said "it's a hard question to answer." (Tr. 535). If he filed another complaint in federal court, he would make it a "bare bones" pleading without including extensive facts. (Tr. 536).

Mitigation

Respondent was appointed to the federal defender panel in 1993 and represented indigent federal criminal defendants. He has been appointed to represent defendants in federal capital habeas corpus cases in Illinois, Indiana, Arizona, and Mississippi. (Tr. 370). He is a former member of the Tinley Park police department's crime prevention committee (Tr. 373).

Prior Discipline

Respondent has no prior discipline.

RECOMMENDATION

The purpose of a disciplinary sanction is not to punish the attorney, but to protect the public, maintain the integrity of the legal profession, and protect the administration of justice from

reproach. In re Edmonds, 2014 IL 117696, ¶ 90. When determining a sanction recommendation, we consider the proven misconduct as well as any aggravating and mitigating factors. In re Gorecki, 208 Ill. 2d 350, 360-61, 802 N.E.2d 1194 (2003). We strive for consistency in recommending sanctions for similar misconduct but must consider the unique circumstances of the case before us. Edmonds, 2014 IL 117696 at ¶ 90.

The Court's instruction in Paragraph [5] of the Preamble to the Rules of Professional Conduct is particularly applicable to the issues before us:

> A lawyer should use the law's procedures only for legitimate purposes and not to harass or intimidate others. A lawyer should demonstrate respect for the legal system and for those who serve it, including judges, other lawyers, and public officials. While it is a lawyer's duty, when necessary, to challenge the rectitude of official action, it is also a lawyer's duty to uphold legal process."

Respondent used the law to harass others and demonstrated disrespect for the legal system by burdening the courts with meritless lawsuits. Instead of upholding the legal process, he abused it because of personal grievances he had with the Village . We consider this to be serious misconduct.

We find several factors in aggravation. Respondent's misconduct harmed Walsh by causing him to incur legal expenses and spend time and effort defending against frivolous claims. Several witnesses spoke to the emotional or professional harm they suffered as a result of Respondent's lawsuits, and we find their testimony credible. In addition, Respondent harmed the courts by consuming judicial resources with repetitive, voluminous pleadings on meritless claims.

In further aggravation, Respondent is not remorseful and appears to be unwilling or unable to acknowledge that he acted unethically. His testimony that he regrets that anyone felt upset fails to take responsibility for his own actions and is not a genuine apology. It is also concerning that he was unable to answer whether Judge Norgle's sanction order would cause him to conduct himself differently in the future, other than shortening his complaints.

In mitigation, Respondent cooperated in this proceeding, has no prior discipline, and has provided representation to indigent criminal defendants. We also consider his testimony that he is "85% retired" and take judicial notice that his current registration status is retired. That said, given that Respondent could request reinstatement to the Master Roll at any time (S.Ct.R. 756(i)), his retirement status does not significantly impact our recommendation.

We decline Respondent's request to consider as mitigation Diane Galante's testimony that Village officials treated her, and Respondent unfairly and improperly restricted their participation in Village governance. Even if we accepted Galante's testimony as true, the actions of others would not justify or excuse Respondent's violations of the ethical rules. Respondent has the right to disagree with public officials and challenge what he believes to be improper conduct but, as an attorney, he is required to conduct himself in accordance with the law and the Rules of Professional Conduct.

The Administrator asks us to recommend a suspension of six months and until Respondent completes the ARDC Professionalism Seminar and pays all sanctions upheld on appeal. Respondent contends that no sanction is warranted because the Administrator failed to prove misconduct or alternatively, if misconduct is found, a minimal sanction is appropriate. Having found that the Administrator proved the charged misconduct, we disagree with Respondent that no sanction is warranted and must determine the appropriate sanction to recommend.

The Administrator cites In re Stolfo, 2016PR00133, M.R. 20978 (March 19, 2019); In re Martin, 2011PR00048, M.R.26610 (May 16, 2014); In re Messina, 2014PR00002, M.R. 28368 (Jan. 13, 2017); and In re Barringer, 2012PR00055, M.R. 27252 (May 14, 2015). We find Stolfo and Martin most analogous to the circumstances of this case. The charges against Stolfo arose from a single underlying matter in which Stolfo represented a client in an employment lawsuit.

Stolfo persisted in pursuing claims that were foreclosed by his client's testimony. The courts imposed sanctions against him totaling $205,224.10, none of which he paid. He filed frivolous motions and appeals seeking to frustrate the collection of the sanctions judgment. In his disciplinary proceeding, Stolfo was found to have filed frivolous claims, engaged in conduct that had no purpose other than to burden and harass the opposing party, and engaged in conduct prejudicial to the administration of justice. For this misconduct, he was suspended for six months and until he completed the ARDC Professionalism Seminar and paid in full the court-ordered sanctions imposed upon him.

Martin filed multiple pro se lawsuits arising from his alleged wrongful termination. Three of his lawsuits were found to be frivolous, resulting in sanctions and fines totaling $25,471.93. Martin engaged in misconduct not present here, including threatening disciplinary action against opposing counsel if he did not withdraw from the litigation, improperly contacting a represented person, and threatening to disclose confidential information. However, Respondent was found to have engaged in conduct that had no legitimate purpose other than to burden and harass others, which was not found in Martin. Thus, on balance, we find Respondent's and Martin's misconduct comparable. Similar to Respondent, Martin did not pay any of the sanctions against him and did not acknowledge his misconduct. He was suspended for six months and until he completed the ARDC Professionalism Seminar and paid all judgments, fees, costs, and contempt fines arising from his misconduct. Martin, 2011PR00048, M.R.26610 (Review Bd. at 7, 11).

Respondent cites In re Gerstein 99 SH 1, M.R. 18377 (Nov. 26, 2002) (30-day suspension for sending multiple letters with abusive and vulgar language toward the recipients); In re Bercos 97 CH 97, M.R. 14713 (May 27, 1998) (30-day suspension on consent for filing numerous frivolous pleadings in an effort to help his client avoid his child support obligations); In re Balog,

98 CH 80 (reprimand for filing three frivolous appeals); In re Yu, 2016PR00104 (reprimand for filing pleadings without a meritorious basis in two immigration appeals) and In re Fitzgibbons 96 CH 496, M.R. 12712 (Sept. 24, 1996) (reciprocal discipline of a censure for filing a frivolous complaint against a creditor).

We do not find Respondent's cited cases comparable to this one. Gerstein used insulting and vulgar language toward multiple people in representing clients and was not charged with filing frivolous claims. Balog demonstrated an impressive record of service to the bar and the community and presented positive character testimony from a judge. Yu presented substantial evidence of good character as well as genuine remorse and efforts to revise his practice to address the issues that led to his discipline. Bercos acknowledged that he committed the charged misconduct by entering into a consent agreement. Respondent, in contrast, did not present any character witnesses, did not acknowledge or take responsibility for his actions, and did not express genuine remorse. For these reasons, this case warrants a greater sanction than a reprimand, censure, or 30-day suspension.

Consistent with Stolfo and Martin, we determine that a six-month suspension is appropriate for the proven misconduct. We recognize that a six-month suspension places obligations on an attorney that may be burdensome in some instances. In this case, we do not consider a six-month suspension to be unduly onerous because Respondent is on retired status and does not have clients to notify or an office to shut down.

We agree with the Administrator that Respondent should be required to complete the ARDC Professionalism Seminar if he desires to return to practice. We further find that he should be required to pay the sanctions imposed by Judge Norgle, if they are upheld on appeal, in order to make Patrick Walsh whole for having to defend Respondent's frivolous claims. Accordingly,

we recommend that Respondent, Steven Erhard Eberhardt, be suspended for six months and until he completes the ARDC Professionalism Seminar and pays all sanctions imposed in Eberhardt I that are upheld on appeal.

Respectfully submitted,

Kenn Brotman
Melissa J. Kuffel
Gerald M. Crimmins

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 April 19, 2024.

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

[i] Federal Rule of Civil Procedure 11(c)(1)(A) provides that a motion for sanctions shall be served upon the opposing party but "shall not be filed with or presented to the court unless, within 21 days after service of the motion (or such other period as the court may prescribe), the challenged paper, claim, defense, contention, allegation, or denial is not withdrawn or appropriately corrected," thereby providing a "safe harbor" by which a party may avoid sanctions by withdrawing or correcting a frivolous claim.