SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION: FIRST JUDICIAL DEPARTMENT

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In the Matter of Jeff Doe,
an attorney and counselor-at-law:

Attorney Grievance Committee
for the First Judicial Department,

Petitioner,

Jeff Doe,
(OCA Atty. Reg. No. xxx),

Respondent.

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THE ATTORNEY GRIEVANCE COMMITTEE'S CONSOLIDATED AFFIRMATION IN OPPOSITION TO RESPONDENT'S MOTION TO DISMISS AND IN SUPPORT OF ITS CROSS MOTION FOR SUMMARY JUDGMENT SUSTAINING THE CHARGES

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TABLE OF CONTENTS

Si Aydiner, an attorney duly admitted to practice law in the State of New York, affirms the following is true and correct under the penalty of perjury:

1. I am a staff attorney in the Office of Jorge Dopico, Chief Attorney to the Attorney Grievance Committee (Committee) for the First Judicial Department, as designated pursuant to 22 NYCRR §§ 603.4(a) and 1240.4, the petitioner herein and am fully familiar with the facts and circumstances of this matter. This consolidated affirmation is in opposition to the motion to dismiss the petition by respondent Jeff Doe, Esq. (respondent) and in support of the Committee's cross motion for summary judgment sustaining the charges in the petition. For the reasons set forth below, respondent's motion should be denied, the cross motion sustaining respondent's violation of Rules 1.2(d) and 8.4 of the Rules of Professional Conduct (Rules) granted, and a referee appointed for a hearing on sanction.

PRELIMINARY STATEMENT

2. Respondent's motion is a transparent attempt to undo the consequences of his own actions and to impermissibly narrow a lawyer's ethical obligations. In June 2014 respondent met with a *60 Minutes* undercover operative—a putative agent of a West African government minister—intent on introducing millions into the United States financial system. Respondent's own videotaped words demonstrated his clear understanding about the provenance of this operative's money: "[s]ome people call it bribes. . . . They're paying the minister to get the [mining] license." Respondent's

own words also demonstrated an appreciation for the illicit task at hand: "[t]he idea is hiding it in plain sight."

3. Once the money's illicit origin was confirmed, respondent—motivated by the prospects of retention—advised the operative how to launder money into the United States and how to successfully navigate a bank's legally mandated inquiry into the money's provenance. All while respondent concomitantly pitched his bona fides by emphasizing banking connections, prior analogous experience, and the skill of deliberate ignorance. Stated differently, respondent advised a person he did not know, could not have trusted, and knew nothing about how to launder money while demonstrating an unsettling level of interest in being retained to perform these services. Respondent's arguments to the contrary are meritless and no issues of fact surround his violation of Rules 1.2(d) and 8.4(h).

BACKGROUND

I. THE UNDERLYING MISCONDUCT RECORDED ON TAPE

4. On 10 June 2014 respondent met an individual identifying himself as Ralph Kayser (Kayser) in his New York County law office.[1] (Joint Stipulation ¶ 1

[1] Kayser recorded (audio and video) his entire meeting with respondent for an exposé that appeared on the news program *60 Minutes* entitled "Lowering the Bar." (Petition ¶ 6). The segment originally aired on 31 January 2016 (viewed by 9.3 million people) and was rebroadcast on 28 August 2016. https://www.cbsnews.com/news/hidden-camera-investigation-money-laundering-60-minutes/; https://tvseriesfinale.com/tv-show/60-minutes-season-48-ratings-3819/.

(Attached as Exhibit-A); Petition ¶¶ 3, 5 (Attached as Exhibit-B); *see also* Resp't Ans. to Petition (Attached to Exhibit-B)). Respondent was not acquainted with Kayser and performed no background research about him prior to their meeting. (Joint Stipulation ¶ 4; Examination Under Oath (EUO) 63:9-13 (Attached as Petition Exhibit-A)). Kayser represented himself as appearing on behalf of a minister of mines from a West African country. (EUO Tr. 79:14-21; Transcript of Meeting (Meeting Tr.) 2:17–3:5 (Attached as Petition Exhibit-B)).[2] Respondent understood minister to mean "government official." (Joint Stipulation ¶ 7; EUO Tr. 80:8-10 ("I mean it was clear to me he was a government official.")). And the purpose of this meeting was to determine whether respondent would be retained to represent the minister in various transactions. (Joint Stipulation ¶ 6; EUO Tr. 69:8-17). Furthermore, respondent knew he was competing for the minister's business because Kayser was, in fact, meeting other lawyers. (EUO Tr. 69:18-24, 102:15-17 (respondent describing the meeting as a "beauty contest.")).

[2] Respondent's claim that there was an "issue" with the "accuracy of the transcript" of his meeting with Kayser is more bombast than bombshell. Initially, the Joint Stipulation contains an errata including respondent's mitigating statements. Respondent, however, fails to inform this court that his initial errata *failed to identify* these self-serving statements because they were extraordinarily difficult to discern on audio. (Letter from Resp't to Kam Yuen dated 3 October 2018 (acknowledging that "I missed them in the errata letter.") (Attached as Exhibit-C)). After multiple viewings by both parties, the corrected errata was incorporated into the Joint Stipulation and any claim of inaccuracy is moot. Respondent's desire to advance an argument like this—where he omits his own culpability—demonstrates the true pathology of this case.

5. Almost immediately, Kayser informed that his "minister has acquired over the time quite a bit of money. . . . So more and more companies are competing for the same rights, mining rights. In order to get them, they pay. How should I name it? Facilitation money. How would you name it?" (Joint Stipulation ¶ 8; Meeting Tr. 2:20–3:5). And based on this description, respondent immediately replied:

> Some people call it bribes. . . . They're paying the minister to get the license.

(Joint Stipulation ¶ 9; Meeting Tr. 3:6-13). Kayser promptly confirmed respondent's impression by stating, "[s]o - okay, bribe. It's actually bribe." (Meeting Tr. 3:11; EUO Tr. 83:13-17). Other than linking the bribes to "facilitation" payments, Kayser did not identify any other source of the minister's money. (Joint Stipulation ¶ 10). Nor did respondent inquire into whether there was, in fact, any non-bribe source of the minister's money. (EUO Tr. 98:6-23; *see also id.* 97:17-20 (acknowledging the failure to inquire whether facilitation payment violated African law)).

6. Kayser detailed his minister's objectives: successfully introduce millions into the United States banking system, close on purchases of a Brownstone, yacht, plane, and maintain the minister's anonymity. (Joint Stipulation ¶ 11). With anonymity being the meeting's "big point." (Joint Stipulation ¶ 13; EUO Tr. 78:9-11). Acknowledging the obvious concerns presented in Kayser's narrative, respondent told Kayser, "I don't want it to *look like I'm laundering money*" while making it the minister's obvious goal. (Meeting Tr. 5:17-18 (emphasis added)). Respondent,

thereafter, addressed each of Kayser's concerns in making his pitch to prevail in the "beauty contest" for the minister's business. (EUO Tr. 102:15-17). In making this pitch, however, respondent intentionally avoided a frank discussion with Kayser about money laundering because it did not suit respondent's pecuniary interests:

> Q. Were you concerned that if you had raised the issue of money laundering any more than you did, it would have *cast you in an unfavorable light* to Mr. Kaiser [*sic*]?
>
> A. That's probably fair.
>
> Q. Which may have increased the *probability* that you would not have been retained?
>
> A. You're right. I want to at least get past the first phase.
>
> . . .
>
> Q. []. So you have some concern that if you *inquire too much too quickly* it could result in you not being retained.
>
> A. *Bye-bye, client*. Exactly.

(*Id.* 102:18—103:3, 184:11-15; *see also id.* 165:22-23 (emphasis added)).

7. Respondent then advised Kayser on: the formation of a domestic limited liability corporation (LLC), respondent's willingness to serve as the LLC's registered agent, the wiring and holding of money in respondent's escrow account, establishing a trust to have "a couple of layers" of identity cover, and avoiding offshore entities because "it lends itself to a red flag." (Joint Stipulation ¶¶ 14-15 (admitting legal advice); Meeting Tr. 6-8, 13-15, 22). Respondent was aware,

through his experiences, that banks employed *Know Your Customer* (KYC)[3] protocols in order to determine the beneficial owner and provenance of its deposits. (Joint Stipulation ¶ 16). Equally cognizant of the banking system's affirmative efforts to combat money laundering, respondent emphasized his close relationship with a local Chase Bank branch (Meeting Tr. 30-32) to comfort Kayser that any KYC inquiry would be favorably resolved (Joint Stipulation ¶ 17(a)-(d); EUO Tr. 118:13—121:15).

II. PROCEDURAL POSTURE

8. Following a vote of the Committee chaired by Ernest J. Collazo, Esq., this petition was filed on or about 10 May 2018. Respondent timely served a response to the petition with an answer on or about 10 September 2018. The parties filed their Joint Stipulation of Disputed and Undisputed Facts (Joint Stipulation) on 13 February 2019. Respondent then filed this motion.

[3] KYC, detailed later, is a protocol, pursuant to Bank Secrecy Act, 31 U.S.C. § 5311, to "prevent banks from being used, intentionally or unintentionally, by criminal elements for money laundering activities." https://en.wikipedia.org/wiki/Know_your_customer; *See infra* § II.D.

ARGUMENT

I. STANDARD OF REVIEW

A) Disciplinary Proceedings And CPLR Article IV

9. This court is *not* required to refer this matter to a referee for a determination on the issue of a rule violation when the record demonstrates no issue of fact on the charges in the petition. 22 NYCRR § 1240.8(b)(1) ("the court *may* refer a formal disciplinary proceeding to a referee for a hearing on any issue that the court deems appropriate.") (emphasis added)). Disciplinary proceedings, such as this, are also governed pursuant to Article IV of the Civil Practice Laws and Rules (CPLR). 22 NYCRR § 1240.8(a)(1). And under Article IV the "court shall make a summary determination upon the pleadings, papers and admissions to the extent that no triable issues of fact are raised. The court may make *any orders* permitted on a motion for summary judgment." CPLR § 409(b) (emphasis added).

B) Summary Judgment

10. In order to obtain summary judgment, a movant must "tender[] sufficient evidence to demonstrate the absence of any material issues of fact." *Alvarez v. Prospect Hosp.*, 68 N.Y.2d 320, 324, 508 N.Y.S.2d 923, 925 (1986). The initial burden of showing that there is no material issue of fact lies with the movant. *Ferluckaj v. Goldman Sachs & Co.*, 12 N.Y.3d 316, 321, 908 N.E.2d 869, 872 (2009). A fact is material when it can "'affect the outcome of the suit under the

governing law.'" *People v. Grasso*, 50 A.D.3d 535, 545, 858 N.Y.S.2d 23, 32 (1st Dep't 2008) (citing *Anderson v. Liberty Lobby, Inc.*, 477 US 242, 248, 106 S. Ct. 2505 (1986)). Because summary judgment is outcome determinative, the evidence—and all inferences—are viewed in the light most favorable to the non-movant. *Sheryll v. L & J Hairstylists of Plainview*, 272 A.D.2d 603, 604, 709 N.Y.S.2d 429, 430 (2d Dep't 2000). But the court can nevertheless reject evidence "'tailored to avoid the consequences of . . . earlier testimony'" in this context. *Fields v. Lambert Houses Redevelopment Corp.*, 105 A.D.3d 668, 671 (1st Dep't 2013) (rejecting affidavit submitted in opposition to a motion for summary judgment that was contradicted by earlier testimony) (internal citation omitted).

II. RESPONDENT VIOLATED RULE 1.2(d) AS A MATTER OF LAW

11. Under Rule 1.2(d) "[a] lawyer shall not counsel a client to engage, or assist a client, in conduct that the lawyer knows is illegal or fraudulent, except that the lawyer may discuss the legal consequences of any proposed course of conduct with a client." Rule 1.2(d). The *prima facie* violation requires a lawyer's: (1) counseling or assisting, (2) a client, (3) in conduct, with (4) knowledge of illegality or fraud, while (5) immunizing the lawyer from discussing the consequences of conduct.[4] Roy D. Simon, Simon's New York Rules of Professional Conduct Annotated 108-09

[4] The consequences exception has not been advanced by respondent. Nor is there any basis in the record to infer that it could have been colorably argued.

(2017). Each element is discussed in turn, non-sequentially, to minimize redundancy.

A) Kayser As Client: Respondent Acknowledged The Meeting Was Privileged And Held With A View Toward Retention

12. Use of the word "client" requires the parties have a lawyer-client relationship. The Rules, however, do not define the term client. Though its preamble suggests this was a deliberate omission: "[w]hether a client-lawyer relationship exists for any specific purpose can depend on the circumstances and may be a question of fact." (Rules, Preamble ¶ [9]). Given the Rules' silence, this Department instructfully recognizes formation of the lawyer-client relationship on terms identical here:

> [T]he attorney client relationship can encompass a preliminary consultation even where the prospective client does not ultimately retain the attorney. . . [where the] *preliminary consultation [was held] 'with a view toward retention of [the lawyer]*.'

Pellegrino v. Oppenheimer & Co., Inc., 49 A.D.3d 94, 99 (1st Dep't 2008) (internal citations omitted) (emphasis added); *accord Seeley v. Seeley*, 129 A.D.2d 625, 627 (2d Dep't 1987); *see also In re Koplik*, M-4179/5384 (1st Dep't 2018) (granting discipline by consent under a similar narrative advanced by Kayser for the lawyer's violation of Rule 1.2(d) (Attached as Exhibit-D); *In re Jankoff*, 165 A.D.3d 58, 81 N.Y.S.3d 733 (1st Dep't 2018) (same) (Jointly attached to Exhibit-D); *In re John Doe*, M-4530 (1st Dep't 2018) (confidential order sustaining Admonition under

Kayser narrative for violating Rules 1.2(d) and 8.4(h) (Jointly attached to Exhibit-D (redacted for Judiciary Law § 90(10))).

13. Applying these principles here, respondent conceded that the purpose of Kayser's consultation was with a view toward his retention to provide legal services. (Joint Stipulation ¶ 6; EUO Tr. 68:19-25, 69:10-14, 76:23—77:4). This is consistent with respondent's testimony that Kayser was meeting other lawyers and that respondent actively competed for the minister's business. (EUO Tr. 69:18-24 (testifying "I was aware that [Kayser] was seeing other lawyers."), 102:15-17 (describing the consultation as, "I'm just part of a beauty contest is the way to put it."). Furthermore, respondent's letter-response to the Committee's opening letter acknowledged, his belief, that this meeting was privileged while repeatedly characterizing Kayser as a client. (Letter from Respondent to Committee dated 28 June 2016 pp. 1 (Attached as Exhibit-E) ("I write to respond . . . regarding a supposedly *confidential attorney client* discussion."), 4 ("I warned that the *client* had to consider. . . ."), 7 ("It is not a violation of any ethical principle known to me *to discuss a legal point and show a client* what he or she can do within the bounds of the applicable law.") (emphasis added); *see also* EUO Tr. 91:15—92:4 (testifying "[t]his was supposedly confidential. I guess I did think of it as privilege.")). And respondent's letter-response, which specifically addressed Rule 1.2(d), failed to argue that Kayser was *not* a client as required.

14. Respondent's present posture, that this meeting was not confidential, is contradicted by his letter-response and EUO testimony and should be rejected as a matter of law on the disjunctive bases of estoppel against inconsistent positions or the doctrine of inconsistent evidence tailored to contradict a prior position. *Fields*, 105 A.D.3d at 671 (rejecting tailored testimony that contradicts an earlier position); *Nestor v. Britt*, 270 A.D.2d 192, 193 (1st Dep't 2000) (holding that the doctrine of "'estoppel against inconsistent positions, a party is precluded from inequitably adopting a position directly contrary to or inconsistent with an earlier assumed position in the same proceeding.'") (internal citation omitted)).

15. In his motion, respondent asserts that "[t]here was no client . . . no possibility of evading the law." (Resp't Aff. ¶ 13). Respondent's suggestion that there was no lawyer-client relationship between he and Kayser because of the underlying ruse is an issue of law that has been rejected by this court. *See In re Koplik*, M-4179/5384 (1st Dep't 2018); *In re Jankoff*, M-1365/3174 (1st Dep't 2018); *In re John Doe*, M-4530 (1st Dep't 2018). Collectively, respondent stated that the purpose of the meeting was to assess his potential retention, he comported himself in a manner to successfully win the "beauty contest" for the minister's business, his letter-response admitted the meeting was privileged—the gravamen of any lawyer-client relationship—and expressly referred to Kayser as a client while failing to advance the converse argument. Respondent's attempt to feign an issue of fact by

contradicting his prior testimony and positions are transparent and should be rejected as a matter of law. For this and the other reasons stated, there is no issue of fact concerning this element.

B) Knowledge Of Illegality Or Fraud: Respondent Acknowledged A "Bribe," "Hiding It In Plain Sight," And Prior Analogous Experience Establishes Actual Knowledge

16. The term "knows" is defined by the Rules as "*actual* knowledge of the fact in question. . . . [though] knowledge may be inferred from circumstances." (Rule 1.0(k) (Terminology) (emphasis added)). The term "illegal" is not defined by the Rules though it includes criminal conduct and conduct that is intentional but not necessarily violative of a statute or ordinance. Simon, *supra*, at 110. Fraud, however, is defined by the Rules as conduct that is "fraudulent under the substantive or procedural law of the applicable jurisdiction or has a purpose to deceive, provided that it does not include conduct that, although characterized as fraudulent by statute or administrative rule, lacks an element of scienter, deceit, intent to mislead." Rule 1.0(i) (Terminology) (emphasis added).

17. As discussed, the consultation began with Kayser describing the provenance of his West African minister's money as facilitation payments made by companies to obtain mining rights. (Joint Stipulation ¶ 8; Meeting Tr. 2:20—3:4). Respondent's

first, and only, reaction to this description was that "[s]ome people call it bribes."[5] (Joint Stipulation ¶ 9; Meeting Tr. 3:6; EUO Tr. 81:20-22 (testifying that bribe money "was my first reaction.")). And this was immediately confirmed by Kayser who stated, "[s]o – okay, bribe. *It's actually bribe*." (Meeting Tr. 3:11 (emphasis added)). Respondent also demonstrated substantive appreciation for the basis of these bribes:

> Respondent: They're paying the minister to get the license.
>
> Mr. Kayser: Exactly, otherwise, they wouldn't get it. . . .
>
> . . .
>
> Respondent: Well, that's between him . . . and the mining company and the government [employing the minister].

(*Id.* 3:6-21). Actual knowledge is also buttressed by other evidence. For example, respondent manifested scienter of Kayser's illicit aim in his statement: "I don't want it to look like I'm laundering money. . . . And that could cost me my [law] license." (*Id.* 5:17-21). Likewise, respondent disabused Kayser of using offshore corporations because "it lends itself to a red flag," recommended the formation of a New York corporation because it "attracts less attention, it's local," and advised that the purpose of any transaction involving the minister "is hiding it in plain sight." (Joint Stipulation ¶ 14(e); Meeting Tr. 14:24—15:5, 22:16-21, 52:12-13). Read together,

[5] Respondent's attempt to distinguish this case with *Jankoff* and *Koplik* is meritless. Of these cases respondent is the *only* lawyer to specifically cause Kayser to explicitly agree that the money was a "bribe." Whereas *Jankoff*, *Koplik*, and *John Doe* contained strong innuendo, this case involves an actual agreement on the issue.

these statements show direct knowledge of the proscribed activity and a plan on effectuating the illicit aim.

18. It was, of course, this scienter that drove respondent to emphasize—in a pitch to win the "beauty contest" for retention—his relationship with a local Chase branch:

> Q. When you informed Mr. Kaiser [*sic*] that the people at Chase are familiar with you, did you do so in order to comfort him that you would have a certain degree of credibility if questions concerning Know Your Customer had arisen?
>
> A. A little bit, yes. . . .
>
> . . .
>
> Q. [] Did you pick Chase also because you had a relationship with [banker] Ms. Price that was substantial in nature?
>
> A. Of course. Well, substantial meaning I've known her for many years. . . . It *shortens the conversation*.

(Joint Stipulation ¶ 17(a)-(d); EUO Tr. 120:24—121:9 (emphasis added)). The juxtaposition of this testimony against the consensus of a bribe allows for only one permissible inference: respondent intentionally contoured the information provided to Kayser in order maintain and maximize the interest of a putative money launderer during the meeting with a full understanding of the illicit aim. (EUO Tr. 165:22-23, 167:3-10 (describing the anticipated legal fee as a "nice engagement")). Knowledge of Kayser's illicit aim is further buttressed by respondent's identification of analogous experience. During the meeting, against the backdrop of a bribe, respondent volunteered that he represented a scrap metal company in England.

(Meeting Tr. 25:6-18). And that respondent established bank accounts at Chase for this entity while telling Kayser, a money launderer, that the scrap metal outfit's money was: "[w]ell, I'm not sure how proper the money is. I don't ask." (*Id.* 26:4-5).

19. Respondent offers two defenses to this element and neither creates an issue of fact. First, respondent cites mitigating statements made to Kayser that respondent does not actually launder money and would only perform services that are legal. (Resp't Aff. ¶ 17; Joint Stipulation ¶ 24 (errata to meeting transcript)). Mitigating statements, like those proffered by Doe here, have been rejected by the court as a defense to a violation of Rule 1.2(d) where advice furthering the illicit aim has also been given. *In re Jankoff*, M-1365/3174 (finding a violation of Rule 1.2(d) where the lawyer "informed [Kayser] that he would have to consult with an expert to determine whether the money could be moved anonymously and to make sure that the money was 'clean' and not criminally derived.").

20. Second, respondent advances the meritless argument that Kayser's statement of his minister wanting to "abide by the law" and do "everything legally" in the United States negates respondent's actual knowledge. Neither statement creates an issue of fact because they have been taken out of context as a matter of law. Specifically, Kayser's statement that his minister would "abide by the law" involved his willingness to pay taxes *after* the money entered the United States. (Meeting Tr.

16:21-24 (Kayser stating "he would pay [taxes], he would abide by the law, *but not raising attention of where the money comes from*.") (emphasis added)). And Kayser's statement that the minister desired to do "everything legally" was made *well* after the parties reached the bribe consensus. Though he fails to acknowledge it here, respondent conceded this at his EUO:

> A. Yes. Then Mr. Kaiser [*sic*] said, pretty much wants to do everything legally. *So I picked up on that and began* --
>
> Q. Well, that comment occurred *later* in the conversation.
>
> A. *Much later*. Yeah, you're right.

(EUO Tr. 108:16-22 (emphasis added)).

21. Actual knowledge, therefore, is supported by direct and circumstantial evidence and this element is established as a matter of law.

C) Counseling Or Assisting In Conduct: Respondent Conceded Providing Kayser With Legal Advice During The Meeting

22. Counseling is "synonymous with the word 'recommend.' A lawyer must not recommend that the client begin or continue a course of conduct the lawyer knows is illegal or fraudulent." Simon, *supra,* at 108 (emphasis added). "The prohibition against counseling a client to engage in illegal or fraudulent conduct applies even if the *lawyer does no other work on the matter*." *Id.* (emphasis added). Respondent, here, has admitted to providing Kayser with legal advice. (Joint Stipulation ¶ 15). This advice included the formation of an LLC, respondent's willingness to serve as

the LLC's registered agent, how the LLC maintained the minister's privacy, the wiring of money into respondent's escrow account, and avoiding an offshore trust because it raises "red flags." (*Id*. ¶ 14(a)-(e)). And the Joint Stipulation is entirely consistent with respondent's EUO testimony and his letter-response to the Committee. (EUO Tr. 98:2-3 (averring "I was giving him advice on that basis."), 123:23-25 (averring "It's legal advice, yeah, no question."); (Letter from Respondent to Committee dated 28 June 2016 pp. 2 ("Among other things, *I advised him* against forming an offshore company. . . . *I also advised* that if 'Kayser's' purported client was investing. . . ."); 7 ("It is not a violation of any ethical principle known to me *to discuss a legal point and show a client what he or she can do* within the bounds of the applicable law.") (emphasis added)).

D) <u>The Committee's Money Laundering Expert Establishes That Respondent Provided Specific Advice To Advance Kayser's Illicit Agenda</u>

23. In support of its *prima facie* case, the Committee has designated Sharon Cohen Levin (Levin) as an expert in money laundering, anti-money laundering, and related regulations. (Affidavit of Sharon Cohen Levin (Attached as Exhibit-F)). Levin, a former Chief of the Money Laundering and Asset Forfeiture Division in the U.S. Attorney's Office for the Southern District of New York, avers that money laundering is "the criminal practice of making the proceeds of criminal activity

appear legitimate by disguising its origin." (*Id.* ¶¶ 2, 5). And that the three stages to money laundering are placement, layering, and integration. (*Id.* ¶ 5).

24. Placement is the initial introduction of unlawful proceeds into the financial system and is, because of the affirmative obligation of financial institutions to combat money laundering, the most vulnerable stage for a money launderer. (*Id.* ¶ 5). For example, the Bank Secrecy Act (BSA), 31 U.S.C. § 5311, *requires* banks establish compliance programs that are, as discussed, known as KYC. (*Id.* ¶ 18). In addition to knowing its customer and the provenance of its deposits, banks are required to perform customer due diligence by screening customers against prohibited person lists maintained by various government agencies. (*Id.*). Layering is the "is the movement of unlawful proceeds within the financial system to conceal its origin" and integration "is where the unlawful funds now appear legitimate and can be used to purchase assets like real property." (*Id.* ¶ 5).

25. According to Levin, the illicit nature of the conversation between respondent and Kayser was confirmed early with the consensus of a bribe. (*Id.* ¶ 24; Meeting Tr. 3:11 (Kayser stating, "[s]o – okay, bribe. It's actually bribe[.]")). Against this backdrop, respondent made three recommendations that directly furthered the aim of money laundering. (Levin Aff. ¶¶ 21-23). First, respondent recommended establishing a shell LLC to hold money in lieu of the minister. (*Id.* ¶ 21; Joint Stipulation ¶ 14(a)-(c) (admitting this was legal advice)). Not surprisingly, shell

corporations are "an easy and cost-effective way to conceal beneficial ownership." (*Id.* ¶ 21). Likewise, respondent "advised Kayser against establishing an offshore trust because 'it lends itself to a red flag.'" (*Id.*). And constitutes advice to minimize the minister's exposure during the placement stage. (*Id.*; Joint Stipulation ¶ 14(e) (admitting this was legal advice)).

26. Second, respondent, obviously aware of a KYC inquiry that would follow a million-dollar escrow deposit, created plan to deceive banking authorities by telling Kayser:

> I'd say to my bank, if they ask us, well, I've got a rich client, he's buying a yacht. Next question please, you know. . . . They know I have rich clients.

(Levin Aff. ¶ 22; Meeting Tr. 30:6-11). This conduct would, of course, directly undermine the BSA and related statutes. Third, respondent demonstrated a willingness to be deliberately ignorant concerning the origin of the minister's money by referencing an existing overseas client's domestic deposits as "I'm not sure how proper the money is. I don't ask." (Levin Aff. ¶ 23; Meeting Tr. 26:4-5).

27. Against this backdrop, Levin avers that respondent provided advice on how the minister could maintain control while anonymous, how banking authorities could be deceived in a KYC inquiry, and how respondent, himself, would be the right lawyer to handle these matters because of his willing ignorance. (Levin Aff. ¶ 24). Respondent's statements concerned all three stages of money laundering and "the

course of action proposed by respondent would violate the money laundering laws." (*Id.*).

III. RESPONDENT'S VIOLATION OF RULE 8.4(h)

28. Rule 8.4(h) prohibits a lawyer from "engag[ing] in any other conduct that adversely reflects on the lawyer's fitness as a lawyer." Rule 8.4(h). The comments to this Rule, instructfully, posit that "[l]awyers are subject to discipline when they violate or attempt to violate the Rules []." *Id.*, Comment [1]. Indeed, "[m]any kinds of illegal conduct reflect adversely on fitness to practice law." *Id.*, Comment [2]. Respondent's suggestion that his conduct—advising a putative money launderer—does not rise to a Rule 8.4(h) violation because it is a case of first impression is entitled no weight because it has been rejected by this court. *In re Koplik*, M-4179/5384 (1st Dep't 2018) (granting discipline by consent under a similar narrative advanced by Kayser for violating Rules 1.2(d) and 8.4(h)); *In re Jankoff*, M-1365/3174 (1st Dep't 2018) (same); *In re John Doe*, M-4530 (1st Dep't 2018) (sustaining Admonition for violating Rules 1.2(d) and 8.4(h)).

29. "As far back as 1856, the Supreme Court acknowledged that 'it is difficult, if not impossible, to enumerate and define, with legal precision, every offense for which an attorney or counsellor ought to be removed.' Broad standards governing professional conduct are permissible and indeed often necessary." *In re Holtzman*, 78 N.Y.2d 184, 190-91 (1991) (internal citation omitted). Indeed, the correct rule—

that respondent fails to cite—for determining the applicability of Rule 8.4(h) is "whether a reasonable attorney, familiar with the Code and its ethical strictures, would have notice of what conduct is proscribed." *Id.* at 191 (internal citation omitted). Applying these principles here, respondent's self-serving statements to Kayser establish notice of proscribed conduct—respondent bluntly stated, "I don't want it to *look like* I'm laundering money. . . . And that could cost me my [law] license." (Meeting Tr. 5:15-21 (emphasis added)). With this backdrop, respondent nevertheless counseled Kayser on introducing millions in bribe money into the United States, "hiding it in plain sight" and avoiding certain transactions because they raise "red flags," while emphasizing that respondent's relationship with a local Chase branch could be used to favorably negotiate any KYC inquiry—an inquiry specifically geared to combat money laundering. As a corollary, respondent—in describing to Kayser his representation of an overseas scrap metal company—stated, "[w]ell, I'm not sure how proper the money is. *I don't ask*." (*Id.* 26:4-5 (emphasis added)). The significance of this statement, in the context of the entire meeting, is that it displays the troublesome pathology of demonstrating analogous experience.

30. Collectively, respondent—desirous for the minister's business—pitched the skills of experience in concealing money and deliberate ignorance. Skills pitched to an individual whose purpose was to launder millions in bribe money into the United States. Skills pitched to an individual for the world to see on *60 Minutes* to the

embarrassment of lawyers everywhere. Standing alone, or in conjunction with Rule 1.2(d), the unrebuttable evidence establishes a violation of Rule 8.4(h). *E.g.*, *In re Jankoff*, M-1365/3174.

IV. RESPONDENT'S SELF-SERVING MITIGATING STATEMENTS DO NOT MILITATE AGAINST ANY RULE VIOLATION

31. Respondent strenuously argues that his mitigating statements demonstrate no Rule violation. This argument is, however, entitled to no weight. Initially, even assuming the underlying truth of respondent's mitigating statements (that he does not launder money), the record demonstrates Rules 1.2(d) and 8.4(h) have been violated as a matter of law. For example, notwithstanding any mitigating statement, respondent continued to advise Kayser, a putative money launderer, on specific ways to effectuate his illicit aims—this is the genesis of the Rule violations here. Perhaps more importantly, exculpatory statements have been *rejected* by this court as an affirmative defense to Rules 1.2(d) and 8.4(h) when advice advancing the illicit aim has also been given. *In re Jankoff*, M-1365/3174, p. 3 (granting discipline by consent to a public censure for violating Rules 1.2(d) and 8.4(h) under similar facts notwithstanding the lawyer's statement to Kayser that "he would have to consult with an expert to determine whether . . . the money was 'clean' and not criminally derived."). Indeed, given the consensus between respondent and Kayser that the money was a bribe, respondent's mitigating statements are entitled to no weight

because of the egregious nature of the advice respondent proffered thereafter (*e.g.*, "[t]he idea is hiding it in plain sight.").

CONCLUSION

32. The Committee requests that the charges of professional misconduct alleged in this petition be sustained; that this court enter an order referring this matter to a referee for a hearing on sanction pursuant to 22 NYCRR § 1240.8(b); and that this court grant such other and further relief as it deems just and proper.

Dated: New York, New York
22 April 2019

Respectfully submitted,

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