DISTRICT OF COLUMBIA COURT OF APPEALS
BOARD ON PROFESSIONAL RESPONSIBILITY

In the Matter of:	:	
	:	
ABIGAIL ASKEW,	:	
	:	
Respondent.	:	Board Docket No. 12-BD-037
	:	Bar Docket No. 2011-D393
A Member of the Bar of the	:	
District of Columbia Court of Appeals	:	
(Bar Registration No. 497703)	:	

REPORT AND RECOMMENDATION OF THE
BOARD ON PROFESSIONAL RESPONSIBILITY

Respondent is charged with violations of Rule 1.1(a), Rule 1.1(b), Rule 1.3(a), Rule 1.4(a), Rule 1.4(b), Rule 1.16(d), Rule 3.4(c), and Rule 8.4(d), in connection with her representation of a single client, Ronald W. Middleton, on appeal to the District of Columbia Court of Appeals ("the Court") from the denial of his motion to vacate his criminal conviction. Respondent represented Mr. Middleton from June 4, 2010, when she was appointed by the Court, until September 27, 2011, when her appointment was vacated and new counsel for Mr. Middleton was appointed. In sum, these eight violations are based on Respondent's failure to communicate with her client and to keep him informed, failure to file the brief with the Court, failure to comply with the Court's orders to file the brief, and failure to timely provide her client's files to successor counsel, as ordered by the Court. At the hearing, Mr. Middleton testified remotely by videoconference pursuant to Board Rule 11.4 (allowing testimony by contemporaneous transmission from a remote location for good cause shown in compelling circumstances). Following this testimony, Respondent stipulated to the Rule violations.

Bar Counsel recommended that Respondent be suspended for 30 days, stayed for a period of one year of probation with the conditions that Respondent:

(1) does not commit any other disciplinary rule violations;

(2) attend 10 hours of Continuing Legal Education classes offered by the D.C. Bar, pre-approved by Bar Counsel, and provide to Bar Counsel proof of attendance at such classes within 30 days of attendance, but no later than 30 days before the expiration of probation;

(3) be evaluated by the D.C. Bar Lawyer Assistance Program, and sign a limited waiver permitting the Program to confirm compliance with this condition and cooperation with the evaluation process; and

(4) undergo an assessment by the D.C. Bar's Assistant Director for Practice Management Advisory Services, or his designee, and sign a limited waiver permitting that program to confirm compliance with this condition and cooperation with the assessment process.

Respondent agreed to the terms and conditions of probation, but argued that the stayed sanction should be a public censure or reprimand, rather than a 30-day period of suspension.

The Ad Hoc Hearing Committee found that there was clear and convincing evidence to establish all the charged violations, and agreed with Bar Counsel's recommended sanction. The Hearing Committee found that Respondent "has recognized that she would benefit from the conditions of probation proposed by Bar Counsel; and thus, has accepted probation and all of the proposed conditions for probation including practice monitoring and LAP evaluation." HC Report at 26.[1] Neither party has filed an exception to the Hearing Committee's report.

[1] The Report and Recommendation of the Ad Hoc Hearing Committee will be cited as "HC Report."

The Board, having reviewed the record, concurs with the Hearing Committee's Findings of Fact as supported by substantial evidence in the record, and its findings of Rule violations, which are supported by clear and convincing evidence. The Board adopts the detailed analysis and recommendation of the Ad Hoc Hearing Committee, attached hereto and incorporated by reference.[2] The Board further agrees with the sanction of a 30-day suspension, stayed for a period of one year of probation with the conditions recommended by the Hearing Committee. A stayed 30-day suspension with probation is consistent with other cases involving comparable misconduct. *See In re Mance,* 869 A.2d 339, 342-43 (D.C. 2005) (per curiam) (stayed 30-day suspension and unsupervised probation for neglect and other violations in handling a criminal appeal); *In re Baron,* 808 A.2d 497, 499 (D.C. 2002) (per curiam) (stayed 30-day suspension with supervised probation for failing to communicate with client and failing to return client file in a criminal appeal); D.C. Bar R. XI, § 9(h)(1).

The public censure recommended by Respondent during the hearing was properly rejected by the Hearing Committee as unduly lenient. A public censure is "only appropriate in cases involving failure to make filings in court and to comply with court orders when the respondents had no prior discipline and there are no other substantial or intentional violations in the course of the misconduct." *Mance*, 869 A.2d at 341 n.4

[2] The Hearing Committee did not credit some of Respondent's testimony, including whether she responded to some of Mr. Middleton's letters, because it was inconsistent with other evidence. HC Report, ¶ 20. However, it did not find that Respondent's testimony was false. Indeed, Respondent's apparent confusion about her correspondence with Mr. Middleton is consistent with the disorganization in her practice. The Board does not disagree with the Hearing Committee's assessment of Respondent's testimony. *See In re Bradley*, No. 12-BG-1205 at 7-12 (D.C. July 11, 2013) (per curiam) (whether respondent gave sanctionable false testimony before the Hearing Committee is a question of ultimate legal fact that the Board and the Court review *de novo*).

(internal quotations and citations omitted). In contrast, Respondent committed substantial and intentional violations of the Rules. The Board agrees with the Hearing Committee's concern "that, in light of the strong evidence of [Respondent's] neglect," the stronger deterrence of a suspension—rather than a public censure—is important to ensure that she complies with the conditions of her probation. HC Report at 27.[3]

The conditions of probation agreed to by the parties are intended to address the disorganization of Respondent's law practice, which was at least a partial cause of Respondent's neglect and related misconduct. *See* HC Report at 27-28. Consultation with the Practice Management Advisory Service ("PMAS") would be beneficial and minimize the chance of future misconduct. Although the parties did not specifically agree that Respondent must *implement* any recommendations made by PMAS, the Board finds that such additional condition should be required.

The Board also concurs with the Hearing Committee's recommendation that Respondent should consult with the Lawyer Assistance Program ("LAP"). The Hearing Committee based its recommendation on its concern that the reason for the neglect "remain[ed] unclear" and on its conclusion that by agreeing to a LAP evaluation, Respondent "implicitly conceded a need for such." HC Report at 28-29.

The Hearing Committee's discussion of the LAP requirement noted that Respondent had represented that she suffered from "an anxiety disorder for which she is in therapy." HC Report at 28-29, n.2. Respondent cited her anxiety disorder to explain

[3] We recognize that the Court may impose a public censure and probation, with the condition that a respondent be suspended if she does not comply with the probation conditions. *See In re Bettis,* 855 A.2d 282, 290 (D.C. 2004). We do not make such a recommendation in this case because, as discussed above, a public censure is not the appropriate sanction on these facts.

why she was late in filing her answer, but explicitly declined to rely on any mental condition in mitigation of the sanction. *Id.* Bar Counsel did not argue that Respondent's anxiety disorder should be considered in aggravation of sanction. The Hearing Committee thus found that there was no proof of a causal nexus between Respondent's physical or mental condition and the misconduct. *Id.* at 28. There is therefore no basis to mitigate or aggravate the sanction based on Respondent's acknowledgement of an anxiety disorder. *See In re Peek*, 565 A.2d 627, 633 (D.C. 1989) ("unless a causal nexus can be shown between a respondent's depression and the misconduct, the depression cannot be used in aggravation or mitigation of sanction"); *see also In re Edwards*, 870 A.2d 90, 96-97 (D.C. 2005) (same). However, because Respondent does not object to the LAP condition, and Bar Counsel supports it, we adopt the Hearing Committee's recommendation of a LAP assessment and related requirements.

CONCLUSION

For the foregoing reasons, the Board recommends that the Court find the foregoing Rule violations and suspend Respondent from the practice of law for 30 days, subject to the following conditions:

1. If within 30 days of the date of the Court's order of discipline Respondent has filed with the Board a statement certifying that she accepts the conditions of probation set forth in this report, the suspension will be stayed for a period of one year and Respondent shall be placed on probation for one year. If Respondent has not filed this statement with the Board, the order of suspension shall take effect without further Order of the Court. *See In re Stow*, 633 A.2d 782, 782 (D.C. 1993) (suspension stayed on

the condition that respondent certify that he accepted the probation conditions); *see also* Board Rule 18.1(a) (same).

2. During the one-year period of probation, Respondent:

(a) shall not commit any other disciplinary rule violations;

(b) shall attend 10 hours of Continuing Legal Education classes offered by the D.C. Bar, pre-approved by Bar Counsel, and provide to Bar Counsel proof of attendance at such classes within 30 days of attendance, but no later than 30 days before the expiration of probation;

(c) shall be evaluated by the D.C. Bar Lawyer Assistance Program, and sign a limited waiver permitting the Program to confirm compliance with this condition and cooperation with the evaluation process;

(d) shall undergo an assessment by the D.C. Bar's Assistant Director for Practice Management Advisory Services, or his designee, implement any recommendations he may make, and sign a limited waiver permitting that program to confirm compliance with this condition and cooperation with the assessment process.

3. If Bar Counsel has probable cause to believe that Respondent has violated any of the terms of probation, Bar Counsel may seek to revoke Respondent's probation, pursuant to Board Rule 18.3.

BOARD ON PROFESSIONAL RESPONSIBILITY

By: /MLS/
Mary Lou Soller

Dated: July 31, 2013

All members of the Board concur in this Report and Recommendation.

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

In the Matter of:	)	
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ABIGAIL ASKEW,	)	
	)	Board Docket No. 12-BD-037
Respondent.	)	Bar Docket No. 2011-D393
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A Member of the Bar of the	)	
District of Columbia Court of Appeals	)	
(Bar Registration No. 497703)	)	

REPORT AND RECOMMENDATION
OF AD HOC HEARING COMMITTEE

I. INTRODUCTION

Abigail Askew, Esquire ("Respondent"), a member of the Bar of the District of Columbia Court of Appeals, has admitted to all charges of violations of the District of Columbia Rules of Professional Conduct (the "Rules") brought by Bar Counsel. The charges were in connection with Respondent's representation of the appeal of Ronald W. Middleton from the denial of his motion to vacate his criminal conviction before the District of Columbia Court of Appeals (the "Court of Appeals" or "Court"). Following Bar Counsel's presentation of the testimony of Mr. Middleton in proceedings before the Ad Hoc Hearing Committee, Respondent stipulated to violating Rules 1.1(a) and 1.1(b) (failing to provide her client with competent representation and failing to serve her client with skill and care), Rule 1.3(a) (failing to represent her client zealously and diligently), Rule 1.4(a) (failing to keep her client reasonably informed of the status of his case), Rule 1.4(b) (failing to explain the matter to her client to the extent necessary to permit him to make informed decisions about the representation), Rule 1.16(d) (failing to protect her client's interests on termination of the representation), Rule 3.4(c) (knowingly disobeying an

obligation under the rules of a tribunal), and Rule 8.4(d) (engaging in conduct that seriously interfered with the administration of justice).

In the sanctions phase of the proceeding, Respondent took the stand and testified in mitigation of sanction to the difficulties she encountered in handling this case. These include problems with obtaining her client's file concerning the lower court proceedings, determining where her client was serving his sentence, receiving United States mail and emails from her client, and the malfunction of her computer. Respondent expressed remorse at the emotional distress that her conduct had caused her client and a willingness to make changes in her practice to prevent the recurrence of these problems.

Bar Counsel asserts that Respondent's conduct warrants a 30-day suspension from the practice of law, with suspension stayed for one year of probation during which time Respondent must: (1) commit no further disciplinary violations; (2) attend 10 hours of continuing education classes offered by the District of Columbia Bar, pre-approved by Bar Counsel, and provide proof of attendance; (3) be evaluated by the District of Columbia Bar Lawyer Assistance Program; and (4) undergo evaluation by the District of Columbia Bar Practice Management Advisory Service. Respondent urges the Hearing Committee to recommend a stayed public censure or reprimand in lieu of a stayed 30-day suspension from legal practice; but otherwise accepts being placed on probation for one year with the above stated conditions recommended by Bar Counsel.

The Ad Hoc Hearing Committee finds there is clear and convincing evidence that Respondent committed the violations alleged and agrees with Bar Counsel's recommended sanction, including a stayed, 30-day suspension. While Respondent testified to practical difficulties in this representation, the explanations do not fully explain her neglect of Mr. Middleton's case. Rather, these hindrances could have been remedied or worked out with

reasonable effort. Respondent's failure to overcome these modest hurdles raises sufficient doubt with the Hearing Committee that Respondent will satisfy the recommended conditions of her probation without the stronger deterrence of a stayed 30-day suspension.

II. PROCEDURAL HISTORY

Bar Counsel filed a Specification of Charges in this matter on August 1, 2012. An Amended Specification of Charges was filed on October 23, 2012, correcting a typographical error. The alleged misconduct concerned Respondent's representation of Ronald William Middleton, who is also known as William Rorls, on the appeal of the denial of his motion to vacate his criminal conviction. Specifically, Bar Counsel alleged that when the Court appointed Respondent, it ordered that she file a brief within 60 days. (Respondent had been appointed to represent Mr. Middleton following the death of his prior court-appointed attorney, and it was alleged that the case was ready for briefing at the time of Respondent's appointment.) Rather than file the brief, Respondent filed nine motions to extend the filing time over an eight-month period. During this time, it was alleged that Respondent was largely uncommunicative with Mr. Middleton, who was incarcerated. Bar Counsel alleged that the only time that Respondent communicated with Mr. Middleton, during the entire representation, was to send him a copy of a draft brief. It was alleged that after Mr. Middleton responded and directed Respondent to file the brief and to include some additional evidence, Respondent did not communicate with her client but again moved for more time to file. It was further alleged that Respondent failed to comply with orders from the Court, when, on August 18, 2011, the Court ordered Respondent to file a brief within 10 days of the order, but she failed to file a brief or to move for an extension. When on September 27, 2011, the Court vacated Respondent's appointment and ordered her to turn over to successor counsel all of the documentation relating to the Mr. Middleton's case within 20

days, it was alleged that she failed to do so and was also unresponsive to successor counsel's letters requesting the documentation.

On October 12, 2012, Respondent filed a Motion for Permission to File Out of Time Respondent's Answer to Petition Instituting Formal Disciplinary Charges. As a showing of excusable neglect for her failure to file her Answer within 20 days of service of the Petition, Respondent stated, *inter alia,* that she "suffers from an anxiety disorder for which she is in therapy" and that she was "unable to focus on … this matter because of her emotional condition stemming from the underlying circumstances of the complaint and inquiry into her conduct." *See* Motion for Permission to File Out of Time at 1. Based on this, Respondent's motion was granted.

On November 5, 2012, Respondent filed her Answer generally denying the factual basis for the allegations "except as established by documentary evidence and testimony at the forthcoming hearing." Respondent further denied that her conduct violated the District of Columbia Rules of Professional Conduct. *See,* Answer To Petition Instituting Formal Disciplinary Charges at 1.

A prehearing conference was held on October 26, 2012, before Ad Hoc Hearing Committee Chairperson Thomas J. Keary, Esquire, and Attorney Member Bridget Bailey Lipscomb, Esquire. Bar Counsel was represented by Deputy Bar Counsel Elizabeth A. Herman, Esquire. Respondent was present at the prehearing and was represented by David A. Carr, Esquire. The deadlines for filing stipulations, exhibits, and witness lists were set, as was a date for the hearing.

On December 26, 2012, Bar Counsel filed its exhibits; and, on December 28, 2012, Respondent filed her exhibit.

A hearing on this matter was held on January 11, 2013 before the full Ad Hoc Hearing Committee, composed of Thomas J. Keary, Bridget Bailey Lipscomb and Mr. Kawin Wilairat, public member. Respondent was present at the hearing and was again represented by Mr. Carr. Bar Counsel was again represented at the hearing by Deputy Bar Counsel Herman.

Bar Counsel presented the testimony of one witness, Ronald Middleton, via video conference from USP Canaan in Waymart, Pennsylvania. After Mr. Middleton's testimony, a recess was taken during which time the parties agreed to stipulations that were entered into evidence.[1] The parties stipulated to most of the facts alleged by Bar Counsel and stipulated that Respondent violated each of the Rules, as charged. Respondent presented no witnesses during the violation phase of the hearing. Bar Counsel offered Bar Exhibits A-D and 1-13, all of which were admitted into evidence, without objection. Tr. 50-51. Respondent offered Respondent's Exhibit 1, which was also admitted into evidence, without objection. Tr. 146.

Upon concluding the first phase of the hearing, the Ad Hoc Hearing Committee made a preliminary non-binding determination that Bar Counsel had proven at least one of the ethical violations set forth in the Specification of Charges. Tr. 50. *See* Board Rule 11.11. Bar Counsel did not submit any evidence in aggravation of sanction. Respondent testified on her own behalf in mitigation of sanction and was cross-examined by Bar Counsel.

On February 1, 2013, Bar Counsel filed Proposed Findings of Fact, Conclusions of Law, and Recommendations as to Sanctions. On February 25, 2013 Respondent filed an Unopposed Motion to File Brief Out of Time and a Brief in Response to Bar Counsel's Proposed Findings of

[1] "Stip. __" or "HC 1"refers to the written Stipulations agreed upon by the parties and entered in the record. "BX" refers to Bar Counsel's exhibits. "Bates Stamp" refers to the consecutively numbered pages in Bar Counsel's exhibits. "Tr. __" refers to the transcript from the January 11, 2013 hearing. "RX" refers to Respondent's exhibit. "FF" refers to the Hearing Committee's Findings of Fact, as set forth herein.

Fact, Conclusions of Law and Recommendation of Sanction. Respondent's brief in response was accepted by Order of the Ad Hoc Hearing Committee Chair of February 27, 2013. In Respondent's Brief in Response, she stated that "[s]he does not contest the facts established and presented by Bar Counsel, nor dispute her responsibility for the enumerated transgressions of the Rules of Professional Conduct." *Id*. at 1. As to sanction, however, Respondent requested that the Hearing Committee recommend imposition of a stayed censure or reprimand in lieu of imposition of a stayed 30-day suspension from the practice of law. Respondent otherwise agreed to a one year probation with the conditions proposed by Bar Counsel. Bar Counsel filed its reply brief on February 27, 2013 in which Bar Counsel reiterated the need for a stayed 30-day suspension from law practice.

III. FINDINGS OF FACT REGARDING LIABILTY FOR THE CHARGES ALLEGED

1. Respondent is a member of the Bar of the District of Columbia Court of Appeals, having been admitted on May 12, 2006, and assigned Bar Number 497703. BX A; Stip. ¶ 1. Respondent also is a member of the Illinois Bar, and has been since 2000. Tr. 55.

2. On November 18, 2009, the Court of Appeals appointed Elizabeth Kent, Esquire, to represent Ronald William Middleton on the appeal of the trial court's denial of his motion to vacate his criminal conviction (a "23-110 motion"). The case was styled, *Middleton v. United States*, 09-CO-1419. BX 2 (Bates Stamp 9); Tr. 18.

3. Mr. Middleton is also known as William Rorls. Tr. 14.

4. Before Ms. Kent was able to file a brief in the matter she became ill and then died. BX 2 (Bates Stamp 9); Tr. 18-19.

5. On June 4, 2010, the Court appointed Respondent to represent Mr. Middleton under the Criminal Justice Act, because Mr. Middleton was proceeding *in forma pauperis.* BX 2

(Bates Stamp 9-10); Stip. ¶ 2. Respondent was a member of the Court of Appeals Panel for assignment of appeals filed by indigents (the "CJA Panel"). Tr. 55. The order of appointment listed Mr. Middleton at USP Lewisburg, a federal prison, although he was no longer serving his sentence at this facility. BX 5 (Bates Stamp 53). Mr. Middleton was relocated from USP Lewisburg to USP Canaan in 2008. Tr. 15.

6. Prior to Respondent's appointment, Mr. Middleton had been represented: at trial by Ronald Horton, Esquire; on direct appeal by William Morrison, Esquire; at the 23-110 hearing by Daniel Harn, Esquire; and, as noted, initially on appeal of the denial of the 23-110 motion by the deceased, Elizabeth Kent, Esquire. Tr. 17-18; BX 13 (Bates Stamp 159). Although Respondent testified that she "usually" contacted the trial attorney or "any other attorney that has represented the party," it is uncontested that Respondent did not contact any of Mr. Middleton's prior attorneys. Tr. 58.

A. Respondent's Communications with Mr. Middleton or the Lack Thereof During the Time of Her Representation of Him

7. After her appointment, Respondent obtained Ms. Kent's file in August or September, which included the transcript of the "23-110 hearing" before the trial court. Tr. 104; Stip. ¶ 2. This file also included Mr. Middleton's letters to Ms. Kent. BX 2 (Bates Stamp 31). In his first letter to previous counsel (undated), he introduced himself and stated, in the first sentence, "I am currently housed at USP Canaan . . . ." BX 8 (Bates Stamp 64). Mr. Middleton's subsequent letter to previous counsel also listed the same address. BX 8 (Bates Stamp 70-71).

8. Respondent sent two letters to Mr. Middleton in 2010, both were sent to the wrong address. Stip. ¶ 4. Respondent addressed the first letter, dated July 18, 2010, to Mr. Middleton at USP Lewisburg, an old, incorrect address provided by the Court in the June 4, 2010

order of appointment. BX 8 (Bates Stamp 78).

9. In that letter, Respondent advised: "In order to help you with your case, it is very important that you contact me. Speaking with you is essential to my preparation of your appeal." BX 8 (Bates Stamp 78). She also asked Mr. Middleton to get in touch with her. Mr. Middleton testified that he never received this letter. BX 1 (Bates Stamp 1-2); Tr. 26.

10. By September 2010, Respondent had the transcript of the 23-110 hearing, but had not received any communication from Mr. Middleton or, specifically, a response to her July 2010 letter. BX 8 (Bates Stamp 79). Instead of verifying Mr. Middleton's address, Respondent sent a second letter a month and a half later to the same USP Lewisburg address. In this September 3, 2010 letter, Respondent again asked Mr. Middleton to get in touch with her. Mr. Middleton also testified that he did not receive this letter. BX 1 (Bates Stamp 1-2); Tr. 26.

11. On or about September 2010, Mr. Middleton wrote to the Court asking about the status of his brief. Tr. 19. The Court sent Mr. Middleton a letter informing him that Respondent had been appointed to represent him and providing Respondent's contact information, *i.e.*, her address and telephone number. *Id.*

12. After Mr. Middleton received the Court's letter, he unsuccessfully attempted to communicate with Respondent. First, Mr. Middleton telephoned Respondent several times and left her messages. Tr. 20. In the messages he said that he wished to know the status of his appellate matter and "what's happening with my brief." *Id.*

13. On October 5, 2010, Mr. Middleton wrote Respondent, using his correct address on both the envelope and the letter sent to Respondent. Tr. 20-21; BX 8 (Bates Stamp 85-86). In this letter, Mr. Middleton expressed his wish to communicate with Respondent and to "have some input into what is going into the brief because this is my life on the line." BX 8 (Bates

Stamp 85-86). He posed numerous questions to Respondent, offered to provide information ("tell me what I can do to help you help me"), and expressed his concern over communicating with her before the brief was due. *Id.*

14. It is uncontested that Respondent never answered Mr. Middleton's October 2010 letter. Therefore, Mr. Middleton did not know whether she had received it or whether she would receive any future letters addressed to her. Mr. Middleton testified that he wrote other letters to Respondent during the fall of 2010, without getting a response. Tr. 22-23, 25.

15. Unable to communicate with his lawyer, Mr. Middleton wrote to the Court. Each of Mr. Middleton's letters described his inability to communicate with Respondent. Tr. 26; Stip. ¶ 4; BX 8 (Bates Stamp 74-77). Each letter provided Mr. Middleton's correct address at USP Canaan. BX 8 (Bates Stamp 76-77); Tr. 26, 40. On October 18, 2010, January 10, 2011, August 15, 2011 and September 9, 2011, the Court sent letters to Respondent, enclosing the letters it had received from Mr. Middleton. BX 13 (Bates Stamp 152).

16. After her September 2010 letter to the wrong address, it is uncontested that Respondent made no effort to communicate with Mr. Middleton or to verify his location until sometime in late February or early March of 2011. See FF ¶¶ 18 and 19. In a letter to Bar Counsel and in her testimony in mitigation of sanction, Respondent claimed she called USP Lewisburg and was informed that the institution did not permit telephone calls into the institution. BX 5 (Bates Stamp 51); Tr. 107-109. This testimony, however, was inconsistent with Mr. Middleton's testimony concerning the process at USP Canaan, where the inmate's case manager arranges for an attorney to speak with an inmate. Tr. 18, 21-22, 131-132. In any event, Respondent did not ask personnel at USP Lewisburg whether Mr. Middleton was residing there or to talk to his case manager. Tr. 108-109. Further, Respondent acknowledged in her testimony

that federal inmates have identity numbers and can be located quickly and easily on the Bureau of Prisons' website. Tr. 63-64, 105-106. It is uncontested that Respondent did not attempt to locate Mr. Middleton by these means.

17. After receiving no response to his attempts to communicate with Respondent, Mr. Middleton asked his sister and wife for help in contacting Respondent. Tr. 27; 64-65; Stip. ¶ 4. Mr. Middleton's sister, Alice Mejia, wrote Respondent numerous times, inquiring whether Respondent had received specific messages and letters sent by Mr. Middleton to Respondent, and what Respondent was doing to prepare the brief. Between February and April 2011, Ms. Mejia received a few brief emails back from Respondent, saying Respondent had not received Mr. Middleton's letters or emails. BX 12.

18. In February 2011, Respondent sent a draft brief to Mr. Middleton using the same incorrect address at USP Lewisburg. BX 5 (Bates Stamp 51, Respondent's letter); BX 12 (Bates Stamp 149, email from Respondent's sister dated Feb. 18, 2011). When Mr. Middleton's sister informed Respondent that he had not received this draft, Respondent finally realized that she had been using an incorrect address. Respondent then looked at Mr. Middleton's correspondence, which Respondent earlier had told Mr. Middleton's sister she had not received, and re-sent the draft brief to the correct address at USP Canaan. BX 5 (Bates Stamp 51); BX 12 (Bates Stamp 145 and 149); Tr. 76.

19. In March 2011, Mr. Middleton received his first communication from Respondent -- the draft brief Respondent had sent to his correct address. Tr. 26-27; Stip. ¶ 4. Mr. Middleton responded in writing soon thereafter, asking Respondent to file the brief and to include some additional evidence that he sent; he included letters and emails he had received from the victim in the case. BX 10 (Bates Stamp 130-131); Tr. 28; Stip. ¶ 5.

20. In her later response to Bar Counsel's inquiries, Respondent claimed that she answered Mr. Middleton's March 2011 letter by writing to him in May 2011, discussing the additional evidence that Mr. Middleton had forwarded to her. BX 8. Respondent was unable to provide evidence of this letter as she testified that the only remaining drafts in her computer were destroyed when her computer experienced a "virus." Tr. 79. However, Respondent contradicted this when she stipulated that the only time that she communicated with Mr. Middleton during the entire representation was when she sent him a copy of the draft brief. In this stipulation, she also acknowledged sending two letters to Middleton at the incorrect address but she testified to sending this third letter, which the Hearing Committee does not credit. Stip. ¶ 4; Tr. 78. Mr. Middleton also testified that he never received Respondent's May 2011 letter, Tr. 29, 79, which is confirmed by evidence that, in response to the lack of response to his March 2011 writing to Respondent, Mr. Middleton requested the Court to accept the [draft] brief from him *pro se*. BX 13 (Bates Stamp 152, 9/6/11 entry on docket sheet). Therefore, the Hearing Committee cannot find that Respondent wrote to Mr. Middleton in May 2011.

21. Mr. Middleton also used the prison institution's email system, Corrlinks, to email Respondent. BX 1 (Bates Stamp 3-7); Tr. 23-25. This could only be done if the recipient agreed to accept email from the inmate. Respondent agreed to accept emails from Mr. Middleton, but then never responded to his emails. Tr. 23-24, 26; Stip. ¶ 4. See also Finding of Fact ¶ 40.

22. Respondent's testimony was that she never received these emails. Tr. 64. Respondent, however, also testified that a user must "log into" the system to retrieve an inmate's emails. Tr. 65. The Hearing Committee finds that Respondent, after giving permission to Mr. Middleton to send her emails, did not log into the system to retrieve his emails. Tr. 65-66, 109-10; BX 12 (Bates Stamp 149) (His email forwarded to Respondent by Mr. Middleton's sister,

"[S]he has not even answered my email i [sic] sent her . . . .").

23. By Respondent's own admission, during the 15 months that she represented Mr. Middleton, she did not adequately communicate with him. Stip. ¶ 4. This caused Mr. Middleton frustration and worry about his long-awaited appeal, especially because he had never met Respondent, who "had [Mr. Middleton's] life in her hands." Tr. 31, 32; BX 12 (Bates Stamp 149).

B. Respondent's Response to the Court's Orders

24. On June 4, 2010, when the Court appointed Respondent, it ordered that she file a brief within 60 days of the appointment. Thereafter, Respondent filed nine motions to extend the time to file her brief before the Court removed her from the case on September 27, 2011. BX 2, 13; Stip. ¶ 3.

25. Between February and June 2011, Respondent filed five of the nine motions for time extensions. BX 2. The Court granted each motion but clearly expressed its wish that no further extensions be requested. BX 2 (Bates Stamp 13, 16, 17, 24).

26. On July 8, 2011, the Court ordered Respondent to file the brief within 15 days of the date of the order. Respondent failed to file the brief or move for more time to do so. On August 18, 2011, the Court ordered Respondent to file the brief within 10 days of the Court order, along with a motion to late-file. BX 2 (Bates Stamp 10). Respondent failed to file the brief or move for more time. It is uncontested that Respondent made no effort to ascertain the status of her client's case between June 2011 and November 2011. Tr. 116-118.

27. On September 27, 2011, the Court vacated Respondent's appointment, removed Respondent from the Court's CJA Panel, and referred Respondent to Bar Counsel. The Court also appointed a successor counsel to represent Mr. Middleton. In the Court's September 27,

2011 Order, the Court ordered Respondent to turn over to successor counsel "all documentation" relating to appellant's representation within 20 days of the date of the Court order. BX 13 (Bates Stamp 152), BX 3 (Bates Stamp 37).

28. On October 3, October 18 and November 8, 2011, successor counsel wrote Respondent requesting a copy of Mr. Middleton's documents, including the record, transcript and pleadings. Respondent failed to respond to successor counsel's letters or to the Court's September 27, 2011 Order. BX 11; Stip. ¶ 7.

29. Respondent testified that she did not receive successor counsel's letters or the Court's September 27, 2011 order. Tr. 91-92. She testified to being informed of her removal from the case during the course of Bar Counsel's investigation of Mr. Middleton's complaint. Tr. 115-16. Respondent attributed this to the "virtual office" at 1629 K Street NW, which she shared with other attorneys on the panel and to the mis-delivery of her mail. Tr. 92-93. The Hearing Committee finds this testimony lacks reliability as Respondent presented no supporting evidence or documentation showing late-forwarding of mail by the virtual office manager or landlord, or that other tenants at her address experienced mail problems, or that the landlord or virtual office manager had been notified of a mail problem. However, Bar Counsel did not establish that they were received by Respondent, and there is insufficient evidence to show that Respondent's testimony was intentionally false.

30. On October 12, 2011, Bar Counsel opened an investigation of a complaint lodged by Mr. Middleton and mailed a letter to Respondent enclosing that complaint. BX 4.

31. Unaware that she had been removed from the case, on October 20, 2011, Respondent filed a brief with the Court on Mr. Middleton's behalf, with a motion requesting that she be allowed to file the brief out of time. Tr. 88-89. Respondent testified that the filing was

prompted by the receipt of Mr. Middleton's complaint to Bar Counsel that his brief had never been filed. Tr. 89. Nevertheless, the motion and brief were more than three months overdue. *See* Finding of Fact ¶ 26. The Court denied the motion and rejected the brief. BX 13 (Bates Stamp 153).

32. It is uncontested that on November 15, 2011, Respondent sent successor counsel a copy of the transcript but did not send him any other document from her file. Stip ¶ 10; BX 11 (Bates Stamp 138). Respondent provided additional information to successor counsel during the course of Bar Counsel's investigation of Mr. Middleton's complaint. Tr. 93-94. The Hearing Committee finds that as a result of Respondent's failure to timely respond either to the Court's September 27, 2011 Order or successor counsel's attempts to obtain the file, successor counsel had to move for still further extensions of time to file the brief for Mr. Middleton. BX 13 (Bates Stamp 153, 195, 198, 201).

IV. FINDINGS OF FACT REGARDING MITIGATION AND SANCTION

33. Respondent had been a member of the Court's CJA Panel established to appoint attorneys to represent indigent criminal defendants for approximately a year or a year and a half before her appointment in June 2010 to Mr. Middleton's case. Tr. 55.

34. Respondent was aware that she could contact Rosanna Mason, an employee of the Court, if she had questions about appellate matters. Tr. 56. But she did not attempt to work with Ms. Mason or any other experienced appellate attorney. Tr. 122.

35. Respondent was aware that prisoners in the federal penitentiary system carry an inmate number with them wherever they are; they can be tracked by their inmate number; and the Federal Bureau of Prisons has a website that has an inmate locator on it. Tr. 63-64.

36. Respondent agreed to accept email from Mr. Middleton; she knew that he was

sending email to her; but, it is uncontested that she did not log on to the system to retrieve his email. Tr. 65-66.

37. Respondent testified that she did not file a brief on behalf of Mr. Middleton or respond to the Court order to do so because, (1) she had not received Mr. Middleton's approval of the brief; and (2) Mr. Middleton had filed a motion indicating that he wanted to represent himself. Tr. 89. Notwithstanding this, Respondent filed the brief with the Court on behalf of Mr. Middleton on October 20, 2011. Moreover, both of these issues could have been addressed if Respondent had taken the effort to communicate with Mr. Middleton.

38. Respondent recognized that she should have resolved the question of Mr. Middleton's location at an earlier time. Tr. 76. When she did not receive a response to those letters, she did not seek to determine whether Mr. Middleton had received any of her letters. Moreover, she failed to appreciate that this led Middleton to send letters to the Court -- which she still characterized at the hearing as "strange." Tr. 89. Mr. Middleton had to communicate with the Court to discover the status of his appeal because Respondent failed to communicate with him; he had to request that the Court accept the brief sent to him by Respondent because he did not know if the Court would dismiss his appeal based upon Respondent's failure to communicate with the Court; and he had to request that he be permitted to file the brief *pro se*, as it appeared that Respondent would not file it.

39. Although the Hearing Committee cannot conclude that Respondent intentionally mislead the Committee, it cannot conclude that Respondent received successor counsel's letters or the Court's September 27, 2011 order. The Hearing Committee does conclude that, despite the fact that Respondent was aware of a problem with the receipt of her mail, she made no effort to stay abreast of the status of the *Middleton* case by independently contacting the Court or

checking the Court's docket sheet. Tr. 116-118. At some point after November 2011, Respondent started using her home address. Tr. 137-138; BX 5 (Bates Stamp 50). In the beginning of 2012, Respondent started using a P.O. Box. Tr. 126-128.

40. Respondent testified that she had a hard drive "crash" starting in April 2011. However, this did not interfere with her ability to log onto Corrlinks or to receive email from Mr. Middleton, or to receive the email that was sent by Mr. Middleton's sister, Ms. Mejia. Tr. 136; BX 2 (Bates Stamp 11 and 12).

41. Respondent did not contest the facts established and presented by Bar Counsel in Bar Counsel's Proposed Findings of Fact, Conclusions of Law and Recommendations as to Sanction. Respondent's Brief in Response to Bar Counsel's Proposed Findings of Fact, Conclusions of Law and Recommendations of Sanction (hereinafter "Respondent's Brief") at 1.

42. There was no evidence introduced that Respondent failed to cooperate with Bar Counsel during its investigation. At the January 11, 2013 hearing, following the testimony of the Complainant, Ronald Middleton, Respondent cooperated with Bar Counsel by entering into a Stipulation in which she admitted to all of the allegations against her. HC 1.

43. Before the Hearing Committee, Respondent recognized her "substantial fault" in how she proceeded with this case stating: "I think it's clear from what Mr. Rorls [Middleton] said that he was frustrated, and he didn't feel like he knew what was going on." Tr. 95. Respondent also expressed remorse stating: "I don't want anybody to feel that sense of lack of control, because that's what I'm there for. I'm supposed to be their advocate and their voice." Tr. 96-97.

44. At the January 11, 2013 hearing, Respondent also agreed with her counsel's statement that she would "take responsibility for what has occurred and … make whatever

changes in how you[r] practice may be seen to be necessary in order to prevent a recurrence of anything approaching the difficulties you have had in this case." Tr. 96; Respondent's Brief at 3. Hence, Respondent has agreed to one year of probation according to the terms recommended by Bar Counsel, which include: (1) 10 hours of Bar Counsel approved legal education classes, (2) assessment by the D.C. Bar Practice Management Advisory Service and (3) evaluation by the D.C. Bar Lawyer Assistance Program. Respondent's Brief at 1.

45. Bar Counsel presented no evidence of prior discipline against Respondent.

V. CONCLUSIONS OF LAW

The Hearing Committee finds, by clear and convincing evidence, that Respondent violated the Rules of Professional Conduct, as charged in the Specification of Charges, based upon Respondent's Stipulations admitting to these violations, as well as the foregoing Findings of Fact.

A. Rules 1.1(a) and (b) – Duty to Represent a Client With Competence, Skill and Care

Rule 1.1 provides:

> (a) A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness, and preparation reasonably necessary for the representation.
>
> (b) A lawyer shall serve a client with skill and care commensurate with that generally afforded to clients by other lawyers in similar matters.

Respondent failed to provide Mr. Middleton with "competent representation" to or to serve him with "skill and care" because she failed to adequately communicate with him, to respond to court orders and to meet the Court's filing deadlines for Mr. Middleton's brief. In Respondent's opening attempts at communication with her client, she recognizes the necessity of communicating with him. FF 8-9. Yet, she did not consult with her client until approximately

eight months after undertaking his representation. FF 5, 19. Moreover, the communication that did occur was minimal. Respondent forwarded a draft brief but failed to respond to inquiry back from Mr. Middleton concerning the draft. FF 19, 20 and 23. *In re Stow*, 633 A.2d 782, 784 (D.C. 1993) (appellate representation without communication for a similar time period held to violate predecessor Code); *In re Rosen*, 470 A.2d 292, 295 (D.C. 1983) (same).

While Respondent initiated the representation in an ethical manner by obtaining the record and writing to Mr. Middleton, although at the incorrect address provided by the Court in the order of appointment (FF 7-10) she thereafter made little or no effort to communicate with him. Respondent ignored his letters and calls. FF 11-13. She never logged on to the Bureau of Prisons email system, Corrlinks, to receive his emails. FF 22. She ignored Mr. Middleton's letters to the Court that were forwarded by the Court to her and that complained about the lack of representation. FF 18. She made little effort to verify her client's location until February or March 2011. FF 16, 18-19.

In this same vein, Respondent failed to stay in contact with the Court regarding her client's case between June and November 2011. FF 26. In July and August 2011, Respondent failed to comply with two Court Orders establishing new deadlines for filing her client's brief or to move for more time. These new deadlines were set after Respondent had filed nine motions to extend the time for the filing of her client's brief. FF 25 and 26. Also in this time period, Respondent was removed from the case by the Court and ordered to turn over her client's file to successor counsel within 20 days. She failed to comply with this order. FF 25-29.

An attorney who commences the representation in an ethical manner, but then neglects to have subsequent communications necessary to advance the client's interests nevertheless violates Rules 1.1(a) and 1.1(b). *In re Evans*, 902 A.2d 56, 69 (D.C. 2006) (appended Board Report); *In*

re Mance, 869 A.2d 339 (D.C. 2005); *In re Douglass*, 859 A.2d 1069, 1080 (D.C. 2004) (appended Board Report).

B. Rule 1.3(a) --- Duty to Represent a Client Zealously and Diligently

Rule 1.3(a) requires that "a lawyer shall represent a client zealously and diligently within the bounds of the law."

Comment [1] to Rule 1.3(a) states that "[t]his duty requires the lawyer to pursue a matter on behalf of a client despite opposition, obstruction, or personal inconvenience to the lawyer and to take whatever lawful and ethical measures are required to vindicate a client's cause or endeavor." *Id.* When she received no response to her early correspondence to her client, Responded failed to take reasonable steps necessary to locate him such as checking the address on the client's correspondence to her (FF 7 and 13) logging on to Corrlinks to check for e-mail from him after agreeing to accept his e-mails (FF 21 and 36) and tracking her client down using his inmate number. FF 35. Likewise, Respondent did not act zealously and diligently when she failed to stay in contact with the Court or check the Court docket during a time period when her client's appeal was pending and she was aware of difficulty with the receipt of her mail. FF 26-32.

C. Rule 1.4(a) -- Duty To keep A Client Reasonably Informed of the Status of His Case and Rule 1.4(b) -- Duty To Explain the Matter to A Client To the Extent Necessary to Permit the Client to Make Informed Decisions About the Representation

Rules 1.4(a) and 1.4(b) state that,

> (a) A lawyer shall keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information.
>
> (b) A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

Respondent simply did not keep Mr. Middleton informed of the status of his matter at any time during her representation. FF 23. The record is replete with Mr. Middleton's unanswered requests to determine if his brief had been filed. FF 11–17. *Mance*, 869 A.2d at 340-41 (failure to communicate with client about his appeal held to violate Rule 1.4(a)); *In re Karr*, 722 A.2d 16, 20-21 (D.C. 1998) (failure of attorney to provide a copy of a brief to a client held to violate Rule 1.4(a)).

Nor did Respondent "promptly comply with [Mr. Middleton's] reasonable requests for information" about the brief and the opportunity to have input. FF 11-14. Mr. Middleton did not know whether Respondent had received his letter and messages; and thus, he complained to the Court. FF 15 and 38. Still receiving no response from Respondent to his letters and calls, Mr. Middleton then went to his sister for help in reaching Respondent. FF 17. Until he received the draft brief in March 2011, Mr. Middleton did not have the opportunity to tell Respondent about information that he wished to have included in his brief. Mr. Middleton's letters and emails addressed to Respondent and the Court show clearly his frustration with the lack of communication with Respondent and worry about the status of his appeal. This led to Mr. Middleton asking the Court to allow him to file the brief *pro se*. FF 38.

Respondent's failure to communicate with Mr. Middleton deprived him of the opportunity to "have some input into what is going into the brief" by exchanging views with his lawyer about the case, discussing the 23-110 hearing, the trial court's written opinion, how his trial attorney's conduct effected his trial, and the post-trial letters sent to him by the victim. As Respondent came to recognize in her testimony, Mr. Middleton was a vulnerable client who could do little to remedy his inability to effectively communicate with Respondent. Tr. 96, 115-

22. He was incarcerated, he did not choose his attorney and he did not have the financial means to hire another attorney.

D. Rule 1.16(d) Duty to Protect a Client's Interests on Termination of the Representation

Rule 1.16(d) requires lawyers to participate in the orderly transfer of a case:

> 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 . . . surrendering papers and property to which the client is entitled . . . .

This Court has made clear what this Rule requires.

> We have previously stated that "a client should not have to ask twice" for his file. *In re Landesberg*, 518 A.2d at 102. We have also said the client is owed an "immediate return" of his file "no matter how meager." *In re Russell*, 424 A.2d at 1088; *see also In re Hager*, 812 A.2d 904 (D.C. 2002) (agreeing that Rule 1.16(d) "unambiguously requires an attorney to surrender a client's file upon termination of the representation" and quoting *In re Bernstein*, 707 A.2d 371, 375 (D.C. 1998)).

In re Thai, 987 A.2d 428, 430 (D.C. 2009).

The Court terminated Respondent's representation of Mr. Middleton on September 27, 2011 and ordered her to turn over "all documentation relating to the representation of appellant" within 20 days of the Court's order. FF 27. Respondent did not turn over the file by October 17, 2011 as the Court directed. Instead, Respondent did not turn over anything until November 15, 2011, and then sent successor counsel only the transcript. She did not turn over correspondence, the draft brief, research, or Ms. Kent's file, until later, during the course of Bar Counsel's investigation of Mr. Middleton's complaint. FF 32.

E. Rule 3.4(c) Knowingly Disobeying an Obligation under the Rules of a Tribunal

Rule 3.4(c**)** states: "A lawyer shall not knowingly disobey an obligation under the rules of a tribunal . . . ."

Respondent has stipulated to violating this provision. FF 42. *See In re Howes*, 39 A.3d 1, 4 n.1 (D.C. 2012) (Court finds violation based upon attorney's stipulation to the "knowing or reasonably should know" part of the Rule). There is also circumstantial evidence that Respondent knowingly disobeyed an order of the Court. It is the duty of an attorney to keep apprised of docket entries. *In re W.E.T.*, 793 A.2d 471, 474 (D.C. 2002). On June 10, 2011, Respondent requested an extension of 10 days to file the brief. BX 2 (Bates Stamp 10). Respondent testified: "I knew that I had asked for an extension and that something was due, something would be due." Tr. 85. Yet, she purposefully did not check the Court's docket sheet or make an inquiry with the Court when she was aware from prior experience in filing such motions of the Court's imminent response her motion.

F. Rule 8.4(d) Engaging in Conduct that Seriously Interfered with the Administration of Justice

Rule 8.4(d) states that "It is professional misconduct for a lawyer to . . . engage in conduct that seriously interferes with the administration of justice."

In *In re Hopkins*, 677 A.2d 55, 60-61 (D.C. 1996), the Court stated that the elements of a Rule 8.4(d) violation are: (1) improper conduct, *i.e.* either taking improper action or failing to take action when, under the circumstances, the lawyer should act; (2) the improper conduct that bears directly upon the judicial process with respect to an identifiable case or tribunal; and (3) the conduct tainted the judicial process in more than a *de minimis* way, *i.e.* at least potentially impact upon the process to a serious and adverse degree. *Id.*

Comment 2 to Rule 8.4 states that "[t]he cases under paragraph (d) include acts by a lawyer such as: … the failure to obey court orders…." *Id.* Here, Respondent ignored the Court's orders to file the brief thereby forcing the appointment of a new attorney. Further, she ignored an order to timely turn over her client's file to successor counsel thereby delaying successor

counsel in commencing his work. FF 26-32. Her conduct delayed the Court's consideration of the appeal and thus bore directly upon the judicial process in an identifiable case. *See In re Toppelberg*, 906 A.2d 881 (D.C. 2006).

VI. RECOMMENDATION AS TO SANCTION

The appropriate sanction is one that is necessary to protect the public and the courts, to maintain the integrity of the profession, and to deter Respondent and other attorneys from engaging in similar misconduct. *See In re Martin*, No. 11-BG-775, slip op. at 47 (D.C. March 28, 2013); *In re Cater*, 887 A.2d 1, 17 (D.C. 2005); *Reback*, 513 A.2d at 231. "In all cases, [the] purpose in imposing discipline is to serve the public and professional interests . . . rather than to visit punishment upon an attorney." *Reback*, 513 A.2d at 231 (citations omitted). The sanction imposed must also be consistent with cases involving comparable misconduct. *See* D.C. Bar R. XI, § 9(h)(1); *In re Elgin*, 918 A.2d 362, 373 (D.C. 2007); *In re Berryman*, 764 A.2d 760, 766 (D.C. 2000). The determination of a disciplinary sanction takes into account: (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 and/or misrepresentation; (4) the presence or absence of violations of other provisions of the disciplinary rules; (5) whether the attorney had a previous disciplinary history; (6) whether or not the attorney acknowledged his or her wrongful conduct; and (7) circumstances in mitigation of the misconduct. *In re Cole*, 967 A.2d 1264, 1267 (D.C. 2009).

Bar Counsel urges the Hearing Committee to recommend a 30-day suspension, stayed during one year of probation with the following conditions: (1) that Respondent commit no further disciplinary rule violations; (2) that Respondent attend 10 hours of Continuing Legal Education classes offered by the D.C. Bar, pre-approved by Bar Counsel, with proof of

attendance provided to Bar Counsel within 30 days of attendance and, all of which must be done at least 30 days before the probation term expires; (3) that Respondent be evaluated by the D.C. Bar Lawyer Assistance Program and that Respondent sign a limited waiver permitting the Program to confirm compliance with this condition and cooperation with the evaluation process; and (4) that Respondent undergo an assessment by Dan Mills, or his designee, of the D.C. Bar Practice Management Advisory Service and sign a limited waiver permitting the Program to confirm compliance with this condition and cooperation with the assessment process. Respondent requests a public censure stayed, and accepts the one year of probation with the conditions recommended by Bar Counsel.

A. Nature and Seriousness of the Misconduct

Respondent's misconduct is serious because it involved neglecting a single client's criminal appeal over fifteen months by: failing to timely file a brief after being granted nine time extensions, failing to communicate with her client, failing to protect her client's interests when the Court vacated her appointment, failing to timely turn over her client's file to successor counsel despite an order of the Court and three requests from successor counsel, knowingly disobeying her obligations to the Court and seriously interfering with the administration of justice.

B. Prejudice to the Client

Mr. Middleton's case was substantially delayed after his previous counsel's death. He was prejudiced by the additional delay when a new attorney was appointed to represent him after the Court removed Respondent, who had to begin anew, *i.e.*, reading the transcripts, researching the law, communicating with the client, and writing the brief. He was further prejudiced by Respondent's failure to timely turn over her client's file. In *In re Mance*, the Court considered,

as part of its sanction analysis, that "[a]lthough respondent's client ultimately did not lose his right to appeal his criminal convictions, the right was in jeopardy and the client suffered unnecessary delay and anxiety." *Mance*, 869 A.2d at 343 n 6. We thus consider the prejudice to Mr. Middleton in our sanction recommendation.

C. Prior Discipline and Dishonesty or Misrepresentation

Respondent has no prior discipline, and there is no evidence of dishonesty in this matter.

D. The Presence of Other Disciplinary Rule Violations

Respondent has admitted to violating seven disciplinary rules. She failed to communicate (Rule 1.4), which overlapped with other neglect-type charges (Rules 1.1, 1.3). However she also knowingly failed to obey Court orders (Rule 3.4(c)), engaged in conduct prejudicial to the administration of justice (Rule 8.4(d)), and failed to protect a client's interest upon termination of the representation (Rule 1.16(d)).

E. Respondent's Attitude

The Hearing Committee finds evidence of indifference by Respondent toward Mr. Middleton and the consistent failure to carry out her duties throughout this representation. Respondent's omissions and commissions were not the result of inadvertence or errors of judgment but rather involved a conscious disregard for the responsibilities that she owed to her client which are the hallmarks of serious neglect. *In re Reback*, 487 A. 2d 235, 238 (D.C. 1985), *adopted in part*, 513 A. 226 (D.C. 1986) (en banc).

Nevertheless, Respondent recognized the "substantial fault" on her part in how she proceeded with this case and has acknowledged the impact of her neglect upon her client stating: "I think it's clear from what Mr. Rorls [Middleton] said that he was frustrated, and he didn't feel like he knew what was going on." FF 43. More significantly, the Hearing Committee finds that

Respondent has expressed a willingness to address her neglect going forward. "I don't want anybody to feel that sense of lack of control, because that's what I'm there for. I'm supposed to be their advocate and their voice." *Id.* In this regard, she has recognized that she would benefit from the conditions of probation proposed by Bar Counsel; and thus, has accepted probation and all of the proposed conditions for probation including practice monitoring and LAP evaluation. Respondent's Brief at 1-2.

F. Mitigating and Aggravating Circumstances

The Hearing Committee finds that the mitigating circumstances offered by Respondent were obstacles that could have been overcome if she had fulfilled her duty to represent Mr. Middleton with diligence and zeal. Respondent was aware from the start of her representation of Mr. Middleton that he wanted to be involved with his case. He had written letters to previous counsel, Ms. Kent, and to Respondent. Yet, Respondent failed to ensure that Mr. Middleton was receiving her letters. She failed to communicate with Mr. Middleton's case manager, ask his sister or wife how they communicated with Mr. Middleton or where he was located, or take any other action to fulfill her ethical responsibility to communicate with her client. Moreover, she testified to not receiving the final Court orders issued in the summer of 2012 or successor counsel's three letters to her. But she did not undertake the simple task of checking the Court docket sheet in Mr. Middleton's case where she would have learned that the Court had issued an order with a due date for the brief and that the Court had ordered her removed from the case and ordered her to transmit her file to successor counsel. The record is replete with evidence of her lack of commitment and dedication to Mr. Middleton's interests.

G. Comparable Cases

Public censure is "only appropriate in cases involving failure to make filings in court and to comply with court orders when the respondents had no prior discipline and there are not other substantial or intentional violations in the course of the misconduct." *Mance,* 869 A.2d at 341 n.4. Here, there is no prior evidence of neglect or of other disciplinary actions against Respondent. However, Respondent intentionally failed to obey Court orders and other misconduct that goes beyond neglect such as her failure to turn over her client's file. Where such aggravating factors are present, a 30-day suspension has been imposed or stayed in favor of probation. *Id.* 869 A.2d at 341 (30-day suspension stayed in favor of one year unsupervised probation with six hours of CLE for intentional neglect for over one year of client's criminal appeal, failure to communicate, and failure to withdraw). *See also, In re Baron,* 808 A.2d 497, 499 (D.C. 2002) (30-day suspension stayed in favor of one-year probation subject to a practice monitor and quarterly reports where respondent failed to communicate with CJA client for five years during his appeal, and did not return the client's file for two years after he complained to Bar Counsel. However, Respondent had prior discipline of an informal admonition for similar misconduct.). Therefore, a 30-day suspension, stayed for the period of probation, is consistent with cases involving comparable misconduct. *See* D.C. Bar R. XI, § 9(h)(1). Moreover, as noted, the Hearing Committee is also concerned that, in light of this strong evidence of neglect, that Respondent will fail to see through the conditions of her probation without the stronger deterrence of a suspension.

The Hearing Committee also believes that assessment by the D.C. Bar Practice Management Advisory Service, as a condition of probation, is appropriate. Respondent's neglect of Mr. Middleton's case is at least a partial result of the disorganization of Respondent's law

practice. *Mance*, 869 A.2d at 341-42 (quoting *In re Stow*, 633 A.2d 782 (D.C. 1993) (per curiam) (finding probation with oversight by a practice monitor to be an appropriate sanction for an attorney whose neglect was an outgrowth of the extremely disorganized, haphazard way in which he ran his high-volume criminal defense practice)); *In re Baron*, 808 A.2d 497 (D.C. 2002) (stayed suspension, attorney failed to communicate with client during pendency of his appeal and ignored court's requests to contact the client). Respondent testified that she has made changes to her practice such as changing her mailing address from a virtual office to a P.O. Box, hiring an assistant to help with billing and scheduling, and moving to electronic court filing to address this disorganization. Tr. 127-130. Nevertheless, consultation with the Practice Management Advisory Service and implementation of its recommendations would help to ensure that Respondent's own remedial efforts are having their desired effect, and that she obtains the additional assistance that she needs to manage her practice. See *In re Toppelberg*, 906 A.2d 881, 882 (D.C. 2006). Respondent does not contest the need for her to consult with Practice Management.

Bar Counsel also recommends that Respondent be required to submit to a Lawyer Assistance Program evaluation but does not explain the basis for the recommendation. There was no proof of a causal connection between Respondent's physical or mental condition and the misconduct found by the Hearing Committee.[2] Nevertheless, the full reasons why Respondent, who has practiced since 2000 in Illinois (see BX A) and in this jurisdiction since 2006, seriously neglected Mr. Middleton's case remain unclear to the Hearing Committee. Given this, and that

[2] Bar Counsel has briefly alluded to Respondent needing "assistance with ... her personal life." Early in these proceedings Respondent stated that she "suffers from an anxiety disorder for which she is in therapy" as a justification for formally answering Bar Counsel's charges out of time. *Supra*, at 4. However, Respondent expressly refused to have this considered as a consideration in mitigation of sanction. Tr. 139.

Respondent has not argued against a LAP evaluation and thereby implicitly conceded a need for such, the Hearing Committee believes that the public will be better served by placing Respondent on probation with LAP evaluation also as a condition, so that she will be encouraged to obtain the assistance she may need.

H. Recommendation

Taking into account the foregoing factors, the Hearing Committee recommends a 30-day suspension stayed for a period of one year of probation with the conditions that Respondent: (1) commit no further disciplinary rule violations; (2) attend 10 hours of Continuing Legal Education classes offered by the D.C. Bar, pre-approved by Bar Counsel, with proof of attendance provided to Bar Counsel within 30 days of attendance and, all of which must be done at least 30 days before the probation term expires; (3) be evaluated by the D.C. Bar Lawyer Assistance Program and that Respondent sign a limited waiver permitting the Program to confirm compliance with this condition and cooperation with the evaluation process; and (4) undergo an assessment by Dan Mills, or his designee, of the D.C. Bar Practice Management Advisory Service and sign a limited waiver permitting the Program to confirm compliance with this condition and cooperation with the assessment process.

AD HOC HEARING COMMITTEE

_____/TJK/_____
Thomas J. Keary, Chairperson

_____/BBL/_____
Bridget Bailey Lipscomb, Attorney Member

_____/KW/_____
Kawin Wilairat, Public Member

Dated: May 22, 2013