DISTRICT OF COLUMBIA COURT OF APPEALS
BOARD ON PROFESSIONAL RESPONSIBILITY
AD HOC HEARING COMMITTEE

In the Matter of:	:	
	:	
WILLIAM E. WALLACE,	:	
	:	Board Docket No. 17-BD-001
Respondent.	:	Bar Docket Nos. 2015-D147;
	:	2015-D161; 2015-D162;
A Member of the Bar of the	:	2015-D239; & 2016-D079
District of Columbia Court of Appeals	:	
(Bar Registration No. 298000)	:	

REPORT AND RECOMMENDATION OF
THE AD HOC HEARING COMMITTEE

Respondent, William E. Wallace, is charged with violating Rules 1.3(b)(2), 1.16(d), and 8.4(d) of the District of Columbia Rules of Professional Conduct (the "Rules"), arising from his representation of plaintiffs in an investment fraud case. Disciplinary Counsel contends that Respondent committed all of the charged violations, and should be suspended for thirty days as a sanction for his misconduct. Respondent contends that he committed no disciplinary violation and requests that the case be dismissed.

As set forth below, the Hearing Committee finds that Disciplinary Counsel has proven violations of Rules 1.3(b)(2), 1.16(d), and 8.4(d) by clear and convincing evidence and Respondent should be suspended for sixty days, with the suspension stayed after the first thirty days for a one-year period of probation, with conditions as stated herein.

I. PROCEDURAL HISTORY

On December 28, 2016, Disciplinary Counsel served Respondent with a Specification of Charges ("Specification"), alleging that Respondent, in connection with his representation of clients suing an organization for investment fraud, violated the following rules:

- Rule 1.3(b)(2), by intentionally prejudicing or damaging a client during the course of the professional relationship;
- Rule 1.16(d), by refusing to inform successor counsel of the amount of his claim for fees, and thus failing to take steps reasonably necessary to protect his clients' interests; and
- Rule 8.4(d), by seriously interfering with the administration of justice.

Specification ¶ 18.

A hearing was held on May 17 and 31, 2017, before this Ad Hoc Hearing Committee (the "Hearing Committee").[1] Disciplinary Counsel was represented at the hearing by Hamilton P. Fox, Esquire. Respondent was represented at the hearing by Barry E. Cohen, Esquire, and Laurel Pyke Malson, Esquire. Counsel for Respondent withdrew after the hearing and thereafter, Respondent proceeded *pro se*.

The Committee received and accepted into evidence Disciplinary Counsel's exhibits DX[2] A through D and DX 1 through 31, over Respondent's objection to DX 17 and 19, and Respondent's exhibits RX 1-187 and 200-02. Tr. 569, 596, 598, 603.

[1] Jean Kapp, the public member on this Committee, passed away after the close of the hearing. She took no part in the drafting of this Report and Recommendation.

[2] "DX" refers to Disciplinary Counsel's exhibits. "RX" refers to Respondent's exhibits. "Tr." refers to the transcript of the hearing held on May 17 and 31, 2017. "FF" refers to the Findings of Fact herein.

The Committee heard testimony from Disciplinary Counsel witnesses Rae Lorenz (by video conference), Kenneth W. Nelson, Irving Ruppel, George Clark, Chris Hagen (by video conference), and Respondent. Respondent called witnesses Patrick Shea (by video conference) and Respondent.

The Hearing Committee did not make a preliminary non-binding determination as to whether Disciplinary Counsel had proven at least one of the disciplinary violations set forth in the specification of charges because the parties stated that they would not be introducing any evidence in mitigation or aggravation following the violations phase. Tr. 338-39; *see* Board Rule 11.11.

Disciplinary Counsel filed its Proposed Findings of Fact, Conclusions of Law, and Recommendation as to Sanction on June 27, 2017. Respondent filed his Post-Hearing Brief and Proposed Findings of Fact and Conclusions of Law on July 12, 2017. On July 14, 2017, the Hearing Committee ordered Respondent to file an amended brief responding to each of Disciplinary Counsel's proposed findings of fact, as ordered during the hearing. Respondent filed his Re-Submitted Post-Hearing Brief and Proposed Findings of Fact and Conclusions of Law on July 31, 2017. Disciplinary Counsel filed a motion to strike Respondent's re-submitted brief for violating Board Rule 19.9(c) by consisting of 101 pages. On August 18, 2017, the Hearing Committee denied the motion to strike and accepted Respondent's brief for filing, citing lack of prejudice. Disciplinary Counsel filed its Reply Brief on August 14, 2017, its Corrected Reply Brief on August 15, 2017, and its Amended Reply Brief on August 23, 2017.

On July 7, 2017, Mr. Cohen and Ms. Malson filed a motion to withdraw as Respondent's counsel, which the Hearing Committee granted on July 26, 2017. On August 1, 2017, Disciplinary Counsel filed a motion to strike Respondent's re-submitted brief and a motion to supplement the record with evidence intended to impeach Respondent's testimony, both of which were denied on August 18, 2017. On August 8, 2017 and August 14, 2017, respectively, Disciplinary Counsel filed a motion for leave to file a memorandum under seal and a redacted segment of its reply brief under seal, which were referred to the Board Chair pursuant to D.C. Bar R. XI, § 17(d) and granted on October 4, 2017. On August 14, 2017, Respondent filed an opposition to Disciplinary Counsel's motion to file a memorandum under seal and a cross motion for sanctions and for an order to show cause, and Disciplinary Counsel filed a response thereto on August 15, 2017. On August 18, 2017, the Hearing Committee deferred its recommendation on Respondent's motion for sanctions pursuant to Board Rule 7.16(a). On August 24, 2017, Respondent filed a motion for an order directing service by electronic mail, for an extension of time to respond to Disciplinary Counsel's filings, and for sanctions against Disciplinary Counsel, and the Hearing Committee denied the first two components on October 4, 2017 and again deferred consideration of the sanctions motion pursuant to Board Rule 7.16(a).

II. FINDINGS OF FACT

The following findings of fact are based on the testimony and documentary evidence admitted at the hearing, and these findings of facts are established by clear and convincing evidence. *See* Board Rule 11.6.

1. Respondent, William E. Wallace, III, is a member of the Bar of the District of Columbia Court of Appeals, having been admitted by motion on December 17, 1979, and assigned Bar number 298000. Following a legal career at several major law firms, Respondent organized Capital Legal Group (US) in approximately November 2013. Respondent referred to himself as the "managing partner" of Capital Legal Group, but had no associates or partners, relying instead on as-needed contract lawyers. Stip. 1; RX 1; Tr. 200-02, 282-83 (Wallace).

2. In approximately March 2014, Respondent was contacted by Richard Cole, whom he had known in the 1970s while in law school. Tr. 19, 503-07. Cole alleged that he had recently been the victim of fraud perpetrated by an organization calling itself Charter Investments ("Charter"). In brief, Charter purported to offer certificates of deposit at above-market rates. When investors wired funds to Charter's account at the East West Bank in California, the funds were withdrawn immediately, and were never invested. Cole had invested – and lost – $280,000 through this fraud. DX 21 at 24. Cole had learned of eleven individuals, and one homeowner's association ("HOA"), similarly victimized, and sought legal representation for the group on a contingency fee basis. Stip. 3; Tr. 16-17, 97-99, 136-37, 504-06.

3. Respondent rarely represented individuals, and even more rarely took cases on contingency. Tr. 19, 503-07.[3] Nevertheless, he spoke with, and, in March 2014, entered into retainer agreements to represent twelve victims of Charter's scheme (eleven individuals plus the HOA). Stip. 3. Individual losses of the Charter clients totaled roughly $4.9 million and ranged in size from $150,000 (Freilich) to $1.9 million (Ward). The Charter clients who testified were mostly retirees, and for some, their investment came from their life savings. Rae Lorenz, for example, had invested $466,000 with Charter, which represented roughly 80% of her life savings. Tr. 15-17 (Lorenz), 97-99 (Nelson), 136-37 (Ruppel). A Minnesota police officer, initially contacted by fraud victim Kenneth Nelson, put the victims in touch with one another. Stips. 3, 4; RX 2, 5, 8, 11, 14; Tr. 16-19, 101-03, 137-38.

4. The Charter clients signed retainer agreements with Respondent that contained, in relevant paragraphs, identical language providing:

> *2.* ***Fees for Service.*** *My standard billing rate is $950 per hour. However, I have agreed to represent you on a contingent fee basis. I will not bill you by the hour for legal services rendered and you will owe us no legal fee unless and until we secure a recovery for you. Our fee for professional services will be thirty-four percent (34%) of any and all recoveries received by you as compensation for the monies stolen from you by Charter Financial [sic]. "Recoveries," as used in this Agreement, shall mean the gross amount of any settlement or final judgment recovered on your behalf, including lump-sum payments, future payments and periodic payments tied to the settlement of claims. Disbursements and out of pocket expenses not paid prior to recovery will be deducted from the recovery before distributions being made to you and us.*

[3] Respondent's testimony regarding his clients is consistent with RX 1, a summary of Respondent's professional biography, which includes five pages of "Significant Litigation Matters." None involves an individual (non-corporate) plaintiff.

> *3.* ***Term of Engagement.*** *Either of us may terminate the engagement at any time for any reason by twenty day written notice to the other, subject, on our part, to applicable rules of professional responsibility and subject on your part to a continuing obligation to honor our right to a recovery of our contingent fee as set forth in paragraph 2. . . .*
>
> *6.* ***Arbitration.*** *While we do not anticipate any disputes with respect to fees or expenses, and to the extent there are any questions about fees or expenses, we expect they will be resolved by discussions and negotiations. To the extent necessary, any and all disputes concerning fees and/or expenses (regardless of amount in dispute) will be resolved by way of binding and confidential arbitration before the DC Bar Attorney-Client Fee Arbitration Board consistent with the laws of the District of Columbia and the fee dispute process administered by the DC Bar.*

DX 1.

5. Respondent addressed the issue of possible expenses and disbursements in the Charter matter in a separate memorandum. RX 2. Noting "I do not get paid unless I am successful in recovering money for you," Respondent suggested creating a common fund of $10,000 to cover actual out-of-pocket expenses associated with the case. The Charter clients contributed, *pro rata*, according to a schedule Respondent proposed. RX 20.

6. Individual Charter clients Rae Lorenz, Kenneth Nelson, and Irving Ruppel, testified at the hearing, as did Patrick Shea, an attorney and member of Charter client Forest Glen Home Owner Association in Utah. The Committee had sufficient opportunity to evaluate the demeanor and tone of each witness, including those who testified by video conference. Lorenz, Nelson, Ruppel, and Shea testified clearly and were responsive and candid both on direct and cross examination. Their

testimony was consistent with contemporaneous communications, and the Committee finds their testimony to have been credible.[4]

7. After the Charter clients signed retainer agreements, Respondent had various communications with the Charter clients individually and, on a few occasions, as a group. Respondent ensured that the Charter clients understood his view that it was "more likely than not that [they] would not prevail." Tr. 507. Respondent's initial strategy was to await the outcome of the Federal Bureau of Investigation's ("FBI") investigation, in the hopes that an arrest would be made, and that useful information would be obtained from the arrest. Respondent hoped to develop a case against East West Bank, as it appeared that Charter Investments was a sham organization. Tr. 64-65 (Lorenz), 104-05 (Nelson), 499 (Shea), 513-15 (Wallace).

8. Charter clients shared with Respondent information that they had, or that they developed. For example, Mr. Ruppel had, early on, spoken by phone with Martin Wang, then a manager of East West Bank, who told Ruppel of his own concerns about the Charter Investment account activity. Tr. 139-141 (Ruppel). Ruppel testified credibly that he had taken contemporaneous notes of his conversation with Mr. Wang, and that he discussed his conversation with Mr. Wang to Respondent. RX 90, 99; Tr. 138-142 (Ruppel), 224-25 (Wallace). Ms. Lorenz

[4] Ms. Lorenz identified several emails in which she complimented Respondent, noting she had done so in order to "feed his ego." Tr. 74. She testified that she felt she "had to handle him so he didn't get irate." Tr. 75-76. Committee members found her explanation of these emails to be credible, based on her demeanor, and the body of communications contained in the record.

reported to Respondent that the FBI had told her they were unlikely to make any arrest. Tr. 35-37 (Lorenz); RX 113.

9. Several of the Charter clients did not agree with Respondent's strategy, wanted a lawsuit to be filed, and wanted more communication from Respondent. Tr. 29-32 (Lorenz), 149-150 (Ruppel). On September 1, 2014, Respondent answered one client's request for better communication with the suggestion that the client – Mr. Nelson – find different counsel to handle his claim. Tr. 109-110; DX 23 at 4. On October 28, 2014, Respondent suggested to the group that "[i]t could be that a change in representation is in order." DX 7; RX 108. No change in counsel was made at that point.

10. In early 2015, without informing the Charter clients of his intentions, Respondent contracted with attorney Jeannie Yim Figer to prepare a memorandum addressing whether the Charter clients should file suit against East West Bank, and if not, whether they could obtain pre-complaint discovery.[5] DX 8; Tr. 286-87. Although Respondent had agreed the Charter clients would owe no legal fees until after a recovery, Respondent paid Ms. Figer $5,000 for this memo, using a little more

[5] At the hearing, Respondent claimed that he had actually done the research in the memo, "fed it to Jeannie Figer, which [sic] fed it back to me." Tr. 527. He also testified that his actual goal in contracting with Ms. Figer was to get her "invested in the case" so she would agree to file a lawsuit in California and pursue a pre-complaint subpoena, using one of the group of Charter clients. Tr. 531. We find that Respondent's testimony on this point was intentionally false. He submitted no evidence that might corroborate his claim that he had provided research to Ms. Figer, and the examples of his work product cited in his brief were unrelated to the memo. *See* Respondent's Brief at 6 (citing RX 36, 47, 104, 114, 119, 131, 132, 141). Furthermore, we find it hard to believe that Respondent would pay $5,000 for a memo based on his own research, even if he received the benefit of getting Ms. Figer invested in the case.

than half of the client-provided funds from the common expense fund. DX 19 at 5; Tr. 283, 287. He testified that the Figer memo was in his view the "single-most important piece of work product" produced during the period he represented the Charter clients. Tr. 390-91. Respondent circulated the March 19, 2015 Figer memo to the Charter clients on April 9, 2015. RX 128.

11. Respondent did not believe he had the facts needed to file a complaint, and he testified that it was "too expensive" to hire an investigator to develop the facts, and that "nobody wanted to pay for a private investigator." Tr. 234-35; 526-27. Yet Respondent introduced no evidence of the cost of such an investigator, nor records that he had made a specific proposal to hire an investigator, that he had proposed that his clients pay for one, or that his clients had rejected any such proposals.[6] We find that Respondent's unsupported testimony, while not intentionally false, represented a post-hoc rationalization for his failure to proceed with the case.

12. On April 16, 2015 Respondent terminated Mr. Ruppel as a client, and returned the full amount of expenses Ruppel had paid. Stip. 6; DX 10. In May 2015, Ward, Cole, Lorenz, Nelson, and Paula and Steven Tamkin ("Tamkin") terminated Respondent as their attorney. RX 3, 6, 7, 9-10, 12-13; DX 11-19; Stip. 7.

[6] We note that Rule 1.8(d)(1) expressly permits attorneys to pay directly for the costs of investigation; client reimbursement is not required. Rule 1.8, cmt. [9]. Attorney Shea (a member of the HOA client) had identified an investigator in California and Respondent told the clients he planned to ask the investigator – at some point – to try to figure out if there was an East West Bank compliance employee who had left the Bank and would be willing to talk about the bank's practices. RX 21 at mins. 40-45. There was no evidence that Respondent pursued this goal, or any more practical investigative goal.

Respondent returned a portion of each client's expenses, after deducting from the common fund the $5,000 Figer fee and the funds returned to Ruppel and Freilich.[7]

13. The Charter clients approached attorney Chris Hagen of the California firm of Ward & Hagen, which had successfully pursued prior claims against East West Bank. Ultimately, the individual Charter clients and the HOA agreed to engage Hagen. RX 3, 6, 7, 9-10, 12-13; DX 11-19; Stip. 7.[8]

14. Respondent contacted Hagen, and the two spoke by phone. Respondent initially sought to serve as Hagen's co-counsel. Hagen advised Respondent that, since Ward & Hagen had sued East West Bank previously, and since the plan was to file suit in California where Hagen was admitted to the Bar and practicing, "unless you have some specific information that would be helpful, I don't know what role you would play." Tr. 417.

15. After that conversation, on May 7, 2015 Respondent forwarded Hagen the engagement letters between Capital Legal and some of the individual clients by email, noting in part: "I draw your attention especially to paragraphs 2 and 3 regarding the right of the client to terminate subject to the right of Capital Legal to

[7] Respondent did not return funds to the Charter clients *pro rata*. Rather, after deducting the $5,000 for the Figer memo payment from the joint expense fund, he fully refunded to Ruppel and Freilich the amounts they had contributed. The remaining clients did not receive full refunds. Rather, they received a proportional share of the expense funds that remained after deducting the Figer, Ruppel, and Freilich payments. The record is unclear as to why Respondent handled the return of client funds in this fashion; however, this issue does not form the basis for any of the charges in this matter.

[8] The Forest Glen HOA and attorney Shea retained Hagen, but did not terminate their attorney-client relationship with Respondent. Tr. 497-99. It is unclear from the record when or whether clients Charpentier, Freilich, Haynes, and Woolbright terminated Respondent; however, that question is not material to the alleged violations at issue.

recover its fee." RX 146; DX 20; Tr. 420-21. Mr. Hagen responded that same day, asking Respondent to "[p]lease advise what your lien/fee is for each client." DX 20; RX 147. Respondent did not immediately respond. Tr. 421-22.

16. Hagen continued his efforts to get Respondent to clarify his position with respect to Capital Legal's putative claim for fees. Hagen emailed again on May 12, 2015, stating that he would not honor a lien on the file if Respondent did not provide a specific amount – dollar or percentage – for the lien for each client. Respondent replied making it clear he was asserting some sort of lien or claim to any recovery: "The lien is on any monetary recovery that might be secured on the claims arising from or associated with the Charter Investment fraud. . . . [Y]ou can pretend there is no lien, and I can pretend that that [sic] the moon is made of cheese. But that doesn't get anyone anywhere. You have the letters of engagement and can see that Capital Legal is entitled to 34% of any recovery (assuming, of course that you are not going to pretend that away, too)." DX 20; RX 149. Hagen understood this to mean that Respondent would be asserting a separate 34% lien on any ultimate recovery. Tr. 468-69, 479. The Hearing Committee found Hagen's testimony to be both credible and consistent with the plain meaning of Respondent's written communications.

17. Hagen continued to seek clarification of Respondent's fee claim, explaining to Respondent: "The clients just need to know whether they are dealing with a 34% fee or a 68% fee." DX 20; RX 150. Respondent failed to respond, or to specify what type of fee he would claim, if any. Hagen resent the email on May 14,

2015, asking Respondent to "please respond." Respondent again failed to respond. DX 20; Tr. 266-67, 423-25.

18. Hagen moved forward with the representation of the Charter clients, assuming that Respondent would assert a fee claim on any eventual recovery of up to a separate 34%. RX 162; DX 21; Tr. 427-28. Hagen informed the individual Charter clients that they were potentially subject to two, separate 34% contingency fees on any possible recovery (one from Respondent and one from Ward & Hagen), and suggested they seek clarification from Respondent, advising them to get "something in writing from [Respondent] stating that he is either not asserting a lien on your case or clearly stating the $ amount of the lien." RX 145.

19. At least several Charter clients then contacted Respondent, asking for clarification of his fee lien, and Mr. Nelson and Ms. Lorenz, for example, asked Respondent to send something in writing to all the clients confirming that he would not be asserting a lien. RX 155, 157, 161, 165. Respondent also failed to respond to these inquiries. Tr. 273-75; RX 166. Ms. Lorenz believed that if she retained Mr. Hagen, she would have to pay 34% of any recovery to him and another 34% to Respondent. On May 26, 2015, she emailed Respondent to inform him that she had "not retained other counsel yet because of the lien, and if you are really asserting a 34% lien then I expect you to continue representing me." RX 165. In spite of Ms. Lorenz's obvious concern about the status of her representation, Respondent acknowledged that he never responded to this email. Tr. 46, 278-79.

20. Hagen's firm prepared engagement agreements for the individual Charter clients spelling out that the firm's 34% contingency fee would be "in addition to and regardless of any fee owed by CLIENTS[] to prior attorneys" and that "any amount claimed by CLIENTS' prior attorney cannot be forwarded without an appropriate Court or Arbitration order, or a written release of lien by the prior attorney." DX 21. The Charter clients agreed to these terms.

21. Mr. Ruppel filed a complaint against Respondent with the Office of Disciplinary Counsel for the District of Columbia on May 16, 2015, and Cole, Lorenz, Nelson, and Ms. Tamkin separately did the same. Stip. 10. DX 22 – 26.

22. Hagen's firm filed a lawsuit in California against East West Bank on behalf of the Charter clients and, in the spring of 2016, the lawsuit settled in mediation, providing monetary compensation to each of the Charter clients. On May 27, 2016, Hagen emailed Respondent, advising him that the lawsuit had settled with a monetary judgment, and again asking: "Please now tell me whether you are asserting any lien(s) and if so then as to which clients, what dollar amounts and the basis for the lien(s); e.g. number of hours worked on the file, etc." RX 167. By this time, Respondent knew that Cole, Lorenz, Nelson, and Tamkin had filed complaints with the Office of Disciplinary Counsel. Tr. 347-48.

23. Respondent did not respond to Hagen's email directly, but on May 31, following requests from separate Charter clients, emailed Hagen to advise he was forgoing a fee with respect to Ruppel, Forest Glen HOA, Ward, Woolbright,

Charpentier, Haynes, and Freilich.[9] RX 172-74. On June 3, Hagen advised Respondent that he had paid out settlement funds to all but Cole, Lorenz, Nelson, and Tamkin. He asked whether Respondent was asserting a lien with respect to these four clients and, if so, in what dollar amount or percentage, "so I know what amount to keep in my client trust account." RX 176. Respondent failed – again – to provide this basic information, and told Hagen the four clients should make a proposal for his fee, but if not, he would file with the Attorney Client Arbitration Board. RX 176.

24. As a result, the remaining four Charter clients located and retained counsel in the District of Columbia, George Clark, to handle the anticipated fee arbitration that Respondent had said he would initiate. In June 2016, Clark contacted Respondent on behalf of Cole, Lorenz, Nelson, and Tamkin. Respondent told Clark he was entitled to his contingency, that he was not releasing his claim to any fee against these four clients in part because they had filed disciplinary complaints against him, that the fee issue would have to be resolved by the ACAB, and that he would not file anything with ACAB until the disciplinary complaints were resolved. Tr. 178-79, 185-86; *see also* Tr. 398. Clark followed up with an email, again asking

[9] Specifically, Respondent stated the following with respect to his claims for fees against the Charter clients: "I will not be impressing a lien as to Forest Glen HOA . . . I also have no intention of impressing a lien as to the recoveries on behalf of Mr. Ward, Mr. Charpentier, Mr. Woolbright and Ms. Haynes" (RX 175, 5/31/16 email sent 2:30 pm); "I have no claim for a fee from [Mr. Ruppel]" (RX 175, 5/31/16 email sent 2:53 pm); "I do not intend to seek a fee from Ms. Freilich (RX 175, 5/31/16 email sent 2:58 pm); "[F]or the majority of the claims, I have agreed to forgo a fee completely" (RX 175, 6/3/16 email sent 12:00 pm).

Respondent to "make a demand" for the fees to which he claimed to be entitled. DX 30. Clark received no response to this email.[10]

25. Ultimately, on September 1, 2016, counsel for Respondent sent a letter to Mr. Hagen saying that Respondent did not claim any right to the funds Hagen was holding in escrow. RX 180. Respondent's counsel noted that any fee claim Respondent might have would be raised in ACAB, "if [Respondent] decides to assert such claim." Hagen released the funds, and Cole, Lorenz, Nelson, and Tamkin received their settlement funds. Respondent has not, according to his own testimony, waived any claim to a fee from these four remaining clients. Tr. 404.

26. Respondent did not provide materials that would assist Mr. Hagen in handling the matter. Tr. 90, 122-23, 486, 499. He turned over no client files or work product, and the only work product Mr. Hagen received – the Figer memorandum – was provided to him by the clients. Tr. 194-95, 429-430.[11]

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[10] Respondent claimed to not have received the email in DX 30. Tr. 396-97. Mr. Clark testified credibly that the email he sent did not bounce back. Tr. 191-92. The email address to which Clark sent the message is the same email reflected on contemporaneous emails both sent and received by Respondent. The record also reveals that Respondent had a well-documented pattern of ignoring similar email requests that asked him to specify the amount, percentage, and basis of any claimed fee. The Committee finds that Respondent's claim that he did not receive this email was false. Respondent failed to respond to any requests for information needed to assess or respond to his possible fee claim. Respondent admitted he had not kept timesheets or any kind of log of his time on the Charter matter. *See* Tr. 373-74. As noted above, Respondent provided no information to his former clients, to Mr. Hagen, or to Mr. Clark from which they could have figured out how much time Respondent actually spent on the Charter matter, let alone whether any of Respondent's work played any factor at all in the outcome.

[11] Respondent takes significant credit for the Figer memorandum's role in the settlement with East West Bank as his justification for a fee. He claims that the citation to *Gonzales v. Lloyds TSB Bank, PLC*, 532 F. Supp. 2d 1200 (C.D. Cal. 2006) in the Figer memorandum led to California Counsel's citation to this case in its opposition to East West Bank's motion to dismiss, which led the Court to cite this case as support for denying the motion to dismiss in the aiding and abetting

27. Respondent's actions are difficult to understand. He was repeatedly asked to provide straightforward information to successor counsel when closing out his representation of the Charter clients. He failed to provide basic fee and/or time records to his clients, to successor counsel, or to the attorney the Charter clients retained for the fee arbitration matter that Respondent had represented he was going to file. He did not respond to requests whether his fee would be a percentage or a dollar figure based on *quantum meruit*, exposing the Charter clients to additional uncertainty.[12] He suggested, at the hearing, that he did not follow through to initiate proceedings at ACAB both because he did not want to "spend three weeks putting together a fee petition for the Board," (Tr. 560), and because he was in an adversarial position with the clients as a result of their disciplinary complaints (Tr. 553).

28. Respondent knew that his former clients had recouped less than their full savings, and professed "I didn't want to charge them a fee at all and I didn't charge any of the others a fee," as soon as he heard of the "horrible" settlement, because he did "feel very bad for them." Tr. 590-91. Yet he selectively maintained

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count. Notwithstanding the fact that there is no possible way that the Hearing Committee could infer a causal link, Respondent fails to acknowledge that he did not author the Figer memorandum, the clients already paid for the Figer memorandum, and Respondent did not forward the memorandum to Hagen, his clients did.

[12] Respondent's Answer asserts that he believed he was entitled, on a *quantum meruit* basis, to a portion of Hagen's 34% contingency fee. Respondent's Answer to Specification of Charges ("Answer") ¶¶ 10, 11, 15, 16. In none of the communication between Respondent, successor counsel Hagen, Mr. Clark, or any of the Charter clients did Respondent state – even when directly asked – that he believed he had a *quantum meruit* fee claim. *See* DX 20; RX 150. We do not find his assertion to be credible.

his fee claims only against the clients who had both fired him and then filed disciplinary complaints.

29. Respondent testified that the reason he did not waive his fee claims against these four Charter clients was because he wanted to "preserv[e] the *status quo*" in his legal relationships with them, and that he "couldn't do a darned thing" about the fee claims. Answer ¶ 16; Tr. 553-54, 593. Respondent's contemporaneous communications directly contradict his testimony. For example:

- On June 3, 2016, Respondent asked Hagen on whom he should serve his allegedly forthcoming ACAB petition to resolve this fee claim. DX 29.
- On June 22, 2016, Respondent proposed that the Charter clients agree to "non-binding mediation to help us determine a reasonable fee amount." RX 179.

Thus, at least through June 22, 2016, Respondent felt it appropriate to threaten legal action to resolve the fee issue, disciplinary complaints notwithstanding. Respondent never asked Disciplinary Counsel whether he would be permitted to take steps to resolve the fee issue during the pendency of the complaints. Tr. 408-09, 570. We find Respondent's testimony attempting to justify his selective decision to waive his fees to be untruthful, and to be contradicted by contemporaneous evidence, including Respondent's own contemporaneous statements.

30. Respondent's credibility is further undermined by the untruthful testimony he gave about the work he allegedly did for the Charter clients. For example, in preparation for the instant hearing, Respondent prepared a summary of the work he claims to have done on behalf of the Charter Investments clients.

RX 187. The six-page listing links specific exhibits to a timeline of projects as "exemplars" of his work. Tr. 517-18, 521, 580-81. The Committee reviewed the materials cited, and found little support that Respondent had performed the work he claimed, or that he had done so during the time frames he specified. Two brief examples illustrate this point:

- Respondent's summary states he performed "Legal Research: FOIA Strategy" between August 2014 and February 2015. RX 187 (unnumbered p. 4). He cited RX 106 as support for this claim. RX 106 is a September 2014 email chain between Charter clients, in which one client notes: "I do want him [Respondent] to make a FOIA request. I sent the request to him, but did not hear back from him." RX 106. Respondent proffered no evidence of any FOIA research prepared for or provided to the Charter clients.
- Respondent's summary states there were multiple calls with a range of state and local "enforcement personnel and investigators" between "March through December 2015."[13] RX 187 (unnumbered p. 1). He cites as support RX 17 (a client contact list, including contact information for law enforcement and investigative personnel) and RX 83 (a March 13, 2014 email from Shana Greene, a Minnesota police officer, sent to the Charter clients and Respondent advising that she had a conference call with the AUSA, FBI, IRS, and

[13] Although the summary is dated March and December 2015, based on the proffered supporting evidence, it is clear that the period should have been March and December 2014 because he no longer represented the individual Charter Investment clients as of April 2015. RX 187.

Homeland Security). Respondent points to no phone logs, notes, memoranda, or other evidence to support his claim that he had any calls with the identified individuals.

31. The hundreds of pages Respondent submitted as "exemplars" of his work for the Charter clients included materials dated after his representation of the Charter clients had ended,[14] research materials dated one full year earlier than the dates he claimed to have done the research,[15] and materials having no bearing on Respondent's legal strategy, or any strategy pursued on behalf of the Charter clients.[16]

32. Respondent's testimony lacked candor even in areas less central to the charges: He testified that he thought of the contract attorneys he occasionally hired as "associates" of the firm (Tr. 202-03); he testified both that he had been told to retire from "big law" because he turned sixty (Tr. 209), and that he retired from Clifford Chance "at the request of Milbank," one of Respondent's previous law firms

[14] For example, Respondent cites to RX 24 – RX 31 as "Background Research" he claims he did on East West Bank between March and May 2014. RX 187, p.2. Yet RX 24 includes materials accessed online as late as July 2015, after Respondent's relationship with the individual Charter clients had been terminated, and 14 months later than Respondent claims to have done the research.

[15] Respondent testified that he performed, between January and May 2015, the research reflected in the materials presented in RX 48 and RX 50. Tr. 582. Both include documents accessed online whose date stamps indicate, however, that they were accessed one year earlier, in May 2014. The remaining documents do not reflect their date of access.

[16] These include "Analysis of Elder Abuse and Neglect Definitions Under State Law (2003), RX 50, pp. 578-612 (accessed 5/27/14 at 10:32 a.m.) and a Florida Bar Journal Article, RX-50 pp. 1224-27 (accessed 5/27/14 at 10:24 a.m.). By far the longest article included in RX-50 – over 500 pages – addresses physical and emotional abuse of the elderly, as well as financial abuse by their domestic caretakers, issues not involved in the Charter clients' claims against East-West Bank or Charter Investments.

(Tr. 502); Respondent testified that he created the Florida branch of his law firm for the Charter clients after signing their engagement letters, yet each engagement letter bears letterhead reflecting: "Capital Legal – Washington, DC – New York – Florida" (DX 1; Tr. 284-85); he testified he "never charged any expenses incurred to any of the clients at any time" (Tr. 510), but he admittedly charged the $5,000 Figer invoice to the clients' expense fund. RX 82 at 5.

III. RESPONDENT'S MOTIONS FOR SANCTIONS

On August 14, 2017, Respondent moved for sanctions and for an order to show cause, contending, first, that sanctions are appropriate for Disciplinary Counsel's allegedly bad faith efforts to supplement the record with impeachment evidence. Respondent further contends that Disciplinary Counsel should be ordered to show cause why it should not be held in contempt for allegedly violating the Hearing Committee's witness sequestration order. For the reasons discussed in the Confidential Appendix, *infra*, we recommend that Respondent's motions be denied.

IV. CONCLUSIONS OF LAW

Disciplinary Counsel contends that Respondent mishandled the transition of the Charter clients' matter to successor counsel, failed to specify the amount or nature of his claim for fees, if any, on his former clients' recovery, and intentionally held up the distribution of funds to former clients who had fired him and then made disciplinary complaints against him, in violation of Rules 1.3(b)(2), 1.16(d), and 8.4(d). Respondent contends that he had a valid claim for fees, that any delay in clients receiving their settlement funds was caused by successor counsel's fee

agreement and the operation of California law pertaining to attorney liens, and that he did not violate any of the Rules charged.

A. Respondent violated Rule 1.16(d) by failing to provide requested information about his fee claim, including billing records.

Rule 1.16(d) provides:

> In connection with any termination of representation, a lawyer shall take timely steps to the extent reasonably practicable to protect a client's interests, such as giving reasonable notice to the client, allowing time for employment of other counsel, surrendering papers and property to which the client is entitled, and refunding any advance payment of fee or expense that has not been earned or incurred. The lawyer may retain papers relating to the client to the extent permitted by Rule 1.8(i).

Disciplinary Counsel contends that Respondent violated Rule 1.16(d) when he asserted a claim for up to a 34% share of any recovery, and failed to provide his clients with any billing or time records, thereby creating a "roadblock to employing successor counsel." Respondent contends that he was not obligated to specify the exact amount of a fee before there was a resolution of the underlying claim.

Respondent's clients were entitled to clarity on what fee Respondent could claim, including any billing records reflecting the hours he expended. Respondent kept no records of the time he spent on the Charter matter. FF 24 n.10; Tr. 373-74. He did not inform his clients, or successor counsel, of this fact. Respondent did not prepare even a best estimate of the time he had spent. Rather, he chose not to, testifying: "it would take an enormous amount of effort to do that. Until a fee became even a possibility, there was no sense spending the enormous amount of time it would take to do it." Tr. 373-74. Providing clients with requested

information about time spent on their matter is not, however, a matter of convenience for an attorney – it is a basic obligation. *See* Rule 1.4(a) ("A lawyer shall keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information."). Respondent's actions, in addition, created confusion and uncertainty. Clients are entitled to evaluate their risk in changing counsel, *see* Rule 1.16, cmt. [4], and to have the capacity to meaningfully evaluate the value of any proposed settlement which, in a contingency matter, includes understanding the portion that will be distributed as fees and/or expenses. *See* Rule 1.4, cmt. [1]. Respondent's actions prevented his Charter clients from having this information. Respondent also never responded to Ms. Lorenz's email informing him that she expected him to remain as her attorney if he would be asserting a 34% contingency fee on her recovery. FF 19.

Respondent also failed to forward to successor counsel materials he claimed were part of the work performed for the clients. FF 26; Tr. 429. Respondent was required to turn over the entire file to his clients or their successor legal representative, with limited exceptions. D.C. Bar Op. 333 (Dec. 20, 2005). Even a brief delay in doing so is a violation of Rule 1.16(d). *See In re Thai*, 987 A.2d 428, 430 (D.C. 2009) (per curiam) (stating that "the client is owed an 'immediate return' of his file 'no matter how meager'" and holding that a five-day delay in returning file to client established a violation of Rule 1.16(d) (quoting *In re Russell*, 424 A.2d 1087, 1088 (D.C. 1980))).

Respondent's conduct violated Rule 1.16(d).

B. Respondent violated Rule 1.3(b)(2) by intentionally prejudicing his client during the course of the professional relationship.

Rule 1.3(b)(2) provides that [a] lawyer shall not intentionally . . . [p]rejudice or damage a client during the course of the professional relationship." "Proof of actual intent to harm . . . is not necessary to establish a violation of Rule 1.3(b)(2); but [Disciplinary] Counsel must establish that the attorney 'knowingly created a grave risk' that the client would be financially harmed and understood that financial damage was 'substantially certain to follow from his conduct.'" *In re Wright*, Bar Docket Nos. 377-99, 10-00, 294-00 & 20-01 at 24-25 (BPR Apr. 14, 2004) (quoting *In re Robertson*, 612 A.2d 1236, 1250 (D.C. 1992) (appended Board Report)), *findings and recommendation adopted in relevant part*, 885 A.2d 315, 316 (D.C. 2005) (per curiam). A violation of Rule 1.3(b)(2) cannot be sustained "unless there is actual prejudice or damage to the client." *In re Cohen*, 847 A.2d 1162, 1165 n.1 (D.C. 2004); *see, e.g.*, *Robertson*, 612 A.2d at 1250 (finding intentional damage to a client where the respondent failed to file a client's tax returns before the deadline, thus forfeiting the client's requests for tax refunds).

Disciplinary Counsel contends that Respondent violated Rule 1.3(b)(2) in two respects when he retaliated against four clients who both fired him and filed disciplinary complaints against him. First, by refusing to clarify for successor counsel in advance of successor counsel's engagement whether, and in what amount/percentage, Respondent was asserting a claim for fees. Second, by selectively maintaining an unspecified claim for fees against those who had made disciplinary complaints, while having released all claims for fees against the other

eight clients in the group, and when there was no uncompensated work that he could identify that substantially contributed[17] to the recovery. Respondent contends that he did not formally assert a lien, that a case cited in the memo prepared by Ms. Figer did contribute to the recovery, and that he was entitled to fees (of a still unspecified amount). Respondent suggests that successor counsel created the problems for the clients.

We outlined above that, contrary to Respondent's contentions, the record reflects that he appeared to have done little work of value for the Charter clients during the course of the engagement, the clients had all paid for what Respondent refers to as the "most important work product" created during the engagement (the Figer memo), and he released fee claims against eight of the clients but selectively asserted a claim for fees against four of the Charter clients who had fired him and filed disciplinary complaints. This latter point is significant, as work on the matter was done for the clients collectively. Respondent's decision to waive fee claims against two-thirds of the clients, whose claims represented over 70% of the money lost by the Charter clients due to the alleged fraud, suggests that Respondent was not motivated by a neutral objective to be fairly compensated for work on this matter.

[17] Respondent argues that "substantial contribution" is not the proper test in evaluating when an attorney is entitled to compensation under *quantum meruit*. Respondent cites to the factors in *Brown v. Brown*, 524 A.2d 1184, 1190 (D.C. 1987), wherein the first factor requires that the attorney demonstrate that "valuable services were rendered." Respondent misses the point, which is that his contribution was minimal, if any, regardless of the test employed. If he did provide value to his clients, it would have been value shared among his clients equally. There is no evidence that Respondent was entitled to any portion of the recovery; recovery which was ultimately obtained from East West Bank, an entity that Respondent declined to proceed against while he represented the charter clients.

Nor does it appear that Respondent actually believed that he was entitled to a 34% recovery. His continual refusal to provide the specific amount of his lien to his clients and Hagen (even after settlement was achieved), his request that the clients make a proposal as to the appropriate fee, his request that the clients enter into non-binding mediation to determine the appropriate fee and his testimony that "I didn't want to charge them a fee at all and I didn't charge any of the others a fee," as soon as he heard of the "horrible" settlement, because he did "feel very bad for them," and the fact that Respondent did not believe that the Charter clients had a viable claim against East West Bank leads to the conclusion that Respondent did not actually believe that he was entitled to a fee, let alone a 34% fee.

There is no doubt that the Charter clients were at grave risk of financial harm: It is undisputed that, because of Respondent's failure to specify his fee claim, the clients were subject to a potentially exorbitant claim that they would have to pay a total fee of 68% of an eventual recovery. That uncertainty interfered with Mr. Hagen's ability to draft and execute retainer agreements, and may have discouraged clients from hiring successor counsel. When the amount of recovery became known after settlement, four of the clients did not have access to 34% of their post-fee damage awards.[18] Respondent knew successor counsel was withholding these funds pending clarification of Respondent's fee claim. While Respondent took issue at the hearing with the propriety of successor counsel's actions to withhold these funds (pursuant to successor counsel's understanding of his obligation under California

[18] Respondent made clear – after the settlement – that he had no fee claim against Ruppel.

law), Respondent took no steps to clarify his fee claim, or to secure the release of these funds, until his own counsel sent a September 2016 letter stating that any fee claim made would not be brought against successor counsel. Respondent continues to hold open the possibility that he will pursue these four clients directly for a fee claim. Tr. 374-75.

Respondent knew that the funds recovered represented retirement funds for these clients, and acknowledged that it was "a very serious matter." Tr. 396. Yet he took no action to mitigate the actual or potential financial harm to his clients from the delayed release of the full settlement funds. Instead, Respondent informed the four clients through successor counsel that he would be filing a petition for fees with ACAB, so the four expended additional funds to secure local District of Columbia counsel to handle the ACAB matter. Respondent never filed a petition.

Respondent suggests that Rule 1.3(b)(2) does not apply because he had been terminated. However, Respondent had a range of continuing obligations to his former clients. He had to take reasonable steps to protect their interests, including surrendering papers and property, returning unearned fees, and returning unearned advanced expenses. Rule 1.16(d). He had to continue to preserve their confidences and secrets. Rule 1.6(g). He could not take a position adverse to them in a substantially related matter. Rule 1.9.

While the Court of Appeals has not yet specifically addressed the question of whether Rule 1.3(b)(2)'s obligation to avoid intentional harm to clients survives the end of an engagement, we believe it does. The Court has clearly recognized that

clients' "unfettered right" to discharge their attorney is central to the lawyer-client fiduciary relationship. *In re Mance*, 980 A.2d 1196, 1203-04 (D.C. 2009) as amended (Oct. 29, 2009); *see also* Rule 1.7, cmt. [8]. To permit an attorney to wield a claim for fees in a retaliatory fashion, against clients who both discharged him and filed disciplinary complaints, would deeply undercut this right. The two other jurisdictions to consider the issue found that the obligation to avoid intentionally harming a client survives the end of the attorney-client relationship. *See State ex rel. Counsel for Discipline, Nebraska Supreme Court v. Sipple*, 660 N.W. 2d 502, 510 (Neb. 2003) ("[R]espondent's ethical obligation not to engage in conduct that was prejudicial or damaging to [client] during the course of the professional relationship extended beyond the termination of respondent's employment relationship with [client], and respondent's actions after [client] had secured new counsel can be considered . . . ."); *In re Gonzalez*, 132 A.D.3d 1, 6 (N.Y. App. Div. 2015) (violation for intentionally making prejudicial statements to immigration authorities which were intended to cause the arrest and deportation of a former client). *See generally In re Mabry*, Bar Docket No. 2007-D190 (BPR Nov. 4, 2010) (finding that attorney's conduct after removal as personal representative violated Rule 1.3(b)(2)), *recommendation adopted*, 11 A.3d 1292 (D.C. 2011) (per curiam).

Here, where Respondent's actions occurred during the transfer of the matter he had handled to successor counsel, and up through the distribution of settlement funds in this same matter, it is a reasonable reading of Rule 1.3 to require its obligation to avoid intentionally harming a client to extend beyond the Spring 2015

termination of the employment relationship. We find that Respondent violated Rule 1.3(b)(2) when, between April 2015 through September 2016 he failed to provide reasonable information that would permit successor counsel to identify the precise nature and elements of his contingent fee claim, knowingly exposing Respondent's clients to financial risk and ultimately delaying their access to settlement funds, and requiring them to incur the expense of retaining counsel for an ACAB matter that Respondent represented he was about to file. In this instance, Respondent's actions are exacerbated by his (1) failure to provide any information at all about his fee claim (including his inability to testify credibly regarding the work that he did to substantiate that he was owed a fee at all) and (2) untruthful testimony regarding his selective decision to waive his fees for those clients who had not filed a disciplinary complaint against him.

C. Respondent violated Rule 8.4(d) by selectively maintaining a claim for fees against only those former clients who had fired him and filed disciplinary complaints.

Rule 8.4(d) provides that it is professional misconduct for a lawyer to "[e]ngage in conduct that seriously interferes with the administration of justice." To establish a violation of Rule 8.4(d), Disciplinary Counsel must demonstrate by clear and convincing evidence that: (i) Respondent's conduct was improper, *i.e.*, that Respondent either acted or failed to act when he should have; (ii) Respondent's conduct bore directly upon the judicial process with respect to an identifiable case or tribunal; and (iii) Respondent's conduct tainted the judicial process in more than a *de minimis* way, *i.e.*, it must have potentially had an impact upon the process to a

serious and adverse degree. *In re Hopkins*, 677 A.2d 55, 60-61 (D.C. 1996). Rule 8.4(d) is violated if the attorney's conduct causes the unnecessary expenditure of time and resources in a judicial proceeding. *See In re Cole*, 967 A.2d 1264, 1266, 1270 (D.C. 2009).

A disciplinary complaint filed with the Disciplinary Counsel qualifies as a "case or tribunal" for purposes of Rule 8.4(d). D.C. Bar Op. 260 (Oct. 18, 1995) (attorney would violate Rule 8.4(d) by negotiating for the withdrawal of a client's existing disciplinary complaint as part of an effort to resolve a fee dispute with that client). Permitting otherwise would "significantly impair the Bar's ability to regulate its members as well as protect the courts, the legal profession, and the public's confidence in the integrity and competence of the judicial system, thereby 'seriously interfer[ing] with the administration of justice.'" *Id.*; *see also In re Blackwelder*, 615 N.E. 2d 106, 108 (Ind. 1993) (per curiam).

Disciplinary Counsel contends that Respondent violated Rule 8.4(d) by retaliating against four clients who had reported his conduct to Disciplinary Counsel by selectively maintaining his fee claims against these clients only, by informing the clients he was about to serve an ACAB petition on them, requiring them to hire local counsel, and by asserting that he would not resolve his claims for fees against them until the disciplinary matters concluded. Respondent contends that he was entitled to resolve legitimate disputes with those clients, and that he was constrained in his ability to resolve his fee dispute because the clients had placed him in an adversarial position when they filed disciplinary complaints against him.

As set out at length above, Respondent made no good faith effort to either inform his clients of the fee he believed he was owed, or to resolve his fee claim through negotiation or the ACAB process. He seemed to believe that the *clients* had the obligation in the first instance to suggest what his fee should be, and that the fact that they did not do so is the principal reason no resolution was reached. That suggestion is absurd. If Respondent believed he was legitimately entitled to be paid for any work he may have done for his twelve Charter clients on the Charter matter, it stands to reason he would have asserted a fee claim against all – not just four – of the clients. His putative justification for this course of action was that the disciplinary complaints filed by the four clients at issue somehow tied his hands. However, reaching a settlement that interferes with a client's ability to file a disciplinary complaint or requires the client to withdraw an existing complaint violates Rule 8.4(d), *see In re Martin*, 67 A.3d 1032, 1052-53 (D.C. 2013); thus, using former clients' pending disciplinary complaints to stonewall the same former clients' reasonable requests to resolve a fee dispute has a similar chilling effect on would-be complainants and also potentially interferes with Disciplinary Counsel's ability to investigate complaints. *See In re Uchendu*, 812 A.2d 933, 941 (D.C. 2002) ("All that Rule 8.4(d) requires is conduct that 'taints' the process or '*potentially*' impact[s] upon the process to a serious and adverse degree." (emphasis in original) (quoting *Hopkins*, 677 A.2d at 60)). Of note, even after he knew of the disciplinary complaints, Respondent affirmatively expressed his intention to file claims against the clients for a fee, asking successor counsel on whom he should serve the petition

– conduct that, not surprisingly, resulted in the clients retaining Attorney Clark to handle their interests in this matter. Respondent also testified that he did not pursue an ACAB dispute because he did not want to "spend three weeks putting together a fee petition for the Board." This suggests that Respondent felt free to pursue his fee claims against the remaining Charter clients, notwithstanding their pending disciplinary complaints. *See* FF 27. Thus, Respondent's refusal to inform the clients of the fee he wanted was not the result of any external "constraint" placed on him by the disciplinary complaints.

Based on the record as a whole, including Respondent's demeanor at the hearing, and his shifting explanations of why he treated the four clients differently, we find by clear and convincing evidence that Respondent violated Rule 8.4(d) by intentionally and selectively maintaining his fee claims against the four clients in a manner that was designed to impact their participation in the disciplinary process, and to cause them harm.

V. RECOMMENDED SANCTION

In this case, Disciplinary Counsel has asked the Hearing Committee to recommend the sanction of a thirty-day suspension. Respondent has requested that the Hearing Committee recommend dismissal of the charges. For the reasons described below, we recommend that Respondent be suspended from the practice of law for sixty days, with the suspension stayed after the first thirty days in favor of a one-year probation period, with conditions as set out below.

A. Standard of Review

The sanction imposed in an attorney disciplinary matter is one that is necessary to protect the public and the courts, maintain the integrity of the legal profession, and deter the respondent and other attorneys from engaging in similar misconduct. *See, e.g.*, *In re Hutchinson*, 534 A.2d 919, 924 (D.C. 1987) (en banc); *Martin*, 67 A.3d at 1053; *In re Cater*, 887 A.2d 1, 17 (D.C. 2005). "In all cases, [the] purpose in imposing discipline is to serve the public and professional interests . . . rather than to visit punishment upon an attorney." *In re Reback*, 513 A.2d 226, 231 (D.C. 1986) (en banc) (citations omitted); *see also In re Goffe*, 641 A.2d 458, 464 (D.C. 1994) (per curiam).

The sanction also must not "foster a tendency toward inconsistent dispositions for comparable conduct or . . . otherwise be unwarranted." D.C. Bar R. XI, § 9(h)(1); *see, e.g.*, *Hutchinson*, 534 A.2d at 923-24; *Martin*, 67 A.3d at 1053 (citing *In re Elgin*, 918 A.2d 362, 376 (D.C. 2007)); *In re Berryman*, 764 A.2d 760, 766 (D.C. 2000). In determining the appropriate sanction, the Court of Appeals considers a number of factors, including: (1) the seriousness of the conduct at issue; (2) the prejudice, if any, to the client which resulted from the conduct; (3) whether the conduct involved dishonesty; (4) the presence or absence of violations of other provisions of the disciplinary rules; (5) whether the attorney has a previous disciplinary history; (6) whether the attorney has acknowledged his wrongful conduct; and (7) circumstances in mitigation or aggravation. *See, e.g.*, *Martin*, 67 A.3d at 1053 (citing *Elgin*, 918 A.2d at 376). The Court also considers "'the moral

fitness of the attorney'" and the "'need to protect the public, the courts, and the legal profession . . . .'" *In re Rodriguez-Quesada*, 122 A.3d 913, 921 (D.C. 2015) (per curiam) (quoting *In re Howes*, 52 A.3d 1, 15 (D.C. 2012)) (internal quotation marks omitted).

B. Application of the Sanction Factors

1. The Seriousness of the Misconduct and Prejudice to the Clients

Respondent's misconduct undermined his clients' ability to select the lawyer of their choice, he failed to provide requested information about his claim for fees to successor counsel (thus exposing his clients to a potential fee of 68% of recovery), his conduct delayed successor counsel's disbursement of settlement funds, and he took actions designed to retaliate against the clients who had discharged him and filed disciplinary complaints, thus attempting to undermine Disciplinary Counsel's ability to investigate Respondent's alleged misconduct.

2. Dishonesty

The Committee may take into consideration Respondent's conduct at the hearing. *See In re Yelverton*, 105 A.3d 413, 430-31 (D.C. 2014); *In re Bradley*, 70 A.3d 1189, 1193-95 (D.C. 2013) (per curiam). As noted, the Committee found Respondent's testimony to be significantly dishonest and lacking credibility. This includes his testimony attempting to justify his selective decision to waive his fees as to some clients and not the clients who had filed disciplinary complaints, and his testimony regarding the work that he allegedly did for the Charter clients (which changed over time), but all sought to deflect responsibility for his conduct.

Dishonesty to the Hearing Committee is a serious aggravating factor. *See In re Cleaver-Bascombe*, 892 A.2d 396, 413 (D.C. 2006).

3. Violations of Other Disciplinary Rules

As discussed above, Respondent violated three separate Rules, with respect to multiple clients, in a single transaction.

4. Previous Disciplinary History

Respondent has no disciplinary history.

5. Acknowledgement of Wrongful Conduct

Respondent does not acknowledge that any aspect of his conduct was wrongful. He instead lays blame at the feet of his clients, successor counsel, local ACAB counsel, and Disciplinary Counsel.

6. Other Circumstances in Aggravation and Mitigation

The Committee finds no circumstances in mitigation of Respondent's conduct. It considers as aggravating circumstances the fact that Respondent's conduct was directed to multiple older, vulnerable individuals whose financial security had been imperiled by fraud. *See Elgin*, 918 A.2d at 376 (appropriate to consider the number of clients harmed, as well as their vulnerability); *In re Ryan*, 670 A.2d 375, 381 (D.C. 1996) (number of clients affected by misconduct affects sanction); *In re Austin*, 858 A.2d 969, 976, 978 (D.C. 2004) (degree of vulnerability of client prejudiced by misconduct relevant to sanction). Respondent was an attorney who had practiced law in the District of Columbia for many years, thus his actions were not born of inexperience. *Cf. In re Chang*, 694 A.2d 877, 882 n.5 (D.C.

1997). Respondent's apparent retaliatory lack of concern over the continued financial distress of the four clients who filed disciplinary complaints is deeply disturbing. He accepted no responsibility whatsoever for any of the many troubling aspects of his course of conduct in the Charter matter.

C. Sanctions Imposed for Comparable Misconduct

Generally, the Court has imposed a suspension of between thirty and sixty days for failure to transmit the papers of a single client and, in appropriate cases, has included a period of unsupervised probation, with a requirement of continuing legal education (CLE) designed to address the conduct at issue, when the conduct at issue resulted from "some systemic problem in a respondent's practice which could effectively be addressed by conditions requiring remedial measure." *In re Mance*, 869 A.2d 339, 341-42 (D.C. 2005) (per curiam) (thirty-day stayed suspension stayed for one year of probation plus CLE for failure to file an untimely notice of appeal, seek to correct his mistake, try to have his client's sentence reduced, communicate with his client and the court, or withdraw from the case in a timely fashion, in violation of Rules 1.1(a) and (b), 1.3(a) and (b), 1.4(a), 1.16(a)(3), and 8.4(d)); *see also Thai*, 987 A.2d at 431 (sixty-day suspension with thirty days stayed in favor of one year probation, with conditions for, in part, violation of Rule 1.16(d)). Here, Respondent wholly failed to transmit papers and billing information requested by successor counsel for not just one but twelve clients. That repeated failure suggests a systemic problem exists in his law office management that could be addressed through probation with CLE.

Further, he selectively maintained his claim for fees against just four of these Charter clients – only those who had fired him and then filed disciplinary complaints. That intentional prejudice of multiple clients, in violation of Rule 1.3(b)(2), which also seriously interfered with the administration of justice by potentially impeding Disciplinary Counsel's investigation, in violation of Rule 8.4(d), supports the imposition of a brief suspension. *See, e.g.*, *In re Francis*, Board Docket No. 13-BD-089, at 13-14, 20 (BPR March 17, 2015), *recommendation adopted*, 137 A.3d 187, 189-190 (D.C. 2016) (per curiam) (thirty-day suspension, stayed in favor of six months of probation and CLE, where the respondent failed to oppose a motion to dismiss which eventually forced the client to identify new counsel to assist her in having her case reinstated and considered on the merits, in violation of Rules 1.3(b)(1), 1.3(b)(2), 1.4(a), and 1.4(b)); *Mance*, 869 A.2d at 340-42; *In re Charles*, 855 A.2d 1114, 1115 (D.C. 2004) (per curiam) (thirty-day suspension for failure to appear for trial, resulting in dismissal of the complaint, and failure to respond to Disciplinary Counsel, in violation of Rules 1.1(a), 1.3(a) and (c), 1.6(a)(1), 8.1, and 8.4(d)).

In sum, Respondent's failure to maintain any type of contemporaneous time records, his failure to respond to successor counsel's wholly appropriate questions about the nature of any fee claim he might make, and his blurring of a fully-paid work product (the Figer memo) with his own unspecified claim for fees, which potentially interfered with Disciplinary Counsel's investigation, suggests that a

sixty-day suspension is appropriate, but that suspension alone would not be sufficient to protect the public from future instances of this conduct.

VI. CONCLUSION

For the foregoing reasons, the Committee finds that Respondent violated Rules 1.3(b)(2), 1.16(d), and 8.4(d) and should receive the sanction of a sixty-day suspension, with the suspension stayed after the first thirty days in favor of probation for one year, provided that within the first thirty days, Respondent files an affidavit with the Board and Disciplinary Counsel certifying his acceptance of the conditions of probation, which are: (1) Respondent shall not commit any further violations of the D.C. Rules of Professional Conduct or the disciplinary rules of any other jurisdiction; and (2) within the first six months of Respondent's probation, he shall take six total hours of CLE courses in (a) legal ethics and (b) law office management as approved in advance by Disciplinary Counsel. Pursuant to D.C. Bar R. XI, § 3(a)(7), we recommend that Respondent be required to notify any current clients and new clients he represents during the term of probation of the fact his probation. We further recommend that Respondent's attention be directed to the requirements of D.C. Bar R. XI, § 14, and their effect on eligibility for reinstatement. *See* D.C. Bar R. XI, § 16(c).

AD HOC HEARING COMMITTEE

/SH/
Sundeep Hora, Chair

/KLG/
Katherine L. Garrett, Attorney Member