



IN RE: STANLEY E. GREENIDGE

NO. BD-2011-110

S.J.C. Order of Term Suspension entered by Justice Lenk on April 7, 2014.[†]

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[†] The complete Order of the Court is available by contacting the Clerk of the Supreme Judicial Court for Suffolk County.

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPREME JUDICIAL COURT
FOR SUFFOLK COUNTY
NO. BD-2011-110

In Re: STANLEY E. GREENIDGE

MEMORANDUM OF DECISION

This matter came before me on an information and record of proceedings, together with a vote of the Board of Bar Overseers (board) recommending that the respondent be suspended from the practice of law for one year, with three months suspended and imposition of the remainder of the suspension stayed for two years. See S.J.C. Rule 4:01, §8(6). The information was filed on remand from this court so that evidentiary hearings could be conducted on the question of mitigation and the appropriate sanction to be imposed in light of the respondent's then newly-diagnosed mental illness, which had gone unrecognized and untreated at the time of the misconduct. The conduct found by the board was deemed admitted during an earlier hearing at which the respondent was defaulted when he failed to appear. Since the respondent obtained counsel and began participating in the disciplinary proceedings, he has not disputed any of the board's

findings as to his misconduct. Therefore, the sole issue before me is the sanction to be imposed.

1. Factual background. I summarize the hearing committee's findings and conclusions as adopted by the board. The respondent was admitted to the bar of the Commonwealth on July 19, 1995, after more than twenty years of practice in other jurisdictions. The respondent graduated from the University of Michigan School of Law in 1972. He worked for the Department of Justice's organized crime unit strike force in Baltimore, Maryland, Washington, D.C., and Brooklyn, New York, and ultimately in Boston. After leaving the Department of Justice, he worked for a large Boston law firm for approximately four and one-half years, then spent two years at the Federal defenders' office before beginning his own practice in the mid-1990s.

The present disciplinary proceedings arise from the respondent's representation of a client who alleged that, while an inmate at the Suffolk County house of correction, she had been sexually assaulted by one of the guards. The client retained the respondent's services in August, 2002, after an acquaintance of the respondent asked that he meet with the client. Prior to retaining the respondent, the client had filed a civil claim in the United States District Court pertaining to the alleged assault, but her previous counsel had withdrawn from the case.

In January, 2003, the respondent received notice of the defendants' motions for summary judgment, but took no action on them, and the motions consequently were allowed in February, 2003; the respondent did not inform the client of the dismissal of her case, but filed a motion for reconsideration, seeking an extension of time in which to file an opposition to the summary judgment motions. Two months later, in April, 2003, the motion for reconsideration was allowed, notwithstanding that the respondent had not filed an opposition, but the respondent did not make any subsequent filings, and the defendants' motion for entry of judgment was allowed in January, 2004.

In March of 2004, the respondent had the client and her mother come to his office, where the client signed a verified complaint against the same defendants; the respondent did not inform the client that her Federal claim had been dismissed, or of the reason for the new complaint. The respondent filed the complaint in the United States District Court, but failed to serve the defendants, and the complaint was dismissed in October, 2004. The client and her mother made numerous attempts to contact the respondent between March and June 2004, seeking information about the status of the client's case, but the respondent did not return their calls. In November, 2004, the client learned of the dismissal when she went to the Federal

courthouse to check on the status of her case. At that point, the client hired new counsel who filed an action against the respondent in the Superior Court, for malpractice and violations of G. L. c. 93A. The respondent did not answer this complaint, and a default judgment entered against him. The client obtained an execution of judgment in the amount of \$1,084,766.12, where actual damages were assessed at \$500,000.00 and then doubled pursuant to G. L. c. 93A.

In May, 2006, the client filed a supplementary process action against the respondent. At a hearing in October, 2006 on the respondent's ability to pay any portion of the judgment; the respondent testified that he had filed tax returns for the years 2004 and 2005 when he had not done so. He was ordered to produce copies of those tax returns to the client's new counsel; he created and produced a Federal tax return for 2005 which stated that he was single and had an income of \$20,000, whereas in actuality he was married and had an income of approximately \$38,000. In November, 2006, the respondent was ordered to pay \$500 per week to the client; from that time until April, 2011, when the court determined that he had no ability to pay, the respondent made only two payments, totaling \$5,000. He failed to appear at seven different hearings concerning his ability to pay, and a *capias* was issued against him on each occasion; he was

arrested on a capias on five occasions, and held in jail on several occasions until he appeared in court, where he was released on personal recognizance. The two payments made were \$500, paid by the respondent's wife on one occasion when the respondent had been arrested and was being held in contempt until he paid that amount, and on another occasion by a friend who paid \$4,500 to obtain the respondent's release from incarceration under a court order that the respondent be held until he paid that amount. In November, 2009, the court issued a determination that the respondent had no ability to make payments. The respondent was again arrested in September, 2010, for failure to appear at a payment review hearing, and the court confirmed that the respondent had no ability to pay.

2. Disciplinary proceedings. Based on the above conduct, bar counsel filed a petition for discipline on September 9, 2011. The petition alleged violations of Mass. R. Prof. C. 1.1 (competence), 1.2(a) (lawyer should seek to achieve lawful objective of client through permissible means), and 1.3 (diligence) for the respondent's failure to oppose the defendant's motion for summary judgment, to take any further action after the allowance of his motion to reconsider, and to serve notice of the second complaint upon the defendants. The petition also alleged violations of Mass. R. Prof. C. 1.4(a)

(lawyer should keep client reasonably informed about status of matter) and (b) (lawyer should explain matter to extent necessary to enable client to make informed decisions) for failure to keep his client reasonably informed of the status of her case and to comply with requests for information; Mass. R. Prof. C. 3.4(c) (knowing disobedience of rules of tribunal), Mass. R. Prof. 8.4(d) (conduct prejudicial to administration of justice), and 8.4(h) (conduct that reflects adversely on attorney's fitness to practice law) for failing to appear at the payment review hearings in violation of court orders; and Mass. R. Prof. C. 3.1(a)(1) (false statements of material fact or law to tribunal), 3.4(b) (falsifying evidence), 8.4(c) (conduct involving dishonesty, fraud, deceit, or misrepresentation), and 8.4(d) and (h) for submitting a fabricated tax return to the client's counsel.

The petition sought the respondent's suspension from the practice of law for a minimum of three years. Because the respondent failed to file an answer to bar counsel's petition, the allegations against him were deemed admitted. See S.J.C. Rule 4:01, §7(3). After a meeting on October 17, 2011, the board recommended that, upon the respondent's default, he be suspended from the practice of law for a period of three years, and bar counsel subsequently filed an information to that effect

with the single justice.

In December, 2011, the respondent's newly-obtained counsel filed a notice of appearance and sought a continuance of the proceedings; bar counsel assented to the continuance. In April, 2012, the respondent filed an opposition to the information, with supporting documentation indicating that he had been examined by a forensic psychologist, had been diagnosed as having a serious but treatable psychiatric disorder, and had begun treatment with a clinician. A hearing was held before me on April 10, 2012, and the parties thereafter filed supplemental memoranda and supporting documentation. In May, 2012, the matter was remanded to the board to conduct evidentiary hearings, make findings, and issue a recommendation on the appropriate sanction to be imposed on the respondent for his misconduct in light of the respondent's then newly-diagnosed mental illness. See Matter of Johnson, 20 Mass. Att'y Disc. R. 272 (2004): Bar counsel's motion for a temporary suspension was denied, contingent upon the respondent's continuing treatment with a licensed psychotherapist, compliance with that therapist's recommendations, and filing of monthly affidavits of compliance.

The hearing committee conducted an evidentiary hearing on September 7, 2012, at which Dr. Robert J. Mendoza, the forensic psychologist who had examined the respondent, Phil Salhaney, a

licensed independent social worker and the respondent's treating therapist, and the respondent testified, and both the respondent and bar counsel introduced a number of exhibits. The hearing committee credited both experts' diagnosis of the respondent as suffering from a major depressive disorder, recurrent, without psychotic features, a condition he most likely had suffered from since at least 1994, and also credited their testimony that the respondent suffers from "learned helplessness." A person suffering from "learned helplessness," a condition which is associated with major depression, believes that nothing he or she does will matter or affect the outcome of any situation. The individual is able to understand and identify problems in his or her life, but "has developed a pattern of thinking where he no longer believes that he has any control in his life. He has begun to behave in a helpless manner. As a result, he dismisses opportunities for change." The hearing committee also credited Mendoza's testimony that the respondent "felt that the worst thing that would happen, would happen to him, and he felt like . . . maybe he deserved it," and that "guilt" was a classic symptom of "learned helplessness." In addition, the hearing committee credited Salhaney's diagnosis of the respondent as suffering from symptoms of trauma due to a very difficult childhood and a number of significant events later in his life,

and from dysthymia, a mood disorder also associated with depression and characterized by symptoms of low self-esteem, hopelessness, poor concentration, poor appetite, insomnia, and difficulty making decisions.

The hearing committee found, relying on both experts' conclusions, that the respondent's depression and "learned helplessness" "contributed significantly" to his "mishandling" of the client's "case, his conduct in not defending her civil suit for malpractice, his failure to appear at the supplementary process hearings, and his failure to respond to bar counsel and the disciplinary process." The hearing committee also found that the connection between the misrepresentations about the respondent's tax returns and his mental condition was "less clear," but credited Mendoza's testimony that "learned helplessness causes people not necessarily to care what they say." In other words, as Salhaney testified, while it does not cause lying, "learned helplessness" does cause denial; a person with depression will, rather than confront the facts of a situation, close his eyes and hope the problem disappears. The hearing committee credited the experts' testimony that the respondent's reaction was to "say or do what was easiest to try to make the immediate problem [the instruction of the court that he produce tax returns] go away," and determined that the

"respondent's false statement that he had filed taxes in 2004 and 2005 was not designed to avoid payment in supplementary process, but to avoid more problems by acknowledging such failure." The committee found that the respondent's false testimony that he had filed tax returns for 2004 and 2005, and the fabrication of the false 2005 return, "was not deceptive because it was not designed to mislead and avoid payment."

Based on testimony by both experts that the respondent had never before been examined by or consulted with a psychotherapist, that he had been diligent in his treatment with Salhaney, that treatment improved his ability to practice law and decreased the likelihood of future misconduct, and that if he continues in treatment it is unlikely he will have another major depressive episode or that his misconduct will recur, as well as the respondent's testimony that he planned to continue in treatment with Salhaney, the hearing committee recommended that the respondent be suspended from the practice of law for one year, with imposition of the suspension stayed for two years, on conditions. The hearing committee also credited both experts' testimony that the respondent's criminal defense work and his ability to help others who are "underserved by society" is very important to him and to his feeling of self-worth. Indeed, both experts testified that the respondent's ability to practice law

is critical to his identity and to his continuing recovery.

In deciding upon a sanction to be imposed, as to the presumptive sanction for neglect of a client matter, the committee relied on Matter of Kane, 13 Mass. Atty Disc. R. 321 (1997) (admonition where lawyer failed to act with reasonable diligence or otherwise neglected client matter and lawyer's misconduct caused little or no actual injury to client or others; public reprimand where lawyer's misconduct caused serious injury or potentially serious injury to client or others; suspension where misconduct involved repeated failures to act or pattern of neglect and conduct caused serious injury or potentially serious injury to client or others):

The committee noted that the presumptive sanction for misrepresentations to a court is a one year suspension, see Matter of McCarthy, 416 Mass. 423, 431-432 (1993), and for misrepresentations to a court under oath, two years. See Matter of Shaw, 427 Mass. 764, 764 (1998) ("an attorney who lies under oath engages in 'qualitatively different' misconduct from an attorney who makes false statements and presents false evidence"). It observed further, however, that a departure from the presumptive sanction may be warranted based on the nature of the misrepresentation, the harm resulting, and the mitigating circumstances. See, e.g., Matter of Guinane, 20 Mass. Att'y

Disc. R. 191 (2004); Matter of Long, 16 Mass. Att'y Disc. R. 250 (2000); Matter of Cross, 15 Mass. Att'y Disc. R. 157 (1999); Matter of Dolan, 10 Mass. Att'y Disc. R. 59 (1994).

The committee determined that the respondent's 2004 public reprimand for neglecting a client matter in 1996, where the client's claims had little merit, was a factor in aggravation.¹ In mitigation, in addition to its findings on the respondent's mental condition, the committee found that the defendants' motion for summary judgment in the client's case, with supporting affidavits, stated that the officer was not on duty at the time of the alleged rape, that other facts in those affidavits called the client's credibility into question, and that, "as a result it would be speculative to try to determine what harm resulted from the respondent's neglect of the case."²

The board adopted the hearing committee's findings of fact and conclusions of law, but rejected its recommended sanction of

¹ The experts testified that the neglect in the earlier matter was likely also to have been as a result of the respondent's then-undiagnosed mental condition, which apparently arose in 1994 when the respondent left the Department of Justice and entered private practice, but that they had not interviewed the respondent specifically in regard to the earlier disciplinary matter.

² The information on the proceedings in the client's case was not before the board when it made its initial recommendation, but was introduced on remand on the question of mitigation.

a one-year suspension stayed for two years, with conditions. The board stated that it was "mindful" both of the gravity of the offenses and of the "severity and complexity" of the respondent's "treatable mental illness." While it concluded that the sanction should be reduced based on the mitigating evidence, it stated further that it was "not convinced, however, that the mitigating evidence should reduce the sanction to what would likely be, in effect, no suspension at all. Some period of actual suspension is in order, in light of the respondent's repeated failures to act, the harm to the client, and the interference with the administration of justice." The board recommended that the respondent be sanctioned by a one-year suspension, with a three-month period of that suspension imposed and the remainder stayed for a period of two years subject to conditions.³ Both the respondent and bar counsel object to the sanction recommended by the board, each for different reasons.

3. Appropriate sanction. I "review de novo the question of the appropriate level of discipline to be imposed." Matter of LiBassi, 449 Mass. 1014, 1016) (2008), quoting Matter of Kennedy,

³ The stay was conditioned on the respondent's continued mental health treatment, limitations on his practice without co-counsel to the area of criminal defense, and regular attendance at a Lawyers Concerned for Lawyers (LCL) support group for the first year.

428 Mass. 156, 156 (1998). While the board's recommended sanction is entitled to substantial deference, it is not binding. See Matter of Griffith, 440 Mass. 500, 507 (2003); Matter of Tobin, 417 Mass. 81, 88, (1994). The aim of the disciplinary process "is to protect the public and maintain its confidence in the integrity of the bar and the fairness and impartiality of our legal system." Matter of Pudlo, 460 Mass. 400, 406 (2011), quoting Matter of Curry, 450 Mass. 503, 520-521 (2008). "The appropriate level of discipline is that which is necessary to deter other attorneys and to protect the public." Matter of Curry, supra at 530. The sanction imposed, however, also must not be "markedly disparate" from sanctions imposed on other attorneys who have committed comparable violations. See Matter of Goldberg, 434 Mass. 1022, 1023 (2001), and cases cited. Nonetheless, I "must ultimately decide every case 'on its own merits such that every offending attorney . . . receives the disposition most appropriate in the circumstances.'" Matter of Lupo, 447 Mass. 345, 356 (2006), quoting Matter of the Discipline of an Attorney, 392 Mass. 827, 837 (1984). "Our rule is not mandatory. If a disability caused a lawyer's conduct, the discipline should be moderated, and, if that disability can be treated, special terms and considerations may be appropriate." Matter of Schoepfer, 426 Mass. 183, 188 (1997).

The case at bar presents atypical facts, and neither party has directed me to closely analogous precedent. As a starting point, the parties do not dispute that the presumptive sanction for lying under oath to a tribunal is a two-year suspension from the practice of law. See Matter of Balliro, 453 Mass. 75, 87-89 (2009); Matter of Shaw, 427 Mass. 764, 764 (1998). The crux of the question is the factors that properly should be applied in mitigation and in aggravation, and the respective weights of those factors. For the reasons below, I conclude that the board's recommended sanction, with minor modifications, is appropriate.

Bar counsel's objections to the board's recommendation appear to rest largely on his apparent disagreement with the hearing committee's findings of credibility and weighing of the evidence, and the weight to be given to certain factors in mitigation and in aggravation. Bar counsel contends that the hearing committee erred in concluding that the respondent's misrepresentations about the tax returns were "not designed to mislead and avoid payment" but to avoid the greater problem of having failed to file Federal tax returns; improperly declined to consider the respondent's initial failure to participate in the disciplinary process as a factor in aggravation; and erred in considering the respondent's mental illness in mitigation, as the

respondent is only in the beginning stages of treatment. Bar counsel appears to challenge any view of a respondent's mental illness as an appropriate factor in mitigation unless the respondent can show, essentially, that the course of treatment is at an end and the treatment has been successful. Bar counsel argues, as he did before the board, that a one-year suspension, stayed, is too lenient, and that the sanction should be increased to a suspension for at least one year and one day, with no stay of the period of suspension. Bar counsel maintains that a stayed suspension is markedly disparate from discipline imposed in other similar cases and not in the public interest.

The respondent, on the other hand, argues that the board's decision requiring a three-month period of immediate suspension from the practice of law, with the remainder of the two-year suspension stayed for two years, is unduly harsh, will serve no protective purpose for the public but will be harmful to his recovery, and is "markedly disparate" from the sanctions imposed in other cases involving a psychiatric condition. He asks me to adopt the committee's original recommended sanction of a one-year suspension stayed for two years.

Having considered these widely disparate views, I conclude that neither would be appropriate, and that the board's recommendation, with minor modifications, should be imposed. The

board's recommendation thoughtfully balances the sometimes divergent interests involved in attempting to achieve all of the above-stated goals of attorney discipline. It recognizes the gravity of making false statements, under oath, before a tribunal, thus impeding the administration of justice, and of neglecting a client's matter to such an extent that the case is dismissed and the client loses any possibility of recovery in that venue. It recognizes also the severity and complexity of the respondent's treatable mental illness, from which the misconduct arose, as a substantial factor in mitigation. And it protects the interests and safety of the public by imposing a lengthy period of treatment and monitoring, while at the same time allowing the respondent to serve a disadvantaged and under-represented group of criminal defendants.

In short, the board's recommendation would serve to foster public confidence in the integrity of the legal system and protect the public from harmful misconduct. It imposes sanctions for clear misconduct, but moderates the severity of the discipline where that misconduct arose from a non-volitional disability rather than from a lack of attention, neglect, self-interest, or a malicious intent. Moreover, the board's recommendation is not "markedly disparate" from sanctions imposed on attorneys who have committed comparable violations of the

disciplinary rules in similar circumstances, in so far as any such similar circumstances can be identified. See Matter of Goldberg, supra, and cases cited.

The imposition of a period of immediate suspension serves to protect the public perception of the integrity of the courts and the bar, even though imposition of a sanction where the misconduct arises from a disability is unlikely to have a deterrent effect on other lawyers. The relatively short period of immediate suspension incorporates the board's determination that the misconduct occurred as a result of the respondent's mental illness, and is unlikely to recur with treatment; thus the cause of the misconduct is a substantial factor in mitigation. See Matter of Balliro, 453 Mass. 75, 87-89 (2009) (evidence in mitigation reduced presumptive suspension of two years to six months for testifying falsely under oath in a criminal trial); Matter of MacDonald, 23 Mass. Att'y Disc. R. 411, 417 (2007) (court "weigh[s] heavily" mitigating circumstances, including depression, in determining sanction for, inter alia, misrepresentation under oath).

In reaching my determination of the appropriate sanction, I start from the presumptive two-year suspension, then turn to consideration of the factors in mitigation and in aggravation, upon which the board relied, that are challenged by bar counsel.

Bar counsel appears to challenge, in general, the conclusion that the respondent's mental illness should be considered in mitigation. In this regard, and relying on two appellate cases in disciplinary proceedings in other States, bar counsel contends that where a psychological condition has "caused or contributed to misconduct," a respondent must demonstrate "a meaningful and sustained period of successful rehabilitation" before that condition can be consideration in mitigation. See Matter of Hull, 767 A. 2d. 197, 201 (Del. 2001). Our cases have not adopted this requirement, which might well hamper, if not preclude, consideration of a mental illness or disability in many cases. Instead, we have consistently considered evidence of a disability as mitigating. See Matter of Schoepfer, 426 Mass. 183, 188 (1997) ("If a disability caused a lawyer's conduct, the discipline should be moderated, and, if that disability can be treated, special terms and considerations may be appropriate"). See, e.g., Matter of Johnson, 20 Mass. Att'y Disc. R. 272 (2004); Matter of Guidry, 15 Mass. Att'y Disc. R. 255 (1999).

The board observed that the committee was "justified in concluding that learned helplessness and major depression contributed to and illuminate the respondent's condition." In the totality of the circumstances here, the committee's findings, adopted by the board, and the record upon which those findings

rely, demonstrate "compelling evidence of special mitigation."
See Matter of Johnson, supra ("substantial financial difficulties, heavy drinking, depression, and emotional turmoil as a result of" respondent's brother's death mitigated presumptive indefinite suspension to thirty-month suspension); Matter of Guidry, supra ("extreme financial and emotional distress resulting from grave and acute family problems" in two years preceding misconduct support mitigation of indefinite suspension to thirty-month suspension).

Bar counsel challenges also, as he did before the board, the hearing committee's conclusion that the respondent's misrepresentations about his tax returns, and the false 2005 tax returns, were not made in an effort to avoid paying his client the judgment due. The committee found, based on Mendoza's testimony, that the respondent's misrepresentations were not designed to avoid payment, but, rather, to avoid the even greater problems he would confront by an admission to a failure to file and pay taxes. The board agreed, noting in addition that the respondent's false statement about having filed the 2004 and 2005 tax returns, "does not directly address or even implicate respondent's ability to pay a judgment." The board observed that the committee's findings concerning the false statements went to the issue of mitigation, whereas bar counsel challenged in

essence the severity of the sanction. The committee and the board were entitled to credit the respondent's experts. See Matter of Curry, 450 Mass. 503, 519 (2008), quoting Matter of Barrett, 447 Mass. 453, 460 (2006), and cases cited (arguments based on credibility determinations generally outside scope of court's review; hearing committee is "sole judge of the credibility of testimony presented at the hearing" whose credibility determinations will be upheld unless court is "satisfied 'with certainty' that a credibility determination was 'wholly inconsistent with another implicit finding'").

Bar counsel contends that while "the committee's reasoning may have some basis as to the respondent's lies about having filed tax returns, there simply is no basis for the same conclusion as to the fabricated tax return and its production to [the client's] counsel. The fabricated tax return understated the respondent's income and his marital status with the obvious purpose of misrepresenting his ability to pay [the client]." This argument, unsupported by reference to the record, reflects only bar counsel's assessment of the reasons for the respondent's actions. The board and the committee were entitled to conclude otherwise on the evidence before them. See Matter of Saab, 406 Mass. 315, 328 (1989), quoting S.J.C. Rule 4:01, § 8(3), and Salem v. Massachusetts Comm'n Against Discrimination, 404 Mass.

170, 174 (1989) (hearing committee is "the sole judge of the credibility of the testimony presented at the hearing"; "[a] mere reading of the transcript is not an adequate substitute for actually observing and hearing the witnesses in determining credibility"). Moreover, nothing in the record supports a conclusion that the respondent's misrepresentations about the tax returns and his creation of the false tax return were made for different reasons. Both the statements and the false tax return are consistent with the hearing committee's and the board's findings, based on the experts' opinions, and their view of the respondent's testimony, that the respondent made the misrepresentations in an attempt to avoid even greater difficulties for not having filed tax returns. In addition, as the board stated, the respondent's 2005 tax return "does not directly address or even implicate respondent's ability to pay a judgment" in October 2006.

Bar counsel maintains also that the board failed to weigh properly the respondent's initial failure to participate in the disciplinary process. Failure to participate in the disciplinary process may be considered as a factor in aggravation. See Matter of Gustafson, 464 Mass. 1021, 1023-1024 (2013). As the board noted, however, the committee did weigh and consider this factor, pointing explicitly to the experts' testimony as to the reasons

for the respondent's failure to participate, again as a result of his mental illness. The board stated that the respondent's psychological condition properly could be considered to have contributed to his conduct of initially failing to respond to bar counsel's investigation, just as the respondent failed to respond to the client's requests for information on her matter, failed to respond to the client's malpractice claim, and failed to respond to the supplementary process action.

Bar counsel maintains that a suspension of one year and a day would have the salutary effect of requiring a hearing prior to the respondent's reinstatement, at which he can be asked to demonstrate his then-current fitness to practice law. However, if, after successfully meeting the terms of the discipline imposed over a two-year period, the respondent moves to dismiss the stay, and bar counsel opposes such motion, bar counsel may file a notice of objection at whatever point the respondent seeks to have the stay of suspension lifted. See S.J.C. Rule 18(1)(c).

Bar counsel maintains also that "it would not be appropriate to permit the respondent to practice law" where he is "in the earliest phase of treatment and has not yet come to grips with longstanding problems." Bar counsel initially made this argument at a hearing before me on whether the matter should be remanded to the hearing committee to conduct additional evidentiary

hearings and to make a determination of the appropriate sanction in light of the respondent's then newly-diagnosed mental illness. Since that time, the respondent has continued to receive mental health treatment, as well as treatment by his primary care physician and a number of specialists for various serious medical conditions. He has been prescribed antidepressant medication by his physician and is taking the medication as prescribed; and has apparently been practicing successfully in the area of criminal defense while disciplinary proceedings were ongoing. Pursuant to the order of remand, he has filed monthly affidavits of compliance with the conditions imposed by that order, as has his treating therapist.

I am mindful that the respondent's misconduct was serious and sustained over a lengthy period. Neither the evidence in the record nor the board's findings, however, suggest that the respondent's continuing practice of law, subject to conditions, would be harmful to the public at this point. Bar counsel stated at a subsequent hearing before me that there have been no complaints from any clients, and has not since asserted otherwise. To the contrary, the respondent's services to low income clients provide a public benefit. See Matter of Abelson, BD-2008-001 (2008). Moreover, both experts testified that the respondent's continued ability to practice law, and in particular

to assist low-income clients in criminal defense, is critical to his perception of his self-worth and to his continuing recovery.

3. Disposition. An order shall enter suspending the respondent from the practice of law for one year, with imposition of all but the first three months of that suspension to be stayed for two years, subject to compliance with the following conditions:

1) the respondent shall continue his psychological treatment, meeting as frequently as recommended by his treating therapist;

2) the respondent shall continue to see his primary care physician and shall comply with that physician's recommendations;

3) if the respondent's treating therapist and his primary care physician determine that such additional treatment is warranted, the respondent shall see a psychiatrist regarding possible medication and shall comply with the psychiatrist's recommendations;

4) the respondent shall limit his practice to criminal defense unless he is serving with co-counsel on a matter, in which event counsel shall be provided forthwith, and acknowledge receipt of, a copy of this memorandum of decision;

5) the respondent shall regularly attend an LCL support group; and

6) the respondent shall make quarterly reports to bar counsel on his compliance with these conditions.

By the Court,



Barbara A. Lenk
Associate Justice

Entered: April 7, 2014