This matter comes to the Board on Professional Responsibility (the “Board”) on review of the Report and Recommendation of Hearing Committee Number Seven, which concluded that Respondent had violated the following D.C. Rules of Professional Conduct: Rule 1.3(a), (b)(1) and (c) by failing to represent his client zealously and diligently and/or intentionally failing to seek the lawful objectives of his client through reasonably available means, and/or failing to act with reasonable promptness in representing his client; Rule 1.4(a) and (b) by failing to keep his client reasonably informed about the status of the matter and promptly complying with reasonable requests for information and/or failing to explain a matter to the extent reasonably necessary to permit his client to make informed decisions regarding the representation; Rule 1.5(a) by charging an unreasonable fee; Rule 1.5(b) by failing to communicate in writing to his client the basis or rate of the fee in a timely fashion; Rule 8.1(a) by knowingly making false statements of material fact in connection with a disciplinary matter; and Rule 8.4(c) by engaging in conduct involving dishonesty, fraud, deceit, and/or misrepresentation.

Following these findings, the Hearing Committee recommended that Respondent be suspended from the practice of law for one year and that restitution be paid with interest according to a reasonable
payment schedule. The Board concurs with the Hearing Committee’s conclusions as to the violations found and the period of suspension recommended, but finds an additional violation of Rule 8.4(c) and recommends that reinstatement be conditioned upon payment of full restitution with interest at the legal rate.

I. Procedural Background

Respondent is a member of the District of Columbia Bar, having been admitted on June 7, 1974. Bar Counsel filed its petition initiating formal disciplinary proceedings and a specification of charges on December 8, 2000. A hearing was held on March 15, 2001. Bar Counsel offered exhibits A-D, 1-10, which were admitted into evidence, some over Respondent’s objection. Respondent offered exhibits 10-14, 16-19, which were admitted without objection. Bar Counsel’s witnesses were Cora Lillian Britton, Lillian Reed Nobles, and Gwendolyn Uron Bruton. Respondent, who proceeded pro se, testified at the hearing and called as witnesses Joseph Cooney, Esquire, Benjamin Lamberton, Esquire, Franklin Burke, Esquire, and Evelyn Parchment, Esquire.

The Hearing Committee Report was issued on January 3, 2002. Bar Counsel objected to the Committee’s finding that Respondent’s knowing false statements to Bar Counsel could not be the basis for a violation of Rule 8.4(c) as well as a violation of Rule 8.1(a) and disagreed with the recommendation that restitution not be made a condition of reinstatement. Respondent objected to the Committee’s findings, both as to violations and as to sanction.

II. Findings of Fact

The Hearing Committee Report includes comprehensive and detailed Findings of Fact, which are supported by the record and accepted by the Board. See infra at 9-10. The relevant facts may be summarized as follows:
History of the Parties.  Respondent is a sole practitioner.  Over the years, Respondent dealt with legal matters for Mrs. Cora Britton’s husband and other members of her family. In 1977 and again in 1984, Respondent represented Mrs. Britton on two different matters. The next professional relationship between Respondent and Mrs. Britton did not occur until 1995.

August 1995. In August 1995, Mrs. Britton’s husband died with virtually no assets and $135,000 worth of debt. Upon his death, Mrs. Britton became entitled to certain benefits from her husband’s retirement fund and life insurance policy through his employer, the United States Postal Service (“USPS”). Extensive paperwork was necessary, however, to claim these benefits. Ms. Gwendolyn Bruton and Ms. Linda Chow, employees of the USPS, assisted Mrs. Britton in completing this paperwork. Mrs. Britton, on the advice of Ms. Bruton, elected to receive the retirement proceeds as an annuity. Mr. Paul Delaine, a USPS accountant, assisted Mrs. Britton with her taxes as he had for the previous ten or twelve years.

October 1995. By October 2, 1995, Mrs. Britton had received total proceeds of approximately $212,000 from the insurance policy and had begun to receive monthly annuity payments. Mrs. Britton used part of the insurance proceeds to make gifts to family members and to make payments on Mr. Britton’s debts. When Mrs. Britton learned that funds from credit life insurance policies had been used to reduce Mr. Britton’s debts, she wondered whether she was entitled to additional funds from these insurers.

In early October 1995, Mrs. Britton met with Respondent for about twenty minutes at his office. During this meeting, in response to a question by Respondent, Mrs. Britton told him about her financial situation, including the recent life insurance payment of approximately $212,000 and the annuity payments. Mrs. Britton requested only two services from Respondent. First, Mrs. Britton asked
Respondent to review copies of four or five bills relating to insurance payments on her husband’s debts to determine whether she was entitled to money from these insurers. No fee was discussed in connection with this service, and no retainer agreement was signed. Second, Mrs. Britton requested that Respondent complete a two-page income tax election form relating to her annuity payments. Respondent charged $35 to fill in the form. Other than the $35 charge, there were no fee discussions between Respondent and Mrs. Britton. On October 3, 1995, Mrs. Britton wrote to Respondent and enclosed Mr. Britton’s death certificate, a check for $35, and an additional bill to review from Marlo Furniture.

Ten to fourteen days following this initial meeting, Respondent called Mrs. Britton and told her that she had four good insurance claims and that he needed $5,000 to file them. Although Mrs. Britton was hesitant at first, Respondent assured her that the money she would receive from the insurance company would be hers, but that the filings for these matters would be costly. Because Respondent had been Mr. Britton’s attorney for many years and had also represented Mrs. Britton on two occasions, she trusted him and mailed the check on October 17, 1995.

November 1995. Two weeks later, Respondent asked for an additional $5,000 to file the claims. Mrs. Britton agreed. On November 9, 1995, Respondent went to her home to collect payment. The Hearing Committee credited Mrs. Britton’s testimony regarding this encounter, which was corroborated in pertinent part by Mrs. Britton’s daughter, Ms. Nobles, who was in an adjacent room at the time. Respondent arrived and stayed for approximately twenty minutes. Before Respondent left, Mrs. Britton asked him for a retainer agreement or other writing regarding his fee and recording her total payment of $10,000. Respondent, claiming to be in a hurry, declined to write an engagement letter at that time but assured Mrs. Britton that he would mail her an appropriate writing.
Despite this assurance, Respondent subsequently failed to provide Mrs. Britton with a written fee agreement. In fact, Respondent never provided a retainer agreement or other comparable writing to Mrs. Britton.

Approximately two weeks after this visit, Respondent asked Mrs. Britton for an additional $15,000, with the assurance that a substantial amount of money would be forthcoming from the insurance claims. Respondent told Mrs. Britton that she would not “even hardly miss this money” because there would be “a lot of money coming back from the insurance companies.” Tr. at 129. Mrs. Britton, however, did not agree to pay this additional amount.

May 1996. From November 1995 to May 1996, Respondent did nothing to investigate or pursue the insurance matter. On May 6, 1996, Respondent sent form letters to five insurance companies and/or creditors. He enclosed a copy of Mr. Britton’s death certificate, asked for copies of any policies concerning Mr. Britton, and requested payment of any monies due.

By the end of the month, Respondent had received responses to most of these letters. Respondent learned that the policies were credit life policies rather than life insurance policies, that the companies had made payments on Mr. Britton’s debts as required, and that there were no additional monies due.2

Despite this knowledge, Respondent failed to notify Mrs. Britton of the correspondence with the insurance companies and her lack of viable claims. Before the Hearing Committee, Respondent

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1 The March 15, 2001 hearing transcript is cited as “Tr.”.

2 Unlike ordinary life insurance, which makes payment of the death benefit to the designated beneficiaries, credit life insurance provides for payment of specified debts of the deceased to credit card companies or other creditors.
acknowledged not only that he knew by the end of May 1996 that no life insurance claims existed, but also that he failed to inform Mrs. Britton of this fact until July 1997.

**February 1997.** There was a fire in Respondent’s office and, shortly thereafter, he moved offices. Respondent contended that some of his files and documents pertaining to his representation of Mrs. Britton were destroyed in the fire. The Hearing Committee, giving a detailed explanation of its reasoning, found that the absence of relevant documents was not, as Respondent asserted, due to the fire.

**July 1997.** Between May 1996 and July 1997, Respondent did no work on the insurance matter and made no attempts to communicate with Mrs. Britton. Mrs. Britton, on the other hand, made repeated and unsuccessful attempts to reach Respondent by telephone until early July 1997. During the July telephone conversation, Respondent was evasive regarding the insurance claims and hung up on Mrs. Britton when she asked for a refund of her money.

On or about July 2, 1997, Respondent prepared a letter to Mrs. Britton dated July 2, 1997, apologizing for his delay in pursuing her matter. He further stated that he would “pursue the matter vigorously” and would notify her of the outcome. Bar Counsel’s Exhibit (“BX”) 6(x). The letter also purported to enclose three checks from the insurance companies. The Hearing Committee noted several problems with this correspondence. First, the checks were not enclosed. Rather, on the same day he wrote the letter, Respondent returned these “stale” checks to their issuers so that new checks could be issued. Second, Mrs. Britton did not recall receiving this letter, and the letter was not in her file. Third, the letter to Mrs. Britton reflects Respondent’s new office address. Mrs. Britton testified that she did not learn of Respondent’s new address until 1999.
Also on July 2, 1997, Respondent sent letters to Chevy Chase, FSB and Union Security Life
Insurance Company asking for a response to the “letter dated May 6, 1996, demand[ing] payment on
the credit life insurance policy of Mr. Britton.” BX 6(v). He sent two additional letters to Household
Life Insurance Company and Assisted Financial Services returning three “stale” checks for reissue.
Copies were not sent to Mrs. Britton, and she was not advised of any responses. In fact, Respondent
did not communicate further with Mrs. Britton regarding this matter for more than two years.

**September 1999.** Until September 1999, Mrs. Britton was unsuccessful in her numerous
attempts to secure new counsel. On September 28, 1999, Mrs. Britton’s new attorney,
Vincent Uchendu, sent a letter to Respondent stating Mrs. Britton’s concerns regarding the money she
had paid to Respondent and requesting a copy of the written fee agreement. Mr. Uchendu further
stated in his letter that he was aware that Respondent had failed to communicate with Mrs. Britton or to
return her calls, and had hung up on her. Respondent failed to answer this letter.

**October 1999.** On October 13, 1999, Mr. Uchendu sent Respondent a second letter.

**November 1999.** On November 16, 1999, Respondent replied to Mr. Uchendu’s letters and
sent Mrs. Britton her file. These documents supplied Mrs. Britton with the first indication that she had
no claims against the credit life insurers, even though Respondent had learned that fact more than three
years earlier. In his letter, Respondent stated that an itemized bill for his work would be sent to Mrs.
Britton. However, no bill was ever sent. Although Mrs. Britton never received such a bill, she did
receive a letter from Respondent dated November 17, 1999, stating that her matters had been
appropriately examined and apologizing for “any delay.” BX 1 at 38.
Subsequently, Mrs. Britton called Respondent and asked for the return of $9,000 of the $10,000 she had paid, which would have allowed Respondent to keep the remaining $1,000 balance as payment for the letters that he had written. Respondent hung up on her.

**Ethical Complaint.** On December 16, 1999, Mrs. Britton filed an ethical complaint against Respondent. Mrs. Britton’s daughter, Ms. Nobles, drafted the complaint based on information provided by her mother.

By letters dated January 3, 2000 and February 28, 2000, Respondent replied to Bar Counsel and made several factual representations. In the first letter, Respondent asserted that he met with Mrs. Britton on October 17, 1995, and that she had sought his advice on matters concerning probate, death benefits, taxation, debt liability, and the creation of a family trust. According to Respondent, he met with her several times and gave her advice on tax elections, drafted a trust agreement, demanded payment from the insurance companies on her behalf, and researched fraud issues. Respondent claimed that from time to time, he would discuss with Mrs. Britton what he characterized to Bar Counsel as “the bleak prospect of the insurance matters.” BX 2 at 2.

In his second letter, Respondent claimed to have spent four and a half hours in meetings with Mrs. Britton, ten hours drafting the trust, five hours on the annuity issue, four hours on probate and tax advice, twenty-five hours researching fraud issues, and twenty hours on correspondence with the insurance companies. He also asserted that he had given Mrs. Britton a written fee agreement, and

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3 According to Respondent, Mrs. Britton told him that she had been informed by the insurance companies that they owed her money under her husband’s policies. It was apparently this alleged misstatement by the insurers that was the basis for Respondent’s purported work on fraud issues. As the Hearing Committee found, however, Mrs. Britton had not detrimentally relied on any such statements, and the insurers would have had no fraudulent motive to overstate Mrs. Britton’s right to payment from them. Furthermore, there was no written work product or other documentation to corroborate Respondent’s claim of hours worked on this matter. Thus, the Hearing Committee
that he had informed her that the policies were credit life policies rather than life insurance policies and therefore provided no death benefits to her. Finally, he stated that Mrs. Britton had insisted to him that she was owed money from the insurance companies and that the companies were refusing to pay.

The Hearing Committee found that each of these statements was false and that Respondent altered or disavowed many of his prior statements during his testimony before the Hearing Committee.

**Findings.** The Hearing Committee made numerous findings of fact that are supported by substantial evidence in the record and therefore are accepted by the Board. See D.C. App. R. XI, § 9(g)(1); Board Rule 13.7; *In re Kitchings*, 779 A.2d 926, 933 (D.C. 2001). As to credibility, the Hearing Committee explicitly found that Mrs. Britton’s testimony was credible, and Respondent’s conflicting version of facts was not. The Hearing Committee rejected most of Respondent’s version of the facts because it was contradictory, inconsistent, and implausible. We find that the Hearing Committee did not base its findings on conjecture or speculation, but on admissible evidence and reasonable inferences drawn therefrom.

In particular, the Hearing Committee rejected a number of Respondent’s contentions, including his claims that: (1) Mrs. Britton had represented that her husband had owned several life insurance policies and that Mrs. Britton was collecting money on them; (2) Mrs. Britton complained that the insurers were refusing to pay her; (3) Mrs. Britton represented that she was due $50,000 on one, or all, of the policies; (4) Mrs. Britton had made tax inquiries of Respondent regarding her annuity and life insurance payments; (5) Mrs. Britton signed a retainer agreement with Respondent during the initial meeting; (6) the initial meeting occurred on October 17, 1995 (as Respondent contended), not earlier.

\[\text{found that it was “not plausible that any lawyer would have wasted this amount of time [twenty-five billable hours, or three work days] on such a frivolous pursuit.” Hearing Committee Report (“HC Rpt.”) at 21.}\]
(as Mrs. Britton testified); (7) Mrs. Britton had requested his assistance concerning creation of a trust to benefit her daughter who was on public assistance; (8) Respondent spent four hours advising Mrs. Britton on probate and taxes on insurance proceeds; (9) Respondent spent five hours dealing with an “annuity issue”; (10) Respondent drafted a trust agreement; (11) Mrs. Britton took him on a tour of her apartment during the November home visit; (12) the November visit lasted three hours; (13) Respondent discussed the responses to his May 1996 letters with Mrs. Britton; and (14) Respondent undertook twenty-five hours of “extensive research” on the viability of fraud and/or misrepresentation claims against the insurance companies.

Based on clear and convincing evidence, the Hearing Committee affirmatively found that Respondent had failed to diligently represent Mrs. Britton; had failed to keep her informed about her insurance matter; had failed to provide a written retainer or fee agreement; had charged an unreasonable fee; had filed false statements with Bar Counsel; and had either knowingly made false statements to Mrs. Britton regarding the viability of her insurance claims, or had knowingly made such statements without any basis in fact. In so ruling, the Hearing Committee noted numerous instances where Respondent’s testimony at the hearing was inconsistent with his prior statements, or where the existence or content of the documents he submitted could not be reconciled with the objective evidence.

III. Discussion

The Board has reviewed the record as a whole and finds that there exists substantial evidence to support the findings of fact on which the Rule violations found by the Hearing Committee are based. The bulk of Respondent’s contentions to this Board are simply unfounded challenges to the Hearing Committee’s factual findings, which were fully explained by the Hearing Committee, supported by
substantial evidence, and rest in significant part on the Hearing Committee’s assessment of credibility and its resolution of contested factual issues in the evidence.

Rules 1.3(a), (b)(1), and (c). Rule 1.3(a), which addresses neglect of client matters, provides: “A lawyer shall represent a client zealously and diligently within the bounds of law.” Neglect has been defined as “indifference and a consistent failure to carry out the obligations which the lawyer has assumed to his client or a conscious disregard for the responsibility owed to the client.” See In re Reback, 487 A.2d 235, 238 (D.C. 1985) (per curiam) (quoting ABA Comm. on Ethics and Professional Responsibility, Informal Op. 1273 (1973)), adopted in relevant part, 513 A.2d 226 (D.C. 1986) (en banc). Although a finding of neglect requires more than a single act or omission, the required pattern of negligent conduct is present here. Respondent waited more than six months from the time he was retained until he first acted on Mrs. Britton’s behalf on May 6, 1996, when he sent form letters to five insurance companies and/or creditors. This perfunctory correspondence plus two follow-up letters to the insurance companies and/or creditors written on Mrs. Britton’s behalf and two letters returning “stale” checks for reissue in July 1997, constituted the sum total of Respondent’s efforts on behalf of his client. We find this lack of diligence and zeal constitutes neglect, in violation of Rule 1.3(a).

Rule 1.3(c) provides: “A lawyer shall act with reasonable promptness in representing a client.” Respondent’s six-month delay in sending the first set of letters and delay of over one year in following up on this correspondence constitutes a failure to act with “reasonable promptness” in violation of Rule 1.3(c).

4 Respondent repeatedly assails the Hearing Committee’s finding that he met with Mrs. Britton in early October 1995. The Hearing Committee’s finding is based on substantial record evidence and is carefully justified in the Hearing Committee Report. Moreover, whether the meeting occurred on October 17, 1995 or earlier does not affect the relevant fact that it was not until May of the following year that Respondent took any action on the insurance matter.
Rule 1.3(b)(1) provides: “A lawyer shall not intentionally fail to seek the lawful objectives of a client through reasonably available means permitted by law and the disciplinary rules.” Unlike Rules 1.3(a) and (c), Rule 1.3(b)(1) requires a showing of intent. The Court has explained that neglect may ripen into intentional failure when a lawyer’s inaction is coupled with an awareness of his obligation to his client. See In re Robertson, 612 A.2d 1236, 1250 (D.C. 1992) (appending Board Report) (interpreting DR 7-101(A)(1), predecessor to Rule 1.3(b)(1)); In re Lawrence, 526 A.2d 931, 932 (D.C. 1986) (per curiam) (same); In re O’Donnell, 517 A.2d 1069, 1072 (D.C. 1986) (per curiam) (appending Board Report) (same). Respondent was aware of his obligation to Mrs. Britton on May 6, 1996, as evidenced by the form letters he mailed to the insurance companies and to Mrs. Britton’s creditors. He took no further action until July 1997, when he spoke with Mrs. Britton over the telephone, and sent the follow-up correspondence to the creditors and insurance companies to which he had written in May 1996. Under these circumstances, we find that from May 1996 to July 1997 and then from July 1997 to the termination of the representation, Respondent intentionally failed to seek his client’s lawful objectives in violation of Rule 1.3(b)(1) because he was demonstrably aware of his obligation to his client but failed to act.

Rules 1.4(a) and (b). Rule 1.4(a) provides: “A lawyer shall keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information.” Rule 1.4(b) provides: “A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informal decisions regarding the representation.” Comment 1 to Rule 1.4 states that “[t]he client should have sufficient information to participate intelligently in decisions concerning the objectives of the representation and the means by which they are to be pursued, to the extent the client is willing
and able to do so.” The evidence shows that Respondent did not inform Mrs. Britton that he had learned she had no viable claims as against the insurers and/or creditors. The Hearing Committee found credible Mrs. Britton’s testimony that she was not told the status or viability of her claims. In addition, even under Respondent’s version that he gave her this information in July 1997, fourteen months had elapsed from the date by which he claimed to have received this knowledge. Respondent also avoided her questions when they did speak, misrepresented the status of her case, and ultimately hung up on her. We therefore agree with the Hearing Committee that Respondent failed to keep his client reasonably informed and to comply with her requests for information, and that he failed to explain the matter to his client in a way reasonably necessary to allow her to make informed decisions, in violation of Rules 1.4(a) and (b).

Rule 1.5(a). Rule 1.5(a) provides: “A lawyer’s fee shall be reasonable. The factors to be considered in determining the reasonableness of a fee include the following: (1) the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly; (2) the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer; (3) the fee customarily charged in the locality for similar legal services; (4) the amount involved and the results obtained; (5) the time limitations imposed by the client or the circumstances; (6) the nature and length of the professional relationship with the client; (7) the experience, reputation, and ability of the lawyer or lawyers

performing the services; and (8) whether the fee is fixed or contingent.” The record shows that the fees totaling $10,000 charged by Respondent and paid by Mrs. Britton were unreasonable. The facts, as found by the Hearing Committee, show that Respondent spent forty minutes meeting with Mrs. Britton and filling out a form that could have been completed in ten minutes. Additionally, Respondent drafted a total of eight letters, some virtually identical, to various creditors and/or insurers over the course of twenty months. The numerous other hours allegedly spent researching, advising, corresponding, and drafting were completely unsupported by either time records or work product. Respondent contends that the Hearing Committee “ignored” his fact witness, Evelyn Parchment, Esquire, on what constitutes reasonable charges. Resp. Br. at 14. In fact, the Hearing Committee expressly found that Ms. Parchment’s generalized testimony regarding fees in trust matters was not connected to the specific circumstances of this case and in any event was irrelevant because Mrs. Britton did not request Respondent’s assistance in connection with any trust.

Rule 1.5(b). Rule 1.5(b) provides: “When the lawyer has not regularly represented the client, the basis or rate of the fee shall be communicated to the client, in writing, before or within a reasonable time after commencing the representation.” The record also fully supports the Hearing Committee’s finding that Respondent failed to provide Ms. Britton with a written fee agreement. The Hearing Committee expressly disbelieved Respondent’s assertions to the contrary because of numerous

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6 Respondent contends that Mrs. Britton filed the complaint in the instant action “[b]efore he had the time to send her an itemized bill . . .” Resp. Br. at 20. However, the record is clear that Respondent did not send Mrs. Britton an itemized bill at any point from 1995 to 1999. Furthermore, the Board rejects the argument that Respondent did not have sufficient time between November 16, 1999 and December 16, 1999 to compile and send an itemized bill to Mrs. Britton.
improbabilities in Respondent’s version, the lack of any time records, and Ms. Nobles’ corroboration of Mrs. Britton’s account. We accept these findings of fact and the violation founded upon them.

**Rule 8.1(a).** Rule 8.1(a) provides: “An applicant for admission to the Bar, or a lawyer in connection with a Bar admission application or in connection with a disciplinary matter, shall not: knowingly make a false statement of material fact.” The Hearing Committee found that Respondent violated Rule 8.1(a), which prohibits making knowingly false statements of material fact in connection with a disciplinary matter. As outlined above, on two separate occasions Respondent submitted statements to Bar Counsel that the Hearing Committee found, in express and detailed findings, contained numerous falsities. Those statements went to the heart, and covered the entire scope, of Respondent’s representation of Mrs. Britton. Upon review of the record, the Board concurs that there is substantial evidence to find that these statements were, in fact, false.

**Rule 8.4(c).** Rule 8.4(c) provides: “It is professional misconduct for a lawyer to: engage in conduct involving dishonesty, fraud, deceit, or misrepresentation.” The record is clear that when Respondent misrepresented to Mrs. Britton that she had viable claims against the insurers and/or creditors that would cost $10,000 to pursue, he engaged in conduct involving dishonesty, fraud, deceit, and/or misrepresentation as prohibited by Rule 8.4(c).

In October 1995, Respondent represented to Mrs. Britton that she had four good insurance claims. If Respondent had reasonably investigated the matter in order to make such an assessment, he would have found that the policies were credit life policies and that Mrs. Britton did not have claims against them beyond recovery of certain payments made by her to satisfy balances due to her husband’s creditors at the time of his death. In May 1996, Respondent received responses from his written inquiries to the credit insurance companies. At this point, Respondent unquestionably knew that the
policies were credit life policies and could not be recovered on by Mrs. Britton. Accordingly, Respondent also knew that his representations to Mrs. Britton that she had viable claims against the insurers and/or creditors were false or, at the very least, that they had no basis whatever in fact or law. Indeed, Respondent himself acknowledged that he knew Mrs. Britton’s claims were baseless at this time. Consequently, we find that Respondent had no reasonable basis to initially request the legal fee and no right to retain it.

Bar Counsel also charges that Respondent violated Rule 8.4(c) when he submitted false statements to Bar Counsel in connection with this disciplinary proceeding. We agree. We do not accept the Hearing Committee’s position that false statements made in connection with a disciplinary proceeding are properly charged only under Rule 8.1. See HC Rpt. at 30 n.6; In re Owens, BDN 2-00 at 7-8 (BPR July 12, 2002) (rejecting Hearing Committee conclusion that specific rule violations are to be found to the exclusion of more general rule violations), Board’s findings accepted by the Court, No. 02-BG-788 (D.C. Sept. 26, 2002) (per curiam). The facts here amply support the finding that Respondent engaged in dishonest behavior when he submitted false factual representations to Bar Counsel as set out above, and such a finding is not inconsistent with relevant precedent. See In re Corizzi, BDnos. 223-97 & 219-98 (BPR Mar. 14, 2001), aff’d 803 A.2d 438 (D.C. 2002).

Additional Issues. Respondent argues that (1) he was denied a fair hearing when his original documents were not returned to him by Bar Counsel, and (2) two Hearing Committee members had preconceived notions of his culpability. We find these contentions to be without merit.

Respondent also alleges that Bar Counsel encouraged false testimony regarding the tax withholding form. The Board finds that this argument was adequately addressed and correctly rejected by the Hearing Committee. See HC Rpt. at 4.
1. The issue of Respondent’s access to the original documents was fully addressed at the pre-hearing conference of February 6, 2001. The record is clear that in addition to giving Respondent a copy of the documents, Bar Counsel offered to let Respondent or his witnesses review and examine the original documents; however, because the existence and condition of the documents were themselves a significant issue in light of Respondent’s assertion that a fire had destroyed or damaged his files, Bar Counsel was unwilling to allow the original documents to be removed because she intended to offer the original documents as evidence. The Hearing Committee denied Respondent’s motion in an Order issued following the pre-hearing conference.

The procedure was sufficient to protect Respondent’s rights and did not deprive him of a fair hearing. Beyond his bare assertions, Respondent has presented no evidence—let alone demonstrated—that he was in fact denied access to the original documents despite the recognition on the record by both Bar Counsel and the Hearing Committee that he was entitled to such access. Furthermore, Respondent has utterly failed to show that the procedure for access to the original documents at Bar Counsel’s office was fundamentally unfair or prejudicial to his case.

8 Respondent initially sought dismissal based on the alleged denial of access to the documents. The Hearing Committee rejected this argument at the pre-hearing conference. Nonetheless, Respondent filed a second motion for dismissal and sanctions, raising again the same arguments one day before the hearing on March 15, 2001. Although the Hearing Committee did not include in its Report a proposed disposition for this motion pursuant to Board Rule 7.14(a), the Board finds that such a recommendation was unnecessary based on the Committee’s prior handling of this issue in the pre-hearing conference. We agree with the Hearing Committee and deny the motion to dismiss.

9 Respondent complained that he needed the original documents so a “fire damage” expert could review them. Since the expert was free to view the documents at the Office of Bar Counsel, the Board fails to see how Respondent was prejudiced. Moreover, the Hearing Committee subsequently and explicitly rejected Respondent’s theory that the retainer and trust documents were destroyed in the February 1997 office fire. See HC Rpt. at 26 n.4. Despite the questions surrounding the extent and the creation of the fire damage, however, there was testimony at the hearing sufficient to support the findings that Mrs. Britton never signed a fee agreement and that a trust was never created for her. Therefore, there is no doubt that the findings of the Hearing Committee and of the Board would not be different had expert testimony on fire damage been presented.
2. The record also fails to support Respondent’s assertion that two members of the Hearing Committee prejudged his case. The Hearing Committee Report adequately addresses and properly rejects that claim. See HC Rpt. at 3 n.1. A brief conversation between two Committee members during a recess as to whether there is a fund to compensate clients injured by lawyers’ ethical violations does not suggest in any way that the Committee had prejudged Respondent’s case and had a preconceived view that he had acted unethically. Moreover, the Committee, while candidly acknowledging that the conversation had occurred, expressly and specifically denied that it had prematurely concluded that Respondent had engaged in the alleged conduct. On the face of the record, Respondent points to nothing that would satisfy his burden of showing improper bias or prejudgment. See In re Stanback, 681 A.2d 1109, 1117 (D.C. 1996).

IV. Sanction

Based on these violations, the Hearing Committee recommended (1) that Respondent be suspended from the practice of law for one year, and (2) that he make full restitution with interest on a reasonable payment plan, but that such payments need not be completed prior to or as a condition of Respondent’s reinstatement to practice law.

1. With respect to suspension, the Hearing Committee compared Respondent’s conduct to that in In re Bernstein, 774 A.2d 309 (D.C. 2001), and found that Respondent, like the respondent in Bernstein, “treated his client as an adversary to be ‘conned’ rather than as a person to whom

10 Respondent argues before the Board, for the first time, that the Hearing Committee Chair was an “echo for the Office of Bar Counsel” based on Respondent’s observations of conversations between the Hearing Committee Chair and a visiting Assistant Bar Counsel during the hearing. Resp. Br. at 3. Respondent did not raise this issue before the Hearing Committee, and therefore it is not properly presented here. See In re Thompson, 583 A.2d 1006, 1007 (D.C. 1990)(per curiam)(citation omitted). Moreover, Respondent’s attack on the Hearing Committee Chair has no basis whatever in the record and rests on nothing more than Respondent’s unsubstantiated assertions in his brief.
[Respondent] owed a fiduciary duty of loyalty, full disclosure and trustworthiness.” HC Rpt. at 32, quoting Bernstein, 774 A.2d at 315. For that conduct, Bernstein was suspended for nine months, a recommendation that the District of Columbia Court of Appeals characterized as being “on the lenient side. 774 A.2d at 317.

We agree with the Hearing Committee that the conduct in the instant case is more egregious than that involved in Bernstein, 774 A.2d at 309. As the Hearing Committee expressly noted, inter alia, (1) Mrs. Britton was an unsophisticated and vulnerable client who had just lost her husband, was inexperienced in matters involving money, and told Respondent that she had already received more than $200,000 in insurance benefits and had a monthly annuity; (2) the legal fees charged were substantial and were improperly retained by Respondent for a considerable time; (3) Respondent did not provide any real benefit to Mrs. Britton in the insurance matter; and (4) Respondent engaged in a lengthy period of evasion and deceit, including knowing misstatements to both his client and Bar Counsel. These factors warrant a longer suspension than that imposed in Bernstein, 774 A.2d at 309, and amply justify a one-year suspension. See HC Rpt. at 33.11

11 In addition, and although not essential to the Hearing Committee’s Report or to ours, the record would fully support the inference, as the Hearing Committee suggested, that Respondent made false statements and fabricated evidence in connection with the discipline proceeding below. See In re Goffe, 641 A.2d 458 (D.C. 1994)(per curiam). Furthermore, Respondent wrongly deprived Mrs. Britton of her money over an extended period. See Bernstein, 774 A.2d at 315 n.11 (“shadow of misappropriation” relevant in disciplinary proceeding notwithstanding that misappropriation was not expressly charged). These considerations, while not necessary to the Board’s determinations, further support a sanction more severe than the nine-month suspension in Bernstein, 774 A.2d at 309.
In sum, we find that Respondent’s conduct was egregious, his violations numerous, the harm he caused significant, and his manifest lack of contrition very troubling. The Board has weighed the relevant factors and equities with regard to sanction and finds that suspension for a period of one year is proportionate to Respondent’s behavior and would adequately serve the interests of the disciplinary system. Although the Board has considered the fact that Respondent has no prior disciplinary record, this sanction is warranted in light of the number of violations, the severity and willfulness of the misconduct, Respondent’s motives, the duration of the misconduct, the lack of remorse, and the Hearing Committee’s assessment of Respondent’s credibility.

2. With regard to restitution, we agree with Bar Counsel and modify the Hearing Committee’s recommendation to require full restitution with interest as a condition precedent to reinstatement. Mrs. Britton waited more than four years for Respondent to act as her lawyer and represent her interests. During this period, she paid Respondent a considerable sum and received virtually no legal services in return. Mrs. Britton has now waited an additional three years during these proceedings for the return of those monies. Based on the record evidence and applicable legal principles, we see no reason to order a payment plan to permit Respondent to make the required payments over time.\textsuperscript{12} Mrs. Britton is entitled to immediate, not deferred, recompense.\textsuperscript{13}

\textsuperscript{12} There is no evidence on the record to establish any serious harm to the Respondent from a lump sum payment requirement. Indeed, the Hearing Committee could go no further than to speculate that “perhaps” immediate restitution would be beyond Respondent’s ability to pay. HC Rpt. at 35.

\textsuperscript{13} In light of this disposition, it is unnecessary for the Board to address the legal issue raised by Bar Counsel of whether the Board has authority to delay full restitution by allowing payments to be made over time. Likewise, since a fitness requirement as a condition of reinstatement was neither sought nor recommended in this case, we need not address the discussion in Bar Counsel’s brief of the appropriate circumstances for the imposition of a fitness requirement.
V. Conclusion

For the reasons stated herein, the Board recommends that Respondent be suspended for one year and that he make full restitution with interest at the legal rate as a condition of his reinstatement. See D.C. App. R. XI, § 3(b). The period of this suspension and the requirement of full restitution with interest prior to reinstatement are warranted by (1) the nature and severity of Respondent’s violations, and (2) the compelling need for prompt and complete restitution to Mrs. Britton at this time. The Board believes that this sanction would adequately serve the interests of the disciplinary system.

BOARD ON PROFESSIONAL RESPONSIBILITY

By: Roger A. Klein

Dated: November 12, 2002

All members of the Board concur in this Report and Recommendation except Ms. Ossolinski and Ms. Taylor, who were members of the Board at the time this matter was discussed and decided, but who did not participate, and Mr. Baach, who did not participate. Ms. Holleran Rivera and Dr. Payne, appointed to the Board effective August 1, 2002, took no part in consideration of this case.