DISTRICT OF COLUMBIA COURT OF APPEALS
BOARD ON PROFESSIONAL RESPONSIBILITY

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| In the Matter of: | : | |
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| BARBARA J. HARGROVE, | : | |
| | : | Board Docket No. 15-BD-060 |
| Respondent. | : | Bar Docket No. 2013-D127 |
| | : | |
| A Member of the Bar of the | : | |
| District of Columbia Court of Appeals | : | |
| (Bar Registration No. 173419) | : | |

REPORT AND RECOMMENDATION OF THE
BOARD ON PROFESSIONAL RESPONSIBILITY

## I. INTRODUCTION

Before the Board is the Report and Recommendation of an Ad Hoc Hearing Committee ("Hearing Committee"), filed on February 22, 2016.[1] Respondent failed to file an answer to the Specification of Charges in a timely manner, and the case proceeded under the default provision set forth in D.C. Bar R. XI, § 8(f). This matter involves Respondent Barbara Hargrove's alleged mishandling of an estate and her ineffective measures to remedy her mistakes, along with her unresponsiveness both to the court in the underlying estate matter and to the Hearing Committee. Respondent was removed as the personal representative in the underlying matter and replaced by successor counsel. The Hearing Committee concluded that Respondent's conduct violated D.C. Rules of Professional Conduct 1.1(a) (failure to provide competent representation); 1.1(b) (failure to serve client with commensurate skill and care); 1.3(c) (failure to act with reasonable promptness); 1.16(d) (failure to surrender papers and property after termination of representation); and 8.4(d) (engaging in conduct that seriously interferes with the administration of justice). H.C.

[1] The petition was filed by the Office of Bar Counsel. The District of Columbia Court of Appeals changed the title of Bar Counsel to Disciplinary Counsel, effective December 19, 2015. We use the current title in this Report and Recommendation.

Rpt. at 26.[2] The Hearing Committee recommended suspending Respondent for a period of 60 days with a requirement that she prove fitness to practice as a condition of her reinstatement. *Id.* Neither Respondent nor Disciplinary Counsel filed exceptions to the Hearing Committee's Report and Recommendation.

Based on our review of the record, we adopt and incorporate the Hearing Committee's findings of fact, which are supported by substantial evidence in the record as a whole. We also adopt the Hearing Committee's conclusions of law for the reasons set forth in the Hearing Committee's Report and Recommendation. Finally, the Board adopts the Hearing Committee's recommended sanction of a 60-day suspension with a requirement to prove fitness to practice as a condition of reinstatement.

## II. PROCEDURAL HISTORY

### A. Specification of Charges

This matter commenced on June 3, 2015, when Disciplinary Counsel filed a Petition and Specification of Charges against Respondent. Disciplinary Counsel alleged that Respondent violated the five disciplinary rules noted above.[3] H.C. Rpt. at 2. Disciplinary Counsel personally served Respondent with the Specification of Charges on June 7, 2015. Respondent did not file an answer to the charges. In a letter dated July 16, 2015, Respondent asked Disciplinary Counsel to extend her response date, citing "the press of business in my office and previously scheduled

[2] References to the Hearing Committee's Report and Recommendation and its findings of fact are referenced, respectively, as "H.C. Rpt. at ___" and "FF ___." Citations to Disciplinary Counsel's exhibits and the hearing transcripts are referenced as "BX ___" and "Hr'g Tr. ___ ([hearing date])," respectively.

[3] In its August 27, 2015 Motion for Default, Disciplinary Counsel also referred to violations of Rules 1.3(a) and (b). *See* Motion for Default at 2. Disciplinary Counsel subsequently confirmed that it had not charged Respondent with violations of those rules. *See* Hr'g Tr. 6:18-22, 7:6-8 (Nov. 30, 2015).

vacation." BX 4. Disciplinary Counsel replied on July 20, 2015 that Respondent would have to apply to the Board on Professional Responsibility by motion to obtain an extension. BX 5. Respondent did not seek an extension from the Board.

B. Pre-Hearing Conference and Motion for Default Judgment

On August 27, 2015, Disciplinary Counsel filed a motion for default with supporting *ex parte* proof to establish the facts and violations of the Rules alleged in the Specification of Charges.[4] The sworn proof included: (1) an Affidavit of Louis L. Jenkins, Auditor Master for the Superior Court of the District of Columbia; (2) the Report of Auditor Master Jenkins in the matter of the Estate of Emma O. Johnson; (3) the December 21, 2012 Order of the Probate Division of the Superior Court approving the Report of the Auditor Master; and (4) an Affidavit of Eli J. Guiterman, Esquire, successor personal representative.

A pre-hearing conference was held on September 14, 2015, at which Respondent did not appear and was not represented. At the pre-hearing conference, and in an Order dated September 18, 2015, the Hearing Committee granted leave to Respondent to move to late-file her Answer, with the Answer attached, on or before October 5, 2015.

On October 6, 2015, Respondent served Disciplinary Counsel with a motion to late-file her answer to the Specification of Charges, with an attached "Answer" – a reply brief that had been previously filed in the Superior Court in the probate matter. The motion was not filed with the Hearing Committee. On October 7, 2015, Disciplinary Counsel submitted Respondent's motion to the Hearing Committee, which it accepted for filing. As grounds for the motion to late-file,

[4] D.C. Bar R. XI, § 8(f) states, in pertinent part, that "The Hearing Committee Chairperson may enter an order of default and the petition shall be deemed admitted subject to *ex parte* proof by Disciplinary Counsel sufficient to prove the allegations by clear and convincing evidence, based upon documentary evidence, sworn affidavits, and/or testimony. . . An order of default is limited to the allegations set forth in Disciplinary Counsel's petition . . . ."

Respondent cited the "press of business in her law practice [that] caused her to fall behind in staying current with her deadlines." Disciplinary Counsel opposed the motion on the grounds that the "Answer" was more than three months overdue and that Respondent failed to meet her burden under D.C. Bar R. XI, § 8(e) and Board Rule 7.5 to demonstrate that "the failure to file [the answer] was attributable to mistake, inadvertence, surprise, or excusable neglect[.]" On October 15, 2015, Respondent filed a second motion, again citing the "press of business," and attaching an "Answer to the Specification of Charges" in which she denied all the allegations contained in the Specification of Charges. Respondent further asserted that the court's order of referral to the Auditor Master and the Auditor Master's report "exceeded D.C. [s]tatutory authority." Attached to the answer was the same brief from the underlying probate matter that was included in her October 6 communication with Disciplinary Counsel. Respondent noted that the brief "details [R]espondent's position."

On October 28, 2015, the Hearing Committee denied Respondent's motion for leave to late-file her Answer based on Respondent's failure to establish "excusable neglect." In accordance with Board Rule 7.8(b), the Hearing Committee treated the allegations in Disciplinary Counsel's motion for default as admitted, subject to the submission of *ex parte* proof by Disciplinary Counsel sufficient to prove the allegations by clear and convincing evidence. The Hearing Committee directed Disciplinary Counsel to notify Respondent of the Order. By Order dated November 10, 2015, the Hearing Committee scheduled a hearing for November 30, 2015. Respondent did not submit a witness list or documentary exhibits on sanctions as permitted by the October 28, 2015, Order. Disciplinary Counsel was present at the November 30, 2015 hearing, but Respondent did not appear, despite being notified by Disciplinary Counsel of the date of the hearing.

## III. FINDINGS OF FACT

### A. Respondent's Appointment as Personal Representative

The Board adopts the Hearing Committee's findings of fact, as supported by substantial evidence in the record. *See* Board Rule 13.7.[5] The relevant facts are set forth below.

Emma O. Johnson died intestate on April 8, 1992. FF 2. At the time of her death, Ms. Johnson's assets included real property at 3928 New Hampshire Avenue, N.W. in Washington, D.C. ("the New Hampshire Avenue property") and interests in real property in North Carolina ("the North Carolina property"). FF 3. Linda Weedon, mother of Ms. Johnson's minor grandchildren, Joseph and Norel Weedon, was appointed Special Administrator on November 23, 1992. FF 2.

In her capacity as Special Administrator, Ms. Weedon entered into a settlement agreement with James Johnson, Ms. Johnson's brother, on October 31, 1994. FF 4-5. The settlement specified that Mr. Johnson's heirs would receive the North Carolina property, while Ms. Weedon "as surviving parent of Norel [] Weedon and Joseph [] Weedon" would receive all of decedent's property in the District of Columbia "on behalf of" her children. FF 5 (quoting BX 7, ¶¶ 24-25). In its ratification of the settlement agreement, the court erroneously identified Ms. Weedon as "Personal Representative" rather than as Special Administrator. *Id*.

On December 4, 1994, Ms. Weedon as Personal Representative filed a deed with the D.C. Recorder of Deeds granting the New Hampshire Avenue Property in fee simple to herself as guardian for Joseph and Norel Weedon. FF 6. The deed was technically insufficient because it failed to refer to the Uniform Transfers to Minors Act and did not contain language restricting the

[5] Board Rule 13.7 provides, in pertinent part, "[u]pon conclusion of the oral argument or its waiver, the Board may affirm, modify, or expand the findings and recommendation of the Hearing Committee."

sale or transfer of the New Hampshire property. FF 7. Nonetheless, the property was titled in Ms. Weedon's name, and not the Estate's, after that deed was filed. *Id*. On February 26, 1996, the court removed Ms. Weedon as Personal Representative and appointed Respondent as successor personal representative. FF 8.[6]

B. Respondent's Conduct as Personal Representative

Respondent stated that she first gained access to the New Hampshire Avenue property on October 23, 1997. FF 9. She filed an affidavit of inventory and first account four days later. According to Respondent, Ms. Weedon's final account had not been approved, and Ms. Weedon had not turned over the Estate's assets to her. *Id*. Respondent's affidavit showed $8,512.96 in Ms. Weedon's Estate account and a zero balance in two other accounts, as of September 5, 1997. FF 10.

Respondent filed a petition for a show cause hearing on January 14, 1998, because she believed that Ms. Weedon had refused to turn over all of the Estate's assets. FF 11. The court entered judgment in the amount of at least $7,930.84 against Ms. Weedon in 1998. FF 12 (citing BX 7, ¶¶ 62, 164 (stating a higher value for the judgment)). Respondent carried the judgment against Ms. Weedon as an account receivable and apparently intended to provide the judgment to the heirs for collection. FF 13. Respondent never provided the judgment to the heirs, nor did she record the judgment, and thus the judgment is now uncollectable. FF 14; *see also* D.C. Code §15-101.

Because Ms. Weedon had titled the New Hampshire Avenue property in her name as guardian for her children, Respondent could not exercise ownership rights over the property as

[6] We follow the Hearing Committee's lead in referring to Respondent as the "personal representative" to avoid confusion with Mr. Guiterman, who was appointed as the "successor personal representative" following Respondent's removal.

personal representative of the Estate. FF 15. Nevertheless, Respondent took the following actions purporting to exercise ownership rights over the property:

- In May 2002, Respondent attempted to sell the property to Christian Anderson for $150,000 and accepted an earnest money deposit of $5,000 from him. FF 15(a). Before that time, Respondent had not listed the property with a broker, aggressively marketed it, or secured a contract for sale. FF 15(a).
- In 2003, Respondent moved to intervene in a foreclosure action against the property. FF 15(b).
- In 2004, Respondent sought to resolve delinquent real estate taxes owed on the property by paying $5,732.56 to the owner of a tax deed in exchange for a quitclaim deed. FF 15(c). Part of that payment was made with Mr. Anderson's deposit, with his permission. *Id*. The quitclaim deed was made in favor of the Estate, but Respondent never recorded it. *Id*.

Respondent filed an emergency petition on April 15, 2005, seeking to remove an alleged squatter, Anita Williams, from the premises and to invalidate the December 6, 1994 deed to Ms. Weedon as guardian. FF 16. At the hearing on the emergency petition, Respondent only raised the issue of Ms. Williams's eviction and not the issue of the return of the New Hampshire Avenue property to the Estate. FF 17. Ms. Williams filed a written response on July 19, 2005, stating that the 1994 settlement agreement awarded the property to Ms. Weedon.[7] FF 18. At the July 21, 2015, hearing, Respondent asserted that Ms. Weedon had been unsuccessful in her efforts to transfer the property to herself. FF 19. Counsel for Ms. Williams countered that the property was

[7] According to the Report of the Auditor Master, Ms. Williams also filed a response to the petition in April 2015 alleging that she had rented the property from Linda Weedon for $750 per month. BX 7 ¶¶ 99-100.

in Ms. Weedon's name and that the order approving the settlement agreement authorized Ms. Weedon to transfer the property to herself as guardian or custodian of the heirs. *Id*. The court denied Respondent's eviction petition without prejudice to Respondent taking certain steps to properly transfer the property. FF 20. Specifically, the court stated that because the deed was technically defective, Respondent should petition to have an independent person appointed guardian so that the deed could be corrected and the property properly transferred. *Id*. That guardian could then bring a petition to dispossess Ms. Williams. *Id*. Respondent, however, never petitioned the court to appoint a guardian, nor did she bring that issue to the court's attention. FF 21. In fact, in all future hearings, Respondent addressed only tax issues. *Id*.

Even though Respondent deposited Estate assets into a BB&T account titled in her name, Disciplinary Counsel does not assert that Respondent commingled Estate funds with personal funds in that account. FF 22 (citing Hr'g Tr. 11:18-22, 12:1-4 (Nov. 30, 2015)). That account escheated to the State of Maryland in late October, 2007. *Id.* Similarly, in late October 2008, a PNC account titled to the Estate escheated to the State of Maryland. FF 24. Because the BB&T account was titled in Respondent's name rather than the Estate's, the successor personal representative was unable to recover the funds. FF 23. Respondent subsequently retrieved the funds from the BB&T account and returned them to the Estate. FF 25. Mr. Guiterman later retrieved the funds from the PNC account. *Id.*

The Superior Court removed Respondent as personal representative on July 16, 2008, because of her continued failures to properly administer the Estate. FF 26. Two days later, Respondent filed a motion to stay the order of removal in which she represented that she was on

the brink of settling on the sale of the New Hampshire Avenue property and of closing the Estate. FF 27. [8]

The court stayed Respondent's removal on August 15, 2008, and scheduled an August 18, 2008 hearing on Respondent's request to make the stay permanent. FF 28. At the August 18, 2008, hearing, Respondent repeated that she was ready to settle the sale of the New Hampshire Avenue property as soon as the District of Columbia provided an accurate tax figure. FF 29. Acting on this information, the court reinstated her for thirty days. *Id.* Before the thirty days expired, Respondent again asserted that she was about to close the Estate and filed a petition to permanently stay her removal and extend her thirty-day reinstatement. FF 30. The court granted Respondent's motion on October 9, 2008, and reinstated Respondent. FF 31. This trend continued for several subsequent hearings until, on December 15, 2009, the court removed Respondent as personal representative and appointed Eli J. Guiterman as her successor. FF 32-33. At the time of Mr. Guiterman's appointment, Respondent still had not transferred title of the New Hampshire Avenue property to the Estate. FF 32.

C. Respondent's Conduct after Removal as Personal Representative

Mr. Guiterman asked Respondent to produce her entire file for the Estate on January 6, 2010. FF 34. Respondent failed to produce the file, so Mr. Guiterman "requested it again on January 29, 2010, and April 21, 2010." FF 35. On May 7, 2010, having still not received the file, Mr. Guiterman served a subpoena on Respondent. FF 36. Respondent did not comply with the

[8] Disciplinary Counsel's Exhibit 7 (the Auditor Master's report) gives this date as "July 18, 2009" and refers to a subsequent hearing on the motion on "August 18, 2009." BX 7 ¶¶ 133-135. However, the court removed Respondent on July 16, 2008; the court filed its order addressing Respondent's motion on August 15, 2008; and subsequent relevant proceedings took place in the fall of 2008. BX 7, ¶¶ 130, 134, and 140-41. Accordingly, the Board concludes that Respondent's July 18 motion and the August 18 hearing were in 2008, not 2009.

subpoena. *Id.* At a September 30, 2010, hearing, the Superior Court ordered Respondent to produce the file to Mr. Guiterman within fourteen days, but Respondent failed to do so. FF 37. On the same day, the court also referred the matter to Louis Jenkins, the Auditor Master for the Superior Court, so that Respondent's final account could be ascertained. FF 38. The Auditor Master conducted a hearing on February 7, 2011. *Id.*

On November 4, 2010, Mr. Guiterman filed a Motion to Show Cause why Respondent should not be held in contempt of court for failure to produce the Estate file. FF 39. Respondent produced some bank documents the following day, but not the complete file. *Id.* The court on March 16, 2011 found Respondent in contempt for failure to produce the file and ordered her to pay Mr. Guiterman's attorney fees. FF 40. The court vacated the contempt Order on April 7, 2011, and ordered Respondent to appear in Mr. Guiterman's office on April 22 with the entire file. FF 41. On June 14, 2011, the court ordered Respondent to pay Mr. Guiterman $3,085.00 for his efforts in obtaining the file. *Id.* Respondent paid that amount on February 3, 2012. *Id.* As of the issuance of the Hearing Committee's Report and Recommendation, Respondent still had not produced the complete file. FF 42.

The Auditor Master filed his report on October 1, 2012, concluding "that this case was too complicated for [Respondent] to handle" and that "[s]he simply never fully comprehended the impact of the facts and the application of the law." FF 43 (quoting BX 7, ¶¶ 171-72). Specifically, Respondent "sincerely," but incorrectly, believed the Estate had title to the New Hampshire Avenue property. FF 44. Because Respondent could not exercise ownership rights over the property, Respondent's efforts with respect to it were futile and prevented the Estate from closing for many years. *Id.* During that time, real estate taxes continued to accrue, totaling $113,000 at the time of the Auditor Master's report. *Id.* The court approved the Auditor Master's report on

December 21, 2012. FF 45. In the same order, the court entered judgment jointly against Respondent and her surety for $2,600 and against Respondent individually for $6,480.84, plus interest, in favor of the Estate. *Id.* On January 24, 2013, the court ordered Respondent to pay additional attorney's fees in the amount of $18,300. FF 46. The surety paid the $2,600 judgment. FF 47. As of the time of the Hearing Committee's Report and Recommendation, Respondent had paid neither the $6,480.84 judgment nor the $18,300 in attorney's fees. FF 47.

## IV. CONCLUSIONS OF LAW

The Board agrees with the Hearing Committee that Disciplinary Counsel established by clear and convincing evidence that Respondent violated Rules 1.1(a) and (b), 1.3(c), 1.16(d), and 8.4(d).[9] The Hearing Committee's unanimous findings of fact, summarized above, are well-reasoned and supported by substantial record evidence.

The Board owes no deference to the Hearing Committee's proposed conclusions of law, and we review them *de novo*. *See In re Bradley*, 70 A.3d 1189, 1194 (D.C. 2013) (per curiam); *In re Anderson*, 778 A.2d 330, 339 n.5 (D.C. 2001).

### A. Respondent Failed to Represent Estate with Competence, Skill and Care, in Violation of Rules 1.1(a) and (b)

The Hearing Committee found that Respondent failed to properly represent the Estate in accordance with the standards of Rules 1.1(a) and (b). We agree.

[9] Under D.C. Bar R. XI, § 8(f) "the petition shall be deemed admitted subject to *ex parte* proof by Disciplinary Counsel sufficient to prove the allegations by clear and convincing evidence, based upon documentary evidence, sworn affidavits, and/or testimony." *See* Board Rule 7.8(b). The question arises as to whether the *ex parte* proof offered by Disciplinary Counsel – the Auditor Master's Report, his supporting affidavit and the affidavit of Mr. Guiterman – meets this standard. We find that this reliable hearsay evidence does. *See* Board Rule 11.3 (providing for the admission of "[e]vidence that is relevant, not privileged, and not merely cumulative" and that "[t]he Hearing Committee may be guided by, but shall not be bound by the provisions or rules of court practice, procedure, pleading, or evidence, except as outlined in these rules or the Rules Governing the Bar.").

"To prove a violation" of Rule 1.1(a), "[Disciplinary] Counsel must not only show that the attorney failed to apply his or her skill and knowledge, but that this failure constituted a serious deficiency in the representation. . . . [A serious deficiency] has generally been found in cases where the attorney makes an error that prejudices or could have prejudiced a client and the error was caused by a lack of competence." *In re Evans*, 902 A.2d 56, 69-70 (D.C. 2006) (per curiam) (citations omitted); *see also In re Ford*, 797 A.2d 1231, 1231 (D.C. 2002) (per curiam) (Rule 1.1(a) violation requires proof of serious deficiency in the representation). Although the Board referred to Rule 1.1(a) only, the "serious deficiency" requirement of Rule 1.1(a) applies equally to Rule 1.1(b). *See In re Yelverton*, 105 A.3d 413, 421-22 (D.C. 2014). The Court has found violations of Rule 1.1 "only [for] conduct that is truly incompetent, fraudulent, or negligent and that prejudices or could have prejudiced the client." *Id.* at 422.

Rule 1.1(b) requires that a lawyer serve the client with the "skill and care commensurate with that generally afforded to client by other lawyers in similar matters." Rule 1.1(b) is "better tailored [than Rule 1.1(a)] to address the situation in which a lawyer capable to handle a representation walks away from it for reasons unrelated to his competence in that area of practice." *In re Lewis*, 689 A.2d 561, 564 (D.C. 1997) (per curiam). With respect to Rule 1.1(b), a Hearing Committee may find a violation of the standard of care established through expert testimony or without expert testimony when an attorney's "conduct is so obviously lacking that expert testimony showing what other lawyers generally would do is unnecessary." *In re Nwadike*, Bar Docket No. 371-00 at 28 (BPR July 30, 2004), *findings and recommendation adopted*, 905 A.2d 221, 227, 232 (D.C. 2006); *see In re Schlemmer*, Bar Docket Nos. 444-99 & 66-00 at 13 (BPR Dec. 27, 2002), *remanded on other grounds*, 840 A.2d 657, *recommendation adopted*, 870 A.2d

76 (D.C. 2005) (Board noted that Disciplinary Counsel need not "necessarily produce evidence of practices of other attorneys in order to establish a Rule 1.1(b) violation").

We agree with the Hearing Committee's unanimous conclusion that Respondent failed to provide competent representation. Here, Respondent's incompetent representation constituted a serious deficiency and prejudiced to the Estate. *See, e.g.*, FF 7, 9, 15, 44 (Respondent erroneously believed for the first six years of her service that the Estate had title to the New Hampshire Avenue property, despite the 1994 deed transferring the property to Ms. Weedon); FF 21, 27, 29, 30, 32 (Respondent continued to treat the property as Estate property even after raising the issue of the property's title to the court); FF 20, 21, 27, 29, 30, 32, 44 (Respondent disregarded the Court's advice to petition for a guardian to correct the deed, and she engaged in extensive proceedings to sell the property and attempted to resolve tax issues related to it).

A competent attorney would have taken steps to dispose of the only remaining Estate asset of value quickly so that the Estate could be closed. That Respondent failed to do so between 1996 and 2002 demonstrates to the Board a lack of "thoroughness [] and preparation" required by Rule 1.1(a) and the skill and care required by Rule 1.1(b). Further, Disciplinary Counsel's evidence is sufficient to establish a Rule 1.1(b) violation in the absence of expert testimony, because Respondent's conduct with respect to the disposition of the New Hampshire Avenue property was "obviously lacking." *Nwadike*, Bar Docket No. 371-00 at 28, *findings and recommendation adopted*, 905 A.2d at 227, 232.

As a result of her lack of competence, skill and care, Respondent unnecessarily delayed the closing of the Estate and by 2012, the unpaid real estate taxes on the property had risen to $113,000. FF 44. In addition, Respondent's own accounts indicated that she intended to turn the judgment over to the heirs (the children of the party owing the judgment) for collection. FF 13.

She never did so, nor did she take other steps to record or collect the judgment. FF 14. The judgment is now uncollectable. FF 14. A competent practitioner would have at least turned the judgment over to the heirs.

For the reasons stated above, the Board finds by clear and convincing evidence that Respondent failed to represent her clients with competence, skill and care, in violation of Rules 1.1(a) and (b).

B. Respondent Failed to Act with Reasonable Promptness in Violation of Rule 1.3(c)

Rule 1.3(c) requires a lawyer to "act with reasonable promptness in representing a client." In *In re Reback*, the Court defined neglect as:

> indifference and a consistent failure to carry out the obligations which the lawyer has assumed to his client or a conscious disregard for the responsibility owed to the client. The concept of ordinary negligence is different. Neglect usually involves more than a single act or omission. Neglect cannot be found if the acts or omissions complained of were inadvertent or the result of an error of judgment made in good faith.

487 A.2d 235, 238 (D.C. 1985) (per curiam) (quoting ABA Comm'n on Ethics and Prof'l Responsibility, Informal Op. 1273 (1973)), *adopted in relevant part*, 513 A.2d 226 (D.C. 1986) (en banc); *see also In re Chapman*, 962 A.2d 922, 926 (D.C. 2009) (per curiam). The Court has held that the failure to take action for a significant time to further a client's cause, whether or not prejudice to the client results, violates Rule 1.3(c).

As detailed above, Respondent engaged in extensive, futile proceedings related to the New Hampshire Avenue property. FF 15, 44. She did not take any significant steps to dispose of the property during her six years as personal representative, and therefore clearly failed to act with "reasonable promptness." Indeed, even after Respondent learned that the property was titled in Ms. Weedon's name, she delayed any steps to address the ownership of the property and failed to take any steps to correct the deed. FF 21. Finally, despite the fact that the Estate had few remaining

assets other than the New Hampshire property, Respondent failed to close the Estate in the thirteen years she served as personal representative. FF 3, 8, 44. Such delay is unreasonable under the circumstances and constitutes a lack of "reasonable promptness."

As a result of Respondent's delay, the property accrued significant real estate taxes. FF 44; H.C. Rpt. at 16. Because the record is unclear as to whether the Estate, Ms. Weedon, or the heirs must pay these taxes, the Board cannot find that Respondent failed to resolve the tax issues in violation of Rule 1.3(c). The Board does find, however, that Respondent violated 1.3(c) when she delayed action on the 1994 judgment against Ms. Weedon until it became uncollectable and when she unreasonably delayed recording a quitclaim deed that was created in favor of the Estate. FF 14-15. The deed was created in 2004, yet Respondent still had not recorded it at the time of her removal in 2009. FF 15. Such a delay without any offered justification is patently unreasonable.

For the reasons stated above, the Board finds that Respondent violated Rule 1.3(c).

C. Respondent Failed to Surrender Papers and Property after Termination the of Representation in Violation of Rule 1.16(d)

Rule 1.16(d) provides that when a representation is terminated, the lawyer must take timely and reasonable steps to protect the client, including "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." Pursuant to Rule 1.16(d), "'a client should not have to ask twice' for [her] file." *In re Thai*, 987 A.2d 428, 430 (D.C. 2009) (per curiam) (quoting *In re Landesberg*, 518 A.2d 96, 102 (D.C. 1986) (per curiam) (appended Board Report)).

Respondent violated Rule 1.16(d) when she failed to provide her file for the Estate to Mr. Guiterman. *See* FF 34-42. Mr. Guiterman, as successor personal representative, was entitled to the file at his first request, yet Respondent's failure to provide the file required Mr. Guiterman to

make two additional requests, to serve a subpoena, and to seek contempt findings in an effort to obtain the file. FF 35-36, 39, 41. Respondent failed to provide a complete file for the Estate even after a court order issued requiring her to produce the documents and after contempt proceedings ensued. FF 37, 40-41, 42. Respondent never offered any justification or excuse for why she failed to produce the complete file in a timely manner.

D. Respondent Engaged in Conduct that Seriously Interfered with the Administration of Justice in Violation of Rule 8.4(d)

Rule 8.4(d) provides that "[i]t 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 establish that the conduct (i) was improper; (ii) bears directly on the judicial process with respect to an identifiable case or tribunal; and (iii) taints the judicial process in more than a *de minimis* way. *See In re Hopkins*, 677 A.2d 55, 57, 60-61 (D.C. 1996). The prohibition of Rule 8.4(d) applies not only to activities that may cause a tribunal to reach an incorrect decision, but also to conduct that "potentially impact[s] upon the process to a serious and adverse degree." *Id.* at 61.

First, Respondent violated Rule 8.4(d) by unnecessarily extending the estate proceedings, which prevented the Estate from closing during her thirteen years as personal representative. FF 44. Respondent's conduct bore directly on the proceedings in *In re Estate of Emma O. Johnson*, 1992 ADM 1105. Further, Respondent's failure to provide a final accounting after the court had removed her as Personal Representative required the court to refer the matter to the Auditor Master. FF 38. Respondent's failure to close the Estate and to execute her other obligations in a timely manner required the additional expenditure of judicial time and resources. *Id.*

Second, Respondent violated Rule 8.4(d) when she asserted incorrectly that she was about to sell the New Hampshire property and close the Estate in an effort to avoid her removal as

Personal Representative. The court first removed Respondent as personal representative in July 2008. FF 26. Respondent moved several days later to stay the removal on the grounds that she was just about to sell the property and close the Estate. FF 27. Soon thereafter, Respondent moved to permanently stay her removal for the same reasons. FF 30. Despite her claims, however, Respondent never went to settlement on the property and never closed the Estate. FF 32, 33. The court finally removed Respondent as successor personal representative in December 2009. FF 33. Respondent's efforts to forestall her removal not only increased the number of proceedings in the Estate matter, but also delayed the appointment of a successor personal representative.

Third, Respondent violated Rule 8.4(d) by failing to provide her file for the Estate to the successor personal representative, even after the court ordered her to do so on several occasions. Mr. Guiterman asked Respondent for her file three times before serving her with a subpoena. FF 34-36. When Respondent failed to comply with the subpoena, the court ordered her to produce the file. FF 37. Respondent failed to comply with the court order, causing Mr. Guiterman to file a motion to show cause why Respondent should not be held in contempt of court. FF 37, 39. Respondent produced a limited number of documents but not the complete file, and the court held her in contempt for her failure to produce the complete file. FF 39-40. The court later vacated the contempt order and ordered Respondent to pay Mr. Guiterman for his efforts to obtain the file. FF 41. Had Respondent provided her file to Mr. Guiterman when he requested it, none of those extensive judicial proceedings would have been necessary.

## V. RECOMMENDED SANCTION

### 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-

attorney and other attorneys from engaging in similar misconduct. *See, e.g.*, *In re Martin*, 67 A.3d 1032, 1053 (D.C. 2013); *In re Hutchinson*, 534 A.2d 919, 924 (D.C. 1987) (en banc). "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); *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.*, *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); *Hutchinson*, 534 A.2d at 923-24.

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 that 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

The Board agrees with the Hearing Committee's findings that Respondent's misconduct was serious. In the thirteen years that Respondent acted as personal representative for the Estate,

she failed to close the Estate even though the Estate had extremely limited assets after the 1994 deed of the New Hampshire Avenue property was transferred to Ms. Weedon. *See* Sections IV.A and B, above; FF 44. During her tenure as personal representative, Respondent engaged in extensive, futile proceedings related to the transferred property and she failed to collect a judgment in favor of the heirs. *See* Sections IV.A and B; FF 14, 44. After the court removed her as personal representative, Respondent failed to provide the successor personal representative with the complete file and failed to provide an adequate final accounting, causing the court to refer the matter to the Auditor Master. FF 34-42. Respondent's misconduct injured the heirs' and Estate's interests and unnecessarily wasted judicial resources.

2. Prejudice to the Client

Respondent's failure to act appropriately regarding the Estate unnecessarily delayed its closing to the detriment of the Estate and the heirs. FF 44. Respondent also failed to address the effect of the 1994 deed, failed to retain control over the Estate's accounts, and failed to enforce or assign the judgment in favor of the Estate. FF 14, 15, 21, 22, 24. In addition, Respondent failed to pay judgments against her in favor of the Estate. FF 47.

3. The Misconduct Did Not Involve Dishonesty

The Board agrees with the Hearing Committee's finding that Respondent did not misrepresent to the court that she expected to sell the New Hampshire Avenue property and close the Estate soon, because Respondent misunderstood the relevant facts and law. FF 43.

4. Violations of other Disciplinary Rules and Previous Disciplinary History

Respondent violated Rules 1.1(a) and (b), 1.3(c), 1.16(d), and 8.4(d). Respondent's multiple rule violations, although in one matter, are considered in aggravation, and warrant a substantial sanction. *See, e.g.*, *In re Silva*, 29 A.3d 924, 943 (D.C. 2011) ("The number of rule

violations found, albeit arising essentially in a single matter, require a substantial sanction."). Respondent has no record of prior discipline. H.C. Rpt. at 21.

5. Failure to Acknowledge Wrongful Conduct

The Board agrees with the Hearing Committee's finding that nothing in the record suggests that Respondent recognizes the seriousness of her misconduct. In the underlying matter, Respondent persisted in her misconduct despite court recommendations and orders, from her failure to provide her file to Mr. Guiterman to complying with the court's order to take steps to transfer the 1994 deed. FF 20, 37, 40. The Auditor Master concluded in his accounting that Respondent "never fully comprehended the facts and the application of the law." FF 43.

In these disciplinary hearings, Respondent did not submit a timely answer or appear at any hearing in the matter, nor did she provide any excuse other than the "press of business." The Board concludes that Respondent's lack of meaningful participation in these disciplinary proceedings suggests indifference toward her misconduct.

6. Other Circumstances in Aggravation and Mitigation

The record does not show any mitigating circumstances.

The Board considers Respondent's failure to participate in these proceedings to be an aggravating factor. *See In re Wright*, 702 A.2d 1251, 1257 (D.C. 1997) (per curiam) ("Respondent's lack of response to the disciplinary system is an aggravating factor for purposes of arriving at a sanction.").

Finally, the Board agrees with the Hearing Committee that the conduct of Respondent alleged in the Second Auditor Master's Report[10] should not be considered in aggravation because

[10] On November 30, 2015, Disciplinary Counsel submitted a Second Auditor Master report in connection with a separate, more recent, probate matter involving Respondent. BX 10.

that conduct has not been established by clear and convincing evidence through testimony or a sworn affidavit.[11] Disciplinary Counsel offered this report as evidence relevant to sanction in its Pre-Hearing Brief. H.C. Rpt. at 22 (citing Disciplinary Counsel's Pre-Hearing Brief at 14-15). Disciplinary Counsel did not offer, nor has the Board found, any District of Columbia or out-of-jurisdiction cases that address directly "whether an Auditor Master's Report, written after the occurrence of misconduct that gave rise to disciplinary charges, may be considered in aggravation in opposing a sanction." *Id.* at 22-23 (quoting Disciplinary Counsel's Post-Hearing Brief on Sanction at 1). While it is true that District of Columbia and out-of-jurisdiction courts have treated subsequent misconduct as an aggravating factor, they have done so only when that misconduct is established by clear and convincing evidence in the record and, therefore, those holdings are inapposite here. *Id* at 23 (citing cases).

Here, the Auditor Master's report apparently was never adopted by the court or established by sworn testimony. BX 10 (Second Auditor Master's Report) (recommending removal of Respondent as personal representative and setting a date for a hearing on the report and the due date for objections). Superior Court Civil Rule 53(g)(1) allows a court to adopt or affirm a master's report, but because the record does not reflect that any of these steps have been taken on this second report, the Board cannot treat the facts found in the report as establishing aggravating circumstances.

[11] Respondent did not address the Second Auditor Master's report during these disciplinary proceedings, although Board Rule 7.8(e) would have allowed her to do so. *See* Board Rule 7.8(e) (a respondent who fails to file an answer may present documentary and testimonial evidence and argument with respect to sanction at the hearing).

C. Sanctions Imposed for Comparable Misconduct

A sixty-day suspension is consistent with the sanction imposed in other matters involving serious neglect of client matters and aggravating factors. *See, e.g.*, *Chapman*, 962 A.2d at 926 (imposing a sixty-day suspension for violations of Rules 1.1(a), 1.1(b), and 1.3(a) in light of aggravating circumstances; "[w]e have imposed greater punishment [than a thirty-day suspension] in neglect cases where there were significant aggravating factors—such as deliberate dishonesty, a pattern of neglect, or an extensive disciplinary history"); *In re Outlaw*, 917 A.2d 684, 687-89 (D.C. 2007) (per curiam) (imposing a sixty-day suspension for violations of Rules 1.1(a) and (b), 1.3(a), 1.4(a) and (b), and 8.4(c) and noting aggravating factor of dishonesty).

D. The Fitness Requirement

The Hearing Committee contends that Respondent should be required to prove her fitness to practice as a condition of reinstatement. H.C. Rpt. at 25. A fitness showing is imposed when the Court cannot be "'reasonably assured' of the respondent's fitness to engage in the practice of law otherwise." *In re Cater*, 887 A.2d 1, 20 (D.C. 2005) (quoting *In re Steele*, 630 A.2d 196, 201 (D.C. 1993)). It "is intended to be an appropriate response to serious concerns about whether the attorney will act ethically and competently in the future, after the period of suspension has run." *Id.* at 22. To determine whether a fitness requirement is warranted, it is necessary to consider whether the evidence and testimony in the record "contain[s] clear and convincing evidence that casts a serious doubt upon [Respondent's] continuing fitness to practice law." *Id.* at 24 (quoting Board Report). In determining whether there is a serious doubt as to an attorney's fitness, the Court has looked to the following five factors, which have also been used to "determine whether to reinstate attorneys who have been suspended (or disbarred)": (1) the nature and circumstances of the misconduct for which the attorney was disciplined; (2) whether the attorney recognizes the

seriousness of the misconduct; (3) the attorney's conduct since discipline was imposed, including the steps taken to remedy past wrongs and prevent future ones; (4) the attorney's present character; and (5) the attorney's present qualifications and competence to practice law. *Id.* at 21 (citing *In re Roundtree*, 503 A.2d 1215, 1217 (D.C. 1985)).

These criteria are satisfied here. Respondent demonstrated a lack of competence. She has failed to acknowledge her neglect and the breach of her obligation not to take actions harmful to her clients, and she failed to participate in the disciplinary process. Finally, there are serious questions as to whether she has taken any steps to remedy her past wrongs or prevent future ones from occurring. She has not paid the judgments awarded against her or provided a complete file to her successor. These failings establish clear and convincing evidence of a serious doubt regarding Respondent's continuing fitness to practice law.

## V. CONCLUSION

For the foregoing reasons, the Board finds that Respondent violated Rules 1.1(a), 1.1(b), 1.3(c), 1.16(d), and 8.4(d). The Board recommends that the Court suspend Respondent from the practice of law for a period of 60 days. The Board further recommends that the Court impose a fitness requirement as a condition of reinstatement. The period of suspension should run, for purposes of reinstatement, from the filing of the affidavit required by D.C. Bar R. XI, § 14(g). *See* D.C. Bar. R. XI, § 16(c); *In re Slosberg*, 650 A.2d 1329, 1331 (D.C. 1994).

BOARD ON PROFESSIONAL RESPONSIBILITY

By: /ELY/
Eric L. Yaffe

Dated: April 26, 2016

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