STATE OF VERMONT
PROFESSIONAL RESPONSIBILITY BOARD

In Re: Michelle Sherer, Esq.
PRB File Nos. 2019-037

Decision No. 228

On or about February 5, 2019, a Petition of Misconduct was served by Disciplinary Counsel on the Respondent, Michelle Sherer, Esq. Disciplinary Counsel subsequently filed a motion to deem the charges admitted based on Respondent's failure to file an answer to the Petition of Misconduct. The motion requested as well that the Panel schedule a hearing on the issue of sanctions.

On April 30, 2019, the Hearing Panel issued an order that granted the motion to deem the charges admitted and scheduled a hearing on the appropriate sanction. The hearing was held on June 13, 2019. Disciplinary Counsel attended the hearing and presented both testimonial and documentary evidence. Respondent did not attend the hearing.

Based on the allegations in the Petition of Misconduct and the evidence presented at the sanctions hearing, the Hearing Panel issues the following findings of fact, conclusions of law, and order.

FINDINGS OF FACT

Respondent, Michelle Sherer, was admitted to practice law in Vermont in 2012. In 2017 Respondent's license to practice was administratively suspended for nonpayment of her licensing dues and remains suspended at this time.

In the summer of 2018 Respondent entered into an agreement to purchase a condominium located in the Town of Colchester. The purchase and sales agreement, entered into August 6, 2018, listed two buyers – Respondent and an individual who Respondent

identified as her aunt. Respondent told the Seller that her aunt was co-signing the purchase and sales agreement because Respondent's credit rating was not as strong as she would like. Respondent also told the Seller that she was an attorney. Signatures on the agreement for the two co-buyers were provided to the real estate broker electronically. The agreement provided for a closing date in late October 2018. The Seller and Respondent further agreed that, prior to the closing, Respondent would be entitled to occupy the condominium and, in return, would pay monthly rent to the Seller in the amount of $1,550 for the months of August, September, and October.

The purchase and sales agreement provided for the payment of a non-refundable $5,000 deposit. Respondent presented a deposit check to the seller that had an incorrectly spelled name for the payee on the check and the check could not be deposited. When Respondent was advised that the check was rejected, Respondent assured the Seller's partner that Respondent would provide a substitute check for the deposit. Respondent proceeded to occupy the condominium. Respondent told the Seller that the deposit for the purchase of the condominium and the rent payments would be wired to the Seller by Respondent's uncle.

In late September, after Seller had still not received payment of the deposit or any rent for the premises, Seller's partner located and telephoned the individual whose name was listed as a co-buyer on the purchase and sales agreement. The individual acknowledged that she was Respondent's aunt but disavowed any knowledge of the real estate transaction. Although Respondent's aunt was listed as a co-buyer on the agreement, she had no knowledge of the transaction, did not agree to act as a co-buyer, and did not offer to provide any financial support to Respondent in connection with the property.[1] Respondent's aunt expressed surprise and anger

[1] Disciplinary Counsel proposes an additional finding of fact that Respondent forged her aunt's electronic signature on the purchase and sales agreement. However, the petition did not clearly make this allegation.

and further indicated that she was considering reporting the matter to the police. The Seller informed the broker of this communication with Respondent's aunt and Seller's attorney informed Respondent that she would have to pay the deposit promptly or leave the premises. Respondent then vacated the condominium.

Respondent never paid the deposit; nor did she pay any rent for her use of the premises in August and September 2018. The Seller also incurred the cost of utilities while Respondent was occupying the premises, including electricity for Respondent's use of air conditioning, and Respondent never reimbursed Seller for any of those costs. While Respondent was occupying the premises and until she vacated the premises, the property was off the real estate market. The Seller and her partner experienced frustration and stress as a result of Respondent's actions.

* * *

R.W. met Respondent during the summer of 2018 while R.W. was cleaning out the Colchester condominium for the Seller. In the course of their conversations, Respondent mentioned to R.W. that she was a lawyer and indicated that she was working for a firm. R.W. told Respondent that she was trying to evict a tenant from a condominium that she owned so that

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It alleged that the agreement "contained the electronic signatures of Respondent and Respondent's aunt, MS, as a co-buyer," ¶ 7, and that "MS did not know about the purchase and sales agreement or the condo, never agreed to act as a co-buyer, never signed anything, and was never asked to provide any financial support for Respondent." *Id.* ¶ 8. Moreover, the language in the preceding summary of Count 1 was ambiguous – the allegation that Respondent "falsely represented to the seller that MS agreed to cosign and did cosign the [agreement] can be read to say either that a representation was made by Respondent that MS "did co-sign" or that Respondent actually co-signed for MS. The petition did not clearly allege that Respondent had in fact forged her aunt's signature. Moreover, the testimony by Seller's partner of his subsequent conversation with Respondent's aunt mirrored the limited factual allegations underlying Count 1. Although it seems possible – and arguably likely – that Respondent forged the signature, the Panel cannot assume that. Moreover, Disciplinary Counsel presented no evidence concerning the source of the electronic signature for the aunt or process by which it was affixed to the document. In sum, the petition was vague on this point and, even assuming adequate notice in the petition, there was no clear and convincing evidence presented from which the Panel could make such a finding. Nevertheless, the evidence was clear that the aunt had not agreed to enter into the agreement and the Panel finds that Respondent had to have known that.

she could move back into the condominium. At the time, R.W. was living in a camper and was desperate to move back to her condominium. Respondent offered to help R.W. for no payment and Respondent indicated to R.W. that she could handle the matter. R.W. understood that Respondent was going to proceed with an action to evict R.W.'s tenant. Respondent initially sent a communication to the tenant on R.W.'s behalf and told R.W. not to contact the tenant because Respondent was taking action.

For approximately six weeks R.W. was under the impression that Respondent was pursuing the eviction. Respondent told R.W. that she had filed an eviction proceeding in the court on R.W.'s behalf and had served the tenant with an eviction notice. R.W. met at some point with Respondent to review documents related to the condominium. Eventually, R.W. asked Respondent for copies of the documents she said she had filed in the court. Respondent stopped returning R.W.'s phone messages. R.W. contacted the owner of the condominium where Respondent was living, who told R.W. that Respondent was not making payments that were due the owner.

Respondent never filed an eviction proceeding against R.W.'s tenant, never served the tenant with process, and never informed R.W. that she had failed to file the proceeding. R.W. eventually learned that Respondent had never filed any documents with the court or otherwise pursued an eviction action.

R.W. experienced stress as a result of Respondent's failure to proceed with the eviction and Respondent's misrepresentations. Eventually, R.W.'s tenant moved out of the condominium and R.W. was able to occupy it again without R.W. having to resort to eviction.

* * *

In May 2018, Respondent notified Bar Counsel Michael Kennedy that she was representing J.P. in a legal matter that J.P. had pending with the Professional Responsibility Program. At that time, Respondent's law license had been suspended, effective July 2017, for nonpayment of licensing fees. An administrative assistant for the Professional Responsibility Program had notified Respondent in July 2017 of the suspension for nonpayment and explained to Respondent that she would have to make the required payment to reactivate her license. As of May 2018, Respondent had failed to make the required payment. Soon after Respondent's conversation with Bar Counsel in May 2018 J.P. retained a different attorney for the Professional Responsibility Program matter.

* * *

Respondent failed to cooperate with the investigation in connection with this matter. She also engaged in dishonesty in response to investigative inquiries and tried to interfere with the investigation by threatening an investigator who was working with Disciplinary Counsel.

In December 2018, after the investigator had advised Respondent that he was working with Disciplinary Counsel and after Respondent had spoken to Disciplinary Counsel by phone, Respondent sent emails to the investigator and Disciplinary Counsel accusing the investigator of harassing her friends and family and threatening to file a complaint against him if he attempted to conduct interviews. At one point, Respondent tried to stop the investigator from interviewing the owner of a store by stating that "he is not allowed at my friend's store." She provided no factual basis for her accusations of harassment. Respondent repeatedly demanded that Disciplinary Counsel instruct the investigator to stop conducting interviews.

Despite repeated requests by Disciplinary Counsel for a phone number and address, Respondent insisted that she had no consistent working phone number and that she was without a

permanent residence. Disciplinary Counsel and her investigator were, however, able to send emails to the Respondent throughout the investigation using a gmail address. Respondent responded to emails from Disciplinary Counsel and her investigator and sent emails to them using a gmail address up to and including February 13, 2019. Respondent also provided Disciplinary Counsel with two mailing addresses at which she represented she could receive mail from Disciplinary Counsel.

On September 25, 2018 Respondent was notified by Bar Counsel of the information that had prompted an investigation to be opened by Disciplinary Counsel. Respondent never filed a written response to the notice of investigation, despite assuring Disciplinary Counsel that she would so. In addition, she repeatedly attempted to avoid being interviewed by Disciplinary Counsel. At one point, she tried to insist that the Vermont state police conduct her interview.

An initial interview was scheduled by Disciplinary Counsel for October 3, 2018 and notice of the interview was provided to Respondent on September 26, 2018. On October 2, Respondent notified Disciplinary Counsel by email that she would not attend, claiming that she had only recently received the notice and needed to attend a job interview and retain counsel to assist her. After agreeing to be interviewed by Disciplinary Counsel on December 20, 2018, she then cancelled that appointment without providing any alternative dates. Disciplinary Counsel rescheduled the meeting for January 2, 2019 and advised Respondent of her duty to cooperate with the investigation.

On January 2, 2019, Respondent sent Disciplinary Counsel an email indicating that she had suffered a grand mal seizure and had a doctor's appointment that would prevent her from attending the scheduled meeting. She did not suggest any alternative dates for the meeting. Later in January 2019, Respondent indicated that she would need a ride in order to meet with

Disciplinary Counsel. When Disciplinary Counsel's investigator drove to the location identified to pick up Respondent, she declined to get into the car and told the investigator that she had participated in a telephone interview with Disciplinary Counsel. Respondent's statement was false.

On February 5, 2019, Disciplinary Counsel served the Petition of Misconduct in this matter by certified mail, in accordance with A.O. 9, Rule 14(A) sent to the two most recent addresses which Respondent had provided. On February 13, 2019 Disciplinary Counsel and the investigator also separately contacted Respondent by email and offered to provide her with a copy of the petition. When Respondent stated in an email to the investigator that she was out of state but that "I can pick up the documents from the courthouse," the investigator offered to meet her in the lobby of the courthouse at a specified time. Respondent stated that she would let him know later that day a time when they could meet. However, she never wrote back. Later that same day Disciplinary Counsel sent an email to Respondent's gmail address advising her that a petition of misconduct had been filed, that it had been served in accordance with A.O. 9, and that an answer was due within twenty days. An electronic copy of the petition of misconduct was attached to the email. In addition, Disciplinary Counsel offered once again to have her investigator deliver a paper copy to Respondent.

CONCLUSIONS OF LAW

The charges against Respondent are deemed to have been admitted because of Respondent's failure to answer the petition of misconduct. Counts 1 and 2 allege violations of Rule 8.4(c) of the Vermont Rules of Professional Conduct. That rule states that "[i]t is professional misconduct for a lawyer to . . . engage in conduct involving dishonesty, fraud, deceit or misrepresentation." V.R.Pr.C. 8.4(c).

The term "dishonesty" has been defined as:

> [e]ncompass[ing] fraudulent, deceitful, or misrepresentative behavior. In addition to these, however, it encompasses conduct evincing a lack of honesty, probity or integrity in principle; a lack of fairness and straightforwardness. Thus, what may not legally be characterized as an act of fraud, deceit or misrepresentation may still evince dishonesty.

Matter of Shorter, 570 A.2d 760, 768 (D.C. 1990) (quoting *Tucker v. Lower,* 200 Kan. 1, 4, 434 P.2d 320, 324 (1967)).

Respondent engaged in dishonest conduct by representing to the Seller of the Colchester condominium that her aunt had agreed to buy the condominium along with Respondent when, in fact, her aunt had not done so. Respondent signed a purchase and sales agreement that made this misrepresentation. In addition, Respondent lied when she told R.W. that she had initiated an eviction action against R.W.'s tenant. In fact, she did not file an action on behalf of R.W.

Count 3 of the petition alleges that Respondent violated Rule 1.3 by failing to diligently pursue the eviction of R.W.'s tenant after Respondent advised R.W. that she would handle that matter. Rule 1.3 provides that "[a] lawyer shall act with reasonable diligence and promptness in representing a client." Respondent failed to file the action and failed to advise R.W. that she had not done so. Respondent abandoned her client.

The Panel notes that Respondent was under administrative suspension at the time for nonpayment of licensing dues and, therefore, was not authorized to practice law at the time she told R.W. that she would pursue an eviction action. Therefore, the Panel must consider whether a lawyer who is under suspension can nevertheless be held to have violated Rule 1.3. At first blush, the alleged violation under Count 3 seems incongruous with Respondent's administrative suspension. However, the Panel concludes that it is appropriate to apply the rule because Respondent held herself out as a practicing attorney and R.W. relied on Respondent's statements

that she would pursue the eviction on R.W.'s behalf. Recognizing that Respondent did not meet the requirement of Rule 1.3 in representing R.W. serves the underlying purpose of protecting the public. Other jurisdictions have found violations of Rule 1.3 despite the fact that a respondent was under suspension at the time of the conduct. *See, e.g., Cleveland Metro. Bar Assn. v. Brown*, 37 N.E.3d 1199, 1200 (Ohio 2015) (finding violation of Rule 1.3 where lawyer who was under suspension agreed to prepare a deed for a real estate transfer and failed to do so); *In re Disciplinary Action Against Tollefson*, 2014 ND 1, ¶ 12, 841 N.W.2d 683, 686 (N.D. 2014) (violations committed by a lawyer who was retained while under suspension to provide services to various clients included violation of Rule 1.3).

Count 4 alleges a violation of Rule 5.5(a). That rule provides that "[a] lawyer shall not practice law in a jurisdiction in violation of the regulation of the legal profession in that jurisdiction . . . ." V.R.Pr.C. 5.5(a). It is well-established that Rule 5.5(a) prohibits lawyers who have been suspended from "practic[ing] law or holding themselves out as eligible to practice." ABA Ctr. For Prof'l Responsibility, Annotated Model Rules of Prof'l Conduct 521 (8th ed. 2015). "Rule 5.5(a)'s prohibition against unauthorized practice applies to lawyers suspended for administrative reasons, such as failure to pay bar dues or comply with continuing legal education (CLE) requirements." *Id.*

Administrative Order 41 provides that "[u]pon . . . failure to pay when due the fee required [for licensing], the right to practice law in this state shall be automatically suspended." A.O. 41, § 6. While under administrative suspension for nonpayment of attorney licensing fees, Respondent advised Bar Counsel that she was representing a lawyer in connection with a Professional Responsibility Program matter. Respondent's conduct violated Rule 5.5(a).

SANCTIONS DETERMINATION

The Vermont Rules of Professional Conduct "are 'intended to protect the public from persons unfit to serve as attorneys and to maintain public confidence in the bar.'" *In re PRB Docket No. 2006-167*, 2007 VT 50, ¶ 9, 181 Vt. 625, 925 A.2d 1026 (quoting *In re Berk*, 157 Vt. 524, 532, 602 A.2d 946, 950 (1991)). The purpose of sanctions is not "to punish attorneys, but rather to protect the public from harm and to maintain confidence in our legal institutions by deterring future misconduct." *In re Obregon*, 2016 VT 32, ¶ 19, 201 Vt. 463, 145 A.3d 226 (quoting *In re Hunter*, 167 Vt. 219, 226, 704 A.2d 1154, 1158 (1997)).

Applicability of the ABA Standards for Imposing Lawyer Sanctions

Hearing panels are guided by the ABA Standards when determining appropriate sanctions for violation of the Vermont Rules of Professional Conduct:

> When sanctioning attorney misconduct, we have adopted the *ABA Standards for Imposing Lawyer Discipline* which requires us to weigh the duty violated, the attorney's mental state, the actual or potential injury caused by the misconduct, and the existence of aggravating or mitigating factors.

In re Andres, 2004 VT 71, ¶ 14, 177 Vt. 511, 857 A.2d 803.

"Depending on the importance of the duty violated, the level of the attorney's culpability, and the extent of the harm caused, the standards provide a presumptive sanction. *** This presumptive sanction can then be altered depending on the existence of aggravating or mitigating factors." *In re Fink*, 2011 VT 42, ¶ 35, 189 Vt. 470, 22 A.3d 461.

The Duty Violated

The ABA Standards recognize a number of duties that are owed by a lawyer to his or her client. *See Standards for Imposing Lawyer Sanctions* (ABA 1986, amended 1992) (*"ABA Standards"*), Theoretical Framework, at 5. Other duties are owed to the general public, the legal

system, and the legal profession. *Id.* In this case, Respondent violated duties owed to a client, the general public, and the legal profession.

Respondent violated a duty of candor in her interactions with the Seller of the Colchester condominium. She engaged in dishonest conduct related to the transaction, falsely representing in executing the purchase and sales agreement that her aunt was a co-buyer when, in fact, her aunt knew nothing about the transaction and had not provided any authorization.

Respondent violated duties of candor and of diligence that she owed to R.W. Respondent lied to R.W. when she told her that she had filed eviction documents with the court. Respondent did not pursue an eviction action, abandoning the matter, and concealed that fact from R.W.

Respondent also violated a duty to the general public and legal profession to refrain from engaging in the unauthorized practice of law. Respondent took on the representation of another attorney in a Professional Responsibility Program matter while she was under administrative suspension.

Mental State

"The lawyer's mental state may be one of intent, knowledge, or negligence." *ABA Standards*, § 3.0, Commentary, at 27. For purposes of the sanctions inquiry, "[a lawyer's] mental state is [one] of intent, when the lawyer acts with the conscious objective or purpose to accomplish a particular result." *Id.*, Theoretical Framework, at 6. The mental state of "knowledge" is present "when the lawyer acts with conscious awareness of the nature or attendant circumstances of his or her conduct [but] without the conscious objective or purpose to accomplish a particular result." *Id.* The mental state of "negligence" is present "when a lawyer fails to be aware of a substantial risk that circumstances exist or that a result will follow, which

failure is a deviation from the standard of care that a reasonable lawyer would exercise in the situation." *Id.*; *see also id.*, at 19 (definitions of "intent," "knowledge," and "negligence").

Under the factual circumstances presented the Panel must conclude that Respondent acted intentionally in her misrepresentations to the Seller of the Colchester condominium and to R.W. and, at the very least, knowingly in her deficient representation of R.W. and unauthorized practice. If Respondent had a normal law practice one might have concluded that she lost track of her caseload and was negligent in her representation of R.W. But it is apparent that she did not have a regular practice. She must have known that she was not performing the promised work. After agreeing to do the work, she met with R.W. to review documents but then did nothing further. In addition, the fact that she lied to R.W. about filing an action supports the conclusion that she knew she was not getting the promised work done. Likewise, Respondent had been informed by the Court Administrator's Office that her licenses was suspended and therefore knew that she was engaged in unauthorized practice. It was less than a year later when she attempted to represent another attorney.

Injury and Potential Injury

The ABA Standards consider "the actual or potential injury caused by the lawyer's misconduct." *ABA Standards*, § 3.0(c), at 26. The term "injury" is defined as "harm to a client, the public, the legal system, or the profession which results from a lawyer's misconduct. The level of injury can range from 'serious' injury to 'little or no' injury." *Id.*, Definitions, at 9. The term "potential injury" refers to harm that is "reasonably foreseeable at the time of the lawyer's misconduct, and which, but for some intervening factor or event, would probably have resulted from the lawyer's misconduct." *Id.* Under the ABA Standards, "[t]he extent of the injury is defined by the type of duty violated and the extent of actual or potential harm." *Id.* at 6.

There was potential and actual injury to the Seller of the condominium from Respondent's misconduct. If Respondent had told the truth, the Seller might not have entered into the agreement with Respondent given her weak credit and pursued other sale opportunities. As a result of the misconduct, the condominium was off the market for months. The Seller might have sold the property sooner. In addition, the Seller paid the costs of electricity used by Respondent at the condominium and received no rent payments for approximately three months. Respondent's dishonesty was harmful to the general public – which relies on lawyers to exhibit the utmost integrity – and, by extension, to the legal profession.

There was injury to R.W., to the general public, and to the legal profession as well from Respondent's dishonesty aimed at R.W. The public can lose confidence in lawyers when they engage in dishonesty and fail to act diligently. In addition, R.W. relied on Respondent's assertion that she was working on the case. Although R.W. eventually regained possession of her condominium (without Respondent's assistance), her recovery was potentially delayed by Respondent's failure to take the promised action.

Finally, the general public and legal profession were harmed by Respondent's unauthorized practice of law. The harm may not have been great – because Respondent promptly ceased representing another attorney after having spoken with Bar Counsel – but any deviation from a suspension exposes the public to potential harm and flouted the Supreme Court's authority.

Presumptive Standard under the ABA Standards

Because of the intentional and otherwise serious nature of the dishonesty aimed at the Seller of the Colchester condominium, the Panel concludes that disbarment under Standard 5.11(b) should apply. That standard states that: "[d]isbarment is generally appropriate when a

lawyer engages in any other intentional conduct involving dishonesty, fraud, deceit, or misrepresentation that seriously adversely reflects on the lawyer's fitness to practice."[2] Respondent's conduct was egregious. Respondent held out her aunt as a co-buyer for the condominium in order to obtain a purchase and sales agreement for the condominium when her aunt had no knowledge whatsoever of the transaction. Respondent engaged in fraud for her personal benefit. Real estate transactions are fundamental to the practice of law and lawyers should model the utmost integrity in such transactions. Respondent's failings "seriously adversely reflect[ed] on [her] fitness to practice law." This is a unique case on the facts where disbarment is justified.[3]

Standard 4.62 applies to Respondent's dishonesty towards R.W. It states that: "[s]uspension is generally appropriate when a lawyer knowingly deceives a client, and causes injury or potential injury to the client." Respondent knowing deceived R.W. by stating that she had filed an eviction proceeding when, in fact, Respondent had not done so.

Standard 4.42(a) applies to Respondent's lack of diligence in her representation of R.W. It states that: "[s]uspension is generally appropriate when a lawyer knowingly fails to perform services for a client and causes injury or potential injury to a client." Respondent knew that she

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[2] The "other intentional conduct" in Standard 5.11(b) is in contrast to the language of Standard 5.11(a), which calls for disbarment in the context of serious criminal conduct.

[3] Disciplinary Counsel argues that Standard 5.12, which calls for suspension "when a lawyer knowingly engages in criminal conduct . . . that seriously adversely reflects on the lawyer's fitness to practice," should apply based on a theory that Respondent committed a crime by forging her aunt's signature on the purchase and sales agreement. But, as noted above, the petition did not provide sufficient notice that Disciplinary Counsel would advance a theory of criminal conduct. Notably, the petition did not allege any violation of Rule 8.4(b) ("It is professional misconduct for a lawyer to . . . engage in a 'serious crime'"). And the allegations in the petition did not explicitly allege forgery. Nevertheless, the intentional nature of the violation committed by Respondent and its egregiousness render Standard 5.11(b), which does **not** require criminal conduct, applicable.

was not performing the services she committed to perform for R.W. And, as explained above, her lack of diligence resulted in injury to R.W.

Standard 7.0 provides for sanctions in cases involving the unauthorized practice of law. *See* ABA Ctr. For Prof'l Responsibility, Annotated Standards for imposing Lawyer Sanctions 339 (2015). Standard 7.2 states that: "[s]uspension is generally appropriate when a lawyer knowingly engages in conduct that is a violation of a duty owed as a professional and causes injury or potential injury to a client, the public, or the legal system."[4] Respondent owed a duty not to practice law while under suspension and breached that duty.

Aggravating and Mitigating Factors Analysis

Next, the Panel considers any aggravating and mitigating factors and whether they call for increasing or reducing the pertinent presumptive standards. Under the ABA Standards, aggravating standards are "any considerations, or factors that may justify an increase in the degree of discipline to be imposed." *ABA Standards*, § 9.21, at 50. Mitigating factors are "any considerations or factors that may justify a reduction in the degree of discipline to be imposed." *Id.* § 9.31, at 50-51. Following this analysis, the Panel must decide on the ultimate sanction that will be imposed in this proceeding.

(a) Aggravating Factors

The following aggravating factors under the ABA Standards are present:

§ 9.22(b) (dishonest or selfish motive) – Respondent acted with a dishonest motive in connection with the condominium purchase and sales agreement. She engaged in dishonesty to advance her own interests.

[4] Because Respondent apparently did not engage in that particular representation to obtain a personal benefit for herself and there was no specific evidence as to the extent of the harm, the disbarment sanction in Standard 7.1 is arguably not applicable. *See* Standard 7.1 (requiring "intent to obtain a benefit for the lawyer or another" and "serious or potentially serious injury to a client").

§ 9.22(c) (pattern of misconduct) – Respondent engaged in a pattern of dishonest conduct. She lied to both the Seller of the condominium and to R.W.

§ 9.22(d) (multiple offenses) – Respondent committed four violations of the Rules of Professional Conduct.

§ 9.22(e) (bad faith obstruction of the disciplinary process) – Respondent attempted to avoid and otherwise stifle the investigative process. She failed to appear for scheduled interviews on multiple occasions. She threatened, without any factual basis, to file a complaint against the investigator and failed to respond to numerous requests for the address of her residence and phone number. Respondent made false statements to Disciplinary Counsel and her investigator during the course of the investigation. Her conduct amounted to bad faith in the extreme and resulted in the unnecessary expenditure of time and expense in the investigation.

Finally, the Panel considers Respondent's failure to appear at the scheduled hearing to be an aggravating factor. *See, e.g., People v. Cassidy*, 884 P.2d 309, 312 (Colo. 1994) (failure to appear before disciplinary board an aggravating factor); *see also People v. Schmad*, 793 P.2d 1162, 1164 (Colo. 1990).

(b) Mitigating Factors

The following mitigating factors under the ABA Standards are present:

§ 9.32(a) (absence of a prior disciplinary record) – Respondent has no prior offenses.

§ 9.32(f) (inexperience in the practice of law) – Respondent had approximately five years of experience at the time of the violations. However, there is no reason to believe that lack of experience played any role in the violations that were committed. Therefore, this factor should receive little weight.

(c) Weighing the Aggravating and Mitigating Factors

The aggravating factors significantly outweigh the mitigating factors not only numerically but qualitatively. In particular, the Panel assigns great weight to the multiple instances of lying, Respondent's lack of cooperation and efforts to interfere with and obstruct the investigation, and her failure to appear and attend the scheduled hearing to answer the charges. These factors significantly outweigh the absence of prior offenses.

The ABA Standards opine that when multiple charges of misconduct have been proven, "[t]he ultimate sanction imposed should at least be consistent with the sanction for the most serious instance of misconduct among a number of violations; it might well be and generally should be greater than the sanction for the most serious misconduct." *ABA Standards*, Theoretical Framework, 7. Here, the Panel has determined that the most serious conduct merits a presumptive sanction of disbarment. However, even if the Panel were to assign a lesser presumptive sanction of suspension to each of the violations, the fact that there are multiple violations and the heavy weight of the aggravating factors present in this case would call for increasing the presumptive sanction from suspension to disbarment.

* * *

Normally, the Panel would compare the current case to past disciplinary determinations in order to decide what sanction should be imposed in this case. However, there are no comparable Vermont cases of which the Panel is aware. The serious nature of the conduct – including dishonesty with both the general public and with a client – along with the unauthorized practice of law, bad-faith obstruction of the investigation, and an utter failure to respond to the allegations or appear at the hearing in this matter cause this Panel to conclude that Respondent is not fit to practice law. The Panel concludes that Respondent should be disbarred.

It is hereby ORDERED, ADJUDGED and DECREED as follows:

1. Respondent, Michelle Sherer, Esq., has violated Rules 1.3, 5.5(a), and 8.4(c) of the Rules of Professional Conduct, as set forth above;

2. Respondent is hereby disbarred from the office of attorney and counselor at law, from the date of this decision.

3. In the event that Respondent files a motion seeking permission to resume the practice of law, she shall be required to provide, as part of the proceeding under A.O. 9, Rules 22(A) and 22(D), a detailed explanation for her lack of participation in this disciplinary proceeding.

Dated this 13th day of September of 2019.

Hearing Panel No. 2

By: _____
Joseph F. Cook, Esq., Chair

By: _____
James A. Valente, Esq., Member

By: _____
Greg Worden, Public Member