DISTRICT OF COLUMBIA COURT OF APPEALS
BOARD ON PROFESSIONAL RESPONSIBILITY

In the Matter of:	:	
	:	
BRIGITTE L. ADAMS,	:	
	:	
Respondent.	:	Board Docket No. 14-BD-031
	:	Bar Docket Nos. 2010-D505,
A Member of the Bar of the	:	2011-D380, 2011-D378, 2011-D379,
District of Columbia Court of Appeals	:	2011-D050, and 2012-D288
(Bar Registration No. 426034)	:	

REPORT AND RECOMMENDATION OF THE
BOARD ON PROFESSIONAL RESPONSIBILITY

Respondent Brigitte L. Adams was charged with violations of several D.C. Rules of Professional Conduct and D.C. Bar Rules in connection with her representation of five different clients pursuing appeals of their criminal convictions. Respondent had accepted appointment by the D.C. Court of Appeals to represent each of these clients pursuant to the Criminal Justice Act ("CJA"). The facts of each of the five cases are largely similar. During a period from late 2009 or early 2010 until the end of September 2010, Respondent effectively abandoned the five criminal appeal clients, failing to communicate with them, failing to pursue their appeals, missing briefing and filing deadlines, and failing to comply with multiple orders from the Court. In late September and early October 2010, the Court vacated Respondent's appointment in each of the five cases, appointed successor counsel, and ordered Respondent to transfer the case files to new counsel forthwith. Respondent failed to comply with the Court's orders to transfer case files to successor counsel. In late 2010, Disciplinary Counsel[1] commenced an investigation of Respondent's handling of the five cases, but Respondent failed to respond to any inquiries, including subpoenas.

[1] The Specification of Charges 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 herein.

Eventually Respondent's failure to comply with an order enforcing Disciplinary Counsel's subpoena led to a contempt hearing, where Respondent failed to appear and, as a result, a bench warrant was issued in April 2011 for Respondent's arrest. In May 2012, the Court granted the Board's request for an order of temporary suspension pursuant to D.C. Bar R. XI, §3(c), based on Respondent's continued failure to respond to the Board's Order compelling her to respond to Disciplinary Counsel's inquiries. In August 2012, Respondent sought to appear as counsel for a plaintiff in a civil action in D.C. Superior Court, but was prevented from proceeding by the trial court due to her suspension.

Finally, in August 2012, Respondent began to cooperate with Disciplinary Counsel's investigation, and the bench warrant and temporary suspension were vacated accordingly. From August 2012 to the present, Respondent has cooperated and participated fully in the disciplinary process. Respondent attributes her violations to an emotional "shut down" triggered by work on a particularly disturbing murder appeal. Respondent has worked with a counselor from the D.C. Bar's Lawyer Assistance Program and sought and received psychological evaluation and psychotherapy to address the issues that led to her misconduct.

Respondent admitted to nearly all of the factual allegations in the Specification of Charges and to most of the charged violations. The Ad Hoc Hearing Committee held an evidentiary hearing in August 2014 and submitted a divided Report and Recommendation in May 2015, in which the majority recommended a six-month suspension with a fitness requirement (the sanction requested by Disciplinary Counsel) and the dissenting Public Member stated that he would recommend an 18-month suspension with fitness. Respondent excepted to the fitness requirement, but not to the six-month suspension recommended by the Hearing Committee majority.

The Board has determined that most of the Hearing Committee's proposed findings of fact are supported by substantial evidence, but that some, which depend heavily on the parties' stipulations, are incomplete and in a few instances inconsistent with the exhibits and uncontradicted testimony. This in turn undermines the evidentiary support for some of the Hearing Committee's credibility determinations. The Board has added some corrected and additional proposed findings based on clear and convincing evidence in the record.

The Board agrees with most of the Hearing Committee's proposed conclusions as to Respondent's disciplinary violations and with its recommendation that Respondent's motion to dismiss two of the charges be denied. The Board also agrees with the recommendation of the Hearing Committee majority of a six-month suspension, but disagrees with its recommendation that Respondent be required to demonstrate his fitness as a condition of reinstatement. Instead, we recommend that all but 90 days of the suspension be stayed during a one-year period of supervised probation with conditions to ensure, among other things, that Respondent continues to receive appropriate psychological treatment. Finally, the Board recommends that, if it is not an automatic consequence of her suspension, the Court order Respondent removed from all panel lists for court-appointed counsel in the Superior Court and the Court of Appeals, without prejudice to her ability to reapply following her term of suspension and probation. *See In re Askew*, 96 A.3d 52, 62 (D.C. 2014) (per curiam).

I. PROCEDURAL HISTORY

Disciplinary Counsel served Respondent with a Specification of Charges on March 10, 2014. Counts I-V of the Specification alleged that Respondent violated the following disciplinary rules in each of five client matters:

- Rules 1.1(a) and (b), by failing to represent her clients competently, and with skill and care;

- Rules 1.3(a), (b)(1) and (c), by failing to represent her clients diligently and zealously, intentionally failing to seek the lawful objectives of her clients, and failing to act with reasonable promptness;

- Rules 1.4(a) and (b), by failing to keep her clients reasonably informed about the status of the matter and failing properly to comply with reasonable requests for information, and by failing to explain the matter to the extent reasonably necessary to permit her clients to make informed decisions regarding the representation;

- Rule 1.16(d), by failing to take timely steps to the extent reasonably practicable to protect her clients' interests, in connection with the termination of representation;

- Rule 3.4(c), by disobeying the rules of a tribunal;

- Rule 8.4(d), by engaging in conduct that seriously interferes with the administration of justice; and

- D.C. Bar R. XI, §§ 2(b)(3) and 2(b)(4), by failing to comply with orders of the Court and the Board and failing to respond to an inquiry from the Court or the Board in connection with a disciplinary proceeding.

Count VI of the Specification of Charges alleged that Respondent violated Rule 5.5(a) by practicing law in a jurisdiction where doing so violates the regulation of the legal profession.

The matter was assigned to an Ad Hoc Hearing Committee composed of Rudolph F. Pierce, Esquire, Chair; Elizabeth Denise Curtis, Esquire; and Hal Kassoff, Public Member.

Respondent answered the Specification of Charges on March 31, 2014, and filed a motion to dismiss the Rule 3.4(c) charge on August 4, 2014, on the grounds that Disciplinary Counsel failed to allege that Respondent's conduct was "knowing." At the beginning of the hearing, Respondent moved to dismiss the Rule 5.5(a) charge on the same grounds. The Hearing Committee recommended to the Board, pursuant to Board Rule 7.16(a), that the motions to dismiss be denied. *See In re Ontell*, 593 A.2d 1038, 1040 (D.C. 1991).

Following a pre-hearing conference before the Hearing Committee Chair on June 10, 2014, the parties filed joint stipulations of fact on August 4, 2014. An evidentiary hearing was held on

August 27, 2014. Disciplinary Counsel introduced several exhibits, but did not call any witnesses. Respondent introduced several exhibits, including the report of a psychological expert, testified herself, and called three additional witnesses: Nicki Irish, a Senior Counselor at the D.C. Bar Lawyer Assistance Program; Stefan Lopatkiewicz, Respondent's friend, current and former employer and supervisor; and Dr. Donald Kimball, a psychologist who testified as an expert concerning his psychological evaluation of Respondent. Following the hearing, the parties filed proposed findings of fact and proposed conclusions of law and recommendations as to sanction, and the Hearing Committee permitted Respondent to file a sur-reply brief.

The Hearing Committee filed its Report and Recommendation on May 28, 2015. The Hearing Committee found that clear and convincing evidence supported all of the charged violations except the charge under D.C. Bar R. XI, § 2(b)(4). A majority of the Hearing Committee adopted Disciplinary Counsel's recommendation of a six-month suspension with a fitness requirement. Public Member Hal Kassoff dissented, stating that he would recommend a suspension of not less than 18 months, with a fitness requirement. The Hearing Committee recommended that Respondent's motion to dismiss the charges under Rules 3.4(c) and 5.5(a) be denied.

Respondent served notice of exceptions to the Hearing Committee Report and Recommendation. Disciplinary Counsel took no exception. Respondent and Disciplinary Counsel submitted briefs, and the Board heard oral argument on September 10, 2015.

II. FINDINGS OF FACT

The Hearing Committee's Report and Recommendation contains proposed Findings of Fact that are based in large part on the parties' stipulations as well as testimony at the hearing and exhibits received in the record. We defer to the Hearing Committee's factual findings if supported by substantial evidence in the record, viewed as a whole. Board Rule 13.7; *see In re Micheel*, 610

A.2d 231, 234 (D.C. 1992). "Substantial evidence means enough evidence for a reasonable mind to find sufficient to support the conclusion reached." *In re Thompson*, 583 A.2d 1006, 1008 (D.C. 1990) (per curiam). Where substantial evidence does not support a finding, the Board must disregard the finding and can make findings of its own. *See In re Dwyer*, 399 A.2d 1, 8 (D.C. 1979). The Board's findings must be supported by clear and convincing evidence in the record. Board Rule 13.7.

Most of the Hearing Committee's proposed findings are supported by substantial evidence in the record, and we adopt them as our own. However, others (and in some cases the stipulations on which they are based) are either incomplete or inconsistent with other evidence, including the hearing testimony and exhibits. We have disregarded the findings that are inconsistent with the evidence and added new findings, based on clear and convincing evidence, to provide a complete basis for our proposed conclusions and recommended sanction. In addition, and as explained below, we have rejected those credibility findings of the Hearing Committee that are based on these inconsistencies or omissions.

The following section of the Board's Report and Recommendation summarizes the Hearing Committee findings that are supported by substantial evidence, augments and modifies findings where necessary, based on clear and convincing evidence, and then addresses the Hearing Committee's credibility determinations.[2]

[2] Our augmented findings are identified by direct citations to the record.

A. General Findings

Respondent is a member of the District of Columbia Bar, admitted on December 19, 1990. She sought and obtained appointment to the Court's panel of attorneys willing to accept appointments to represent indigent criminal defendants in appellate matters under the CJA. FF 1-2.[3]

As the Hearing Committee found, Respondent is a "seasoned appellate lawyer[,]" HR at 21. The Board further finds, based on uncontradicted testimony, that Respondent first signed up in 1998 as a solo practitioner in criminal practice on the CJA Panel. Tr. 34. She began by handling criminal trials and in due course was assigned to more difficult felony cases, which involved jury trials. Tr. 35-36. In about 2001, Respondent transitioned to appellate work and was assigned and successfully completed more than 60 criminal appeals under the CJA program. Tr. 44-45, 52-53; RX 5. Respondent's criminal appellate practice resulted in eight reported decisions, one reversal and two remanded cases. Tr. 48. Based on her experience and success, the CJA Panel assigned increasingly complex and serious cases to Respondent. Tr. 45. Prior to the events that led to the disciplinary proceeding, Respondent had completed two appeals on behalf of clients convicted of murder. Tr. 55-60.

The difficulties that preceded Respondent's disciplinary violations began when she handled a murder appeal in which her client was convicted of a particularly egregious murder and expressed no remorse, which "upset [Respondent] very much." Tr. 58-59; FF 67. While working

[3] The Hearing Committee Report and Recommendation will be cited as "HR"; its Proposed Findings of Fact as "FF"; the Dissent as "D"; Disciplinary Counsel's Exhibits as "BX"; Respondent's Exhibits as "RX"; the transcript of the Hearing as "Tr."; and the parties' pre-hearing stipulations as "Stip."

on this second murder appeal, Respondent also began to receive repeated telephone calls from another client, Brian Gilliam, the subject of Count V of the Specification of Charges. Mr. Gilliam was charged with three homicides, had raised an insanity defense, and was held in St. Elizabeth's Hospital, where he apparently had access to a telephone that he used repeatedly to call Respondent at home. Tr. 63-64. The Hearing Committee accepted as credible Respondent's testimony that these murder cases were difficult for her emotionally and caused her "to shut down."

> Afterward, while the appeals at issue in the instant case were pending, Respondent "would sit down with the transcripts and [she] would sit there and not be able to open it." Tr. 66. She testified that she "wasn't able to deal with what lay behind the pages of the transcript to discover what – what was at issue in these cases." Tr. 67.

FF 67.

Respondent testified that it was her ordinary practice to send a standard letter of introduction to CJA clients, but her testimony did not specify whether she sent such a letter to any of the five clients at issue here. The Hearing Committee accordingly made no finding as to whether such a letter had been sent in those cases. FF 5.

Counts I - V of the Specification of Charges detail a series of actions or failures to act by Respondent in connection with the five clients Respondent was appointed to represent. The Hearing Committee's Proposed Findings of Fact 8-53 are based largely on the parties' stipulations about these acts and omissions. In some cases, the Board has determined that additional factual findings are necessary, and we have added those findings, which are based on clear and convincing evidence, including hearing testimony and Disciplinary Counsel's exhibits, that are cited in the text below.

B. Findings Specific to Count I (Jones)

On September 9, 2009, the Court appointed Respondent to represent Charles E. Jones on appeal of his criminal conviction. FF 8. Mr. Jones addressed three letters to the Court, in October

and December 2009 and in January 2010, complaining that he had been unable to reach Respondent. FF 9, 11-12. The Court forwarded all three letters to Respondent, who never replied to the letters and never communicated with Mr. Jones after first being appointed to represent him. FF 10-13.

On November 3, 2009, the Court ordered Respondent to file the brief and limited appendix within 40 days (by December 13, 2009), but Respondent neither filed a brief nor moved to extend time. FF 14. The Court entered a second order on December 30, 2009, requiring Respondent to file the brief and limited appendix within 40 days (by February 8, 2010). Respondent did not file a brief by February 8, but eight days later, on February 16, 2010, Respondent filed a motion seeking a two-week extension. FF 15. Neither the parties' stipulations nor the Hearing Committee's findings mention that the February 16, 2010 motion sought the extension due to weather problems, including "two snow storms, lack of transportation facilities and a snow emergency in effect until the date of this filing." BX 2 at 25-26. The motion referred to the two blizzards on February 5-6 and February 9-10, 2010, which severely impacted the Washington, D.C. area and were sometimes referred to as "Snowmageddon" and "Snowpocalypse." *Id*.[4] The Court granted the February 16 motion, and the brief in the Jones case was then due March 2, 2010. BX 2 at 24; FF 15.[5]

[4] Respondent filed a similar motion on the same day, seeking a 30-day extension in the *Williams* case. BX 3 at 36-37; FF 27.

[5] While Respondent did miss the February 8 deadline to respond to the Court's order of December 30, 2009, we note that the first of the two blizzards, February 5-6, had already occurred, and there is no other evidence that Respondent's week-late filing was due to anything more sinister than extreme weather conditions. The fact that the Court granted Respondent's February 16 motion without requiring a motion to late-file or any further explanation tends to support this inference. Respondent's February 16, 2010 motion therefore did not contribute to any of the disciplinary violations charged here.

Respondent did not file a brief by March 2, 2010, nor did she file a timely motion seeking additional time. FF 15. On March 30, 2010, the Court ordered Respondent to file the brief and a motion to late-file within 20 days (by April 19, 2010). Respondent did not comply. FF 16. On May 11, 2010, the Court ordered Respondent to file the brief and a motion to late-file within 15 days (by May 26, 2010). FF 17.

On May 26, 2010, Respondent filed a motion to extend the time to file the brief by 40 days on the ground that she had been ill for an extended period of time. FF 17. Although neither the parties' stipulations nor the Hearing Committee's findings mention it, Respondent's May 26, 2010 motion was filed jointly in the *Jones*, *Williams*, *Lee* and *Medley* cases. BX 2 at 20-21; BX 3 at 41-42; BX 4 at 6-7; BX 5 at 5. The Court granted this motion and ordered that the brief be filed by July 6, 2010. FF 17. Respondent did not comply. FF 18. On July 15, 2010, the Court ordered Respondent to file the brief and a motion to late-file within 20 days (by August 4, 2010). Respondent did not comply. FF 19. On August 13, 2010, the Court ordered Respondent to file the brief and a motion to late-file within 15 days (by August 28, 2010). FF 20. Respondent did not comply. FF 20. The Court vacated Respondent's appointment and appointed successor counsel on September 23, 2010. FF 21.

C. Findings Specific to Count II (Williams)

On October 16, 2006, the Court appointed Respondent to represent Antonio Williams on appeal of his criminal conviction. The record does not detail Respondent's early communications with Mr. Williams, but she stipulated that she stopped communicating with him in early 2010. FF 22.

On September 23, 2008, the Court ordered Respondent to file a brief within 40 days (by November 3, 2008). On November 3, 2008, Respondent moved to extend the time to file the brief

until November 12, 2008, and the Court granted the motion. FF 23. Although neither the parties' stipulations nor the Hearing Committee's findings mention it, the motion was filed on grounds that there were questions about the completeness of the transcript. BX 3 at 12-23. On November 12, 2008, Respondent filed a motion to extend the time to file the brief for 30 days. FF 24. Although neither the parties' stipulations nor the Hearing Committee's findings mention it, the motion was based on deficiencies in the transcript. BX 3 at 16-17. The Court ruled on this motion on January 8, 2009, when it ordered the motion held in abeyance until Respondent provided, within 20 days (by January 28, 2009), specific information about the transcript issues and steps taken by Respondent to remedy them. BX 3 at 18; FF 24. Respondent filed a response to the order concerning missing transcripts on February 23, 2009, and a motion to late-file that response on March 11, 2009. FF 24.

Although neither the parties' stipulations nor the Hearing Committee's findings mention it, Respondent's filings explained that Respondent did not receive the Court's January 8, 2009 order until February 20, 2009, whereupon the February 23 response was filed. BX 3 at 19-20. As a result, the Court on June 2, 2009 permitted Respondent to lodge the February 23 response concerning missing transcripts, continued to hold in abeyance Respondent's motion for an extension of time, and required Respondent to submit within 20 days (by June 22, 2009) an additional report concerning actions to complete the transcript. BX 3 at 21. On June 17, 2009, Respondent filed the required report and request for continued extension. BX 3 at 28-29. On June 26, 2009, the Court granted Respondent's motion for an extension of time and ordered that the brief be filed "within 40 days from the date the transcript is filed with this court." Respondent was

also ordered to inform the Court within 15 days after receiving the ordered transcripts. BX 3 at 30.[6]

On November 13, 2009, the Court ordered that, as all transcripts had been filed, the brief was due within 40 days (by December 23, 2009). BX 3 at 31; FF 25. The parties stipulated, and the Hearing Committee found, that "Respondent did not respond to this order." Stip. 24, FF 25. That stipulation and finding are both inaccurate, as Respondent filed an untimely response to the Court's November 13, 2009 order on January 7, 2010. Stip. 25; FF 26. On January 6, 2010, the Court ordered Respondent to file the brief, accompanied by a motion to late-file, within 20 days. FF 25. The next day, January 7, 2010, Respondent filed an uncontested motion for a 40-day extension of time. FF 26. Although neither the parties' stipulations nor the Hearing Committee's findings mention it, the motion admitted that Respondent had "misplaced" the November 13 order and had been unaware the transcripts were complete. BX 3 at 33-34.[7] The Court granted Respondent's January 7 motion, setting a new deadline of February 16, 2010. BX 3 at 35; FF 26.

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[6] Neither the parties' stipulations nor the Hearing Committee's Proposed Findings of Fact mention the Court's June 2, 2009 order (BX 3 at 21), Respondent's timely June 17, 2009 response (BX 3 at 28-29), or the Court's June 26, 2009 order (BX 3 at 30), which substantially vindicated Respondent's efforts, in her motions filed November 3, 2008, November 12, 2008 and February 23, 2009, to obtain extensions of time in order to obtain a complete transcript. There is no evidence that Respondent was dilatory in obtaining the missing transcript. Thus, none of the motions that Respondent filed in the *Williams* case prior to the Court's order of November 13, 2009 contributed to any of the disciplinary violations charged here.

[7] Neither the parties' stipulations nor the Hearing Committee's findings mention the fact that Respondent's January 7, 2010 motion was an untimely response to the Court's November 13, 2009 order, or that the motion admitted that the untimeliness was due to Respondent's fault in "misplac[ing]" that order. Disciplinary Counsel cross-examined Respondent at the hearing concerning this motion and her representation to the Court that she had "misplaced" the November 13, 2009 order. Tr. 130:13-132:6. While we do not fault Disciplinary Counsel's line of questioning, we do not believe the evidence could support a finding that Respondent's statement that she "misplaced" the order was a misrepresentation. Thus, Respondent's filing of January 7, 2010 did not contribute to any of the disciplinary violations charged here.

On February 16, 2010, Respondent filed an additional motion seeking a further 30-day extension. FF 27. Neither the parties' stipulations nor the Hearing Committee's findings mention that the February 16, 2010 motion sought the extension due to weather problems, including "two snow storms, lack of transportation facilities and a snow emergency in effect until the date of this filing." BX 3 at 36-37. This motion referred to the two blizzards on February 5-6 and February 9-10, 2010, which severely impacted the Washington, D.C. area and were sometimes referred to as "Snowmageddon" and "Snowpocalypse."[8] The Court granted this motion, setting the new briefing deadline as March 18, 2010. BX 3 at 43; FF 27.[9]

Respondent did not comply with the Court's order to file the brief by March 18, 2010. FF 27. On March 30, 2010, the Court ordered Respondent to file the brief and a motion to late-file within 20 days (by April 19, 2010). Respondent did not comply. FF 28. On May 11, 2010, the Court ordered Respondent to file the brief and a motion to late-file within 15 days (by May 26, 2010). BX 3 at 45, FF 28.

On May 26, 2010, Respondent filed a motion to extend the time to file the brief by 40 days on the ground that she had been ill for an extended period of time. FF 28. Although neither the parties' stipulations nor the Hearing Committee's findings mention it, Respondent's May 26, 2010 motion was filed jointly in the *Jones*, *Williams*, *Lee* and *Medley* cases. BX 2 at 20-21; BX 3 at 41-42; BX 4 at 6-7; BX 5 at 5. The Court granted this motion and ordered that the brief be filed by July 6, 2010. FF 29. Respondent did not comply. FF 29. On July 1, 2010, the Court ordered

[8] Respondent filed a similar motion seeking a two-week extension in the *Jones* case. BX 2 at 25-26; FF 15.

[9] Respondent's February 16, 2010 motion in the *Williams* case was timely, and the extreme weather conditions provided ample grounds, as the Court recognized in granting the motion. The February 16, 2010 motion therefore did not contribute to any of the disciplinary violations charged here.

Respondent to file the brief and a motion to late-file within 20 days (by July 21, 2010). Respondent did not comply. FF 29. On August 9, 2010, the Court ordered Respondent to file the brief and a motion to late-file within 15 days (by September 3, 2010). FF 29. Respondent did not comply. FF 29. The Court vacated Respondent's appointment and appointed successor counsel on September 21, 2010. FF 30.

D. Findings Specific to Count III (Lee)

On January 6, 2010, the Court appointed Respondent to represent Ali Lee on appeal of his criminal conviction. FF 31. Respondent stipulated that she never communicated with Mr. Lee. FF 31.

On March 11, 2010, the Court ordered Respondent to file the brief within 40 days (by April 20, 2010). Respondent did not comply. FF 32. On May 6, 2010, the Court ordered Respondent to file a brief and a motion to late-file within 20 days (by May 26, 2010). FF 33.

On May 26, 2010, Respondent filed a motion to extend the time to file the brief by 40 days on the ground that she had been ill for an extended period of time. FF 33. Although neither the parties' stipulations nor the Hearing Committee's findings mention it, Respondent's May 26, 2010 motion was filed jointly in the *Jones*, *Williams*, *Lee* and *Medley* cases. BX 2 at 20-21; BX 3 at 41-42; BX 4 at 6-7; BX 5 at 5. The Court granted this motion and ordered that the brief be filed by July 6, 2010. FF 34. Respondent did not comply. FF 34. On July 15, 2010, the Court ordered Respondent to file the brief and a motion to late-file within 20 days (by August 4, 2010). FF 35. Respondent did not comply. FF 35. On August 13, 2010, the Court ordered Respondent to file the brief and a motion to late-file within 15 days (by August 28, 2010). FF 36. Respondent did not comply. FF 36. On September 14, 2010, the Court ordered Respondent to file the brief, and a motion to late-file within 10 days (by September 24, 2010). FF 37. On September 23, 2010, one

day before the date for compliance with this order, the Court vacated Respondent's appointment and appointed successor counsel. FF 38.[10]

E. Findings Specific to Count IV (Medley)

On January 6, 2009, the Court appointed Respondent to represent Louis Medley on appeal of his criminal conviction. FF 39. The record does not show whether or not Respondent initially communicated with Mr. Medley, but she stipulated that she stopped communicating with him after early 2009. FF 39.

The Court received three letters from Mr. Medley complaining that he had not been able to communicate with Respondent. FF 40. The Court forwarded the third of these letters to Respondent in August 2009. FF 40.[11] Mr. Medley filed a motion on February 3, 2010, asking the Court to appoint new counsel. FF 41. On February 18, 2010, the Court sent Mr. Medley's motion to Respondent and ordered her to respond within 20 days (by March 10, 2010). FF 41. Respondent did not comply. FF 41. In April 2010, the Court received and forwarded to Respondent another letter from Mr. Medley requesting substitution of counsel. FF 42. Respondent did not reply to the letter. FF 42. On May 28, 2010, the Court received, and four days later forwarded to Respondent, a *pro se* mandamus petition from Mr. Medley, based on Respondent's failure to communicate. FF 43. The record does not indicate that Respondent ever addressed this petition or that any action

[10] Finding of Fact 37 states that Respondent "did not respond" to the Court's order of September 14, 2010. The finding is literally correct, although Respondent did not, technically, violate the September 14 order because the Court vacated her appointment one day before the response to that particular order fell due. BX 4 at 4-5. There is no evidence that Respondent would have complied with the September 14 order if she had not been removed as counsel for Mr. Lee.

[11] The record does not clearly show whether or not the first two letters were ever forwarded to Respondent.

was taken on the petition, which arguably became moot when the Court appointed successor counsel.

On February 24, 2010, the Court ordered Respondent to file a brief within 40 days (by April 5, 2010). Respondent did not comply. FF 44. On April 13, 2010, the Court ordered Respondent to file the brief and a motion to late-file within 20 days (by May 3, 2010). FF 44. Respondent did not comply. FF 44. On May 12, 2010, the Court ordered Respondent to file the brief and a motion to late-file within 15 days (by May 27, 2010). FF 45.

On May 26, 2010, Respondent filed a motion to extend the time to file the brief by 40 days on the ground that she had been ill for an extended period of time. FF 46. Although neither the parties' stipulations nor the Hearing Committee's findings mention it, Respondent's May 26, 2010 motion was filed jointly in the *Jones*, *Williams*, *Lee* and *Medley* cases. BX 2 at 20-21; BX 3 at 41-42; BX 4 at 6-7; BX 5 at 5. The Court granted this motion and ordered that the brief be filed by July 6, 2010. FF 46. Respondent did not comply. FF 46. On August 12, 2010, the Court ordered Respondent to file the brief and a motion to late-file within 20 days (by September 1, 2010). FF 47. Respondent did not comply. FF 47. On September 14, 2010, the Court ordered Respondent to file the brief and a motion to late-file within 15 days (by September 29, 2010) but before the deadline for compliance, the Court on September 21, 2010 vacated Respondent's appointment and appointed successor counsel. FF 48-49.

F. Findings Specific to Count V (Gilliam)

On April 24, 2008, the Court appointed Respondent to represent Brian Gilliam on appeal of his criminal conviction. FF 49. Mr. Gilliam obtained Respondent's home telephone number and began calling her frequently in a manner that she found unnerving, which Respondent testified led her to conclude, after ordering the transcripts, that she "could not handle his appeal." Tr. 64:7-

66:7. At that point, Respondent stipulated that she stopped communicating with Mr. Gilliam. FF 49. Once the record was completed, on April 14, 2010, the Court ordered Respondent to file a brief within 40 days (by May 24, 2010). FF 51. On May 24, 2010, Respondent filed a motion to extend the time to file the brief by 40 days[12] on the ground that she had been ill.[13] FF 51. The Court granted the motion and set the briefing deadline for July 6, 2010. BX 6 at 18.[14] Respondent did not comply. FF 51. On July 13, 2010, the Court ordered Respondent to file the brief and a motion to late-file within 20 days (by August 2, 2010). FF 52. Respondent did not comply. FF 52. On August 12, 2010, the Court ordered Respondent to file the brief and a motion to late-file within 15 days (by August 27, 2010). FF 52. Respondent did not comply. FF 52. On September 14, 2010, the Court ordered Respondent to file the brief and a motion to late-file within 10 days (by September 24, 2010). FF 53. Respondent did not comply. FF 53. The Court vacated Respondent's appointment and appointed successor counsel on October 8, 2010. FF 53.

G. Failure to Transmit Files to Successor Counsel

The Court's orders of September 21, 2010 (*Williams* and *Medley*), September 23, 2011 (*Jones* and *Lee*) and October 8, 2010 (*Gilliam*) removing Respondent and appointing successor counsel also ordered Respondent to transmit her files to successor counsel "forthwith." FF 7. Respondent, however, failed to turn over any transcripts or other files to any of the successor counsel. FF 7; Stip. ¶¶ 19, 30, 40, 52, 59. As a result, successor counsel were required to secure

[12] Finding of Fact 51 contains a typographical error stating that the requested extension was for 90 days. BX 6 at 16-17 shows the request was for 40 days.

[13] The May 24, 2010 motion is similar in substance to the motion filed jointly on May 26, 2010 in the *Jones*, *Williams*, *Lee* and *Medley* cases. BX 2 at 20-21; BX 3 at 41-42; BX 4 at 6-7; BX 5 at 5.

[14] The order also granted extensions of time for briefs by two separately represented co-defendants to be filed by August 23, 2010 and September 21, 2010, respectively. BX 6 at 18.

additional sets of transcripts, further extending the delay. FF 7. At the hearing, Respondent testified that sometime in 2011, several months after ignoring the Court's orders to turn over the files to successor counsel, she "couldn't handle being surrounded by" boxes of transcripts and other files related to the five cases at issue here and threw them out, placing the public record materials in the dumpster behind the condominium where she lived and shredding the nonpublic materials at the office. Tr. 99-101; FF 7.[15]

H. Failure to Cooperate with Disciplinary Counsel's Investigation

The Hearing Committee's proposed Findings of Fact 54-66 address Count VI, which charged Respondent with the unauthorized practice of law, and further detail Respondent's several failures to cooperate with the disciplinary process from late 2010 until October 2012. These findings are supported by substantial evidence and we will summarize them only briefly here.

Disciplinary Counsel commenced an investigation as a result of Respondent's failures in connection with her representation of Messrs. Jones, Williams, Lee, Medley and Gilliam and sent inquiries to Respondent, to which she did not respond. FF 54-55. Disciplinary Counsel sought and obtained a Board order for Respondent to respond to Disciplinary Counsel's inquiries. Again, Respondent did not comply with the Board order. FF 56. Disciplinary Counsel issued a subpoena for Respondent's client file in the *Jones* matter, Bar Docket 2010-D505, and when Respondent did not comply, Disciplinary Counsel sought and obtained an order from the Court, enforcing the subpoena, with which Respondent again did not comply. FF 57-58. On January 28, 2011, the Court referred the matter concerning Mr. Gilliam to Disciplinary Counsel and to the Chief Judge to

[15] Disciplinary Counsel argues that the destruction of these files shows Respondent's malicious intent to harm her clients; but by the time Respondent discarded these files, the damage was already done. Successor counsel had already been forced to order new transcripts and start from scratch. The manner in which Respondent disposed of the files appears consistent with expert psychological evidence about Respondent's disturbed state of mind in 2011.

designate a Superior Court judge to conduct a contempt hearing based on Respondent's failure to comply with previous orders of the Court. FF 59. The hearing was held on April 18, 2011 before Superior Court Judge Bush, but Respondent failed to attend. As a result, the judge issued a bench warrant for Respondent's arrest. FF 60. Disciplinary Counsel's multiple attempts in May 2011 to serve the bench warrant on Respondent through a process server at her home address were unsuccessful. FF 61. On May 4, 2012, the Board petitioned the Court for an order of temporary suspension pursuant to D.C. Bar R. XI, § 3(c) based on Respondent's failure to comply with the Board's January 14, 2011 order compelling her to respond to Disciplinary Counsel's inquiries. FF 62. The Court entered an order of temporary suspension on May 30, 2012 and amended it on June 18, 2012, without changing the substance of the order. FF 62. Respondent did not file the required affidavit pursuant to D.C. Bar R. XI, § 14(g) showing that she had notified clients, adverse parties and the courts of her compliance with the Court's order of suspension until October 1, 2012. FF 62.

I. The Unauthorized Practice of Law

On August 7, 2012, while the Court's order of temporary suspension was in effect, Respondent appeared before Superior Court Judge Edelman in the case styled *Eutelsat America Corp. v. Atlantic Television News*, Docket No. 2011-CAB 137, as counsel for Eutelsat. FF 64. The trial court refused to let Respondent proceed in view of the Court's order of suspension. FF 64. Respondent stipulated that she had continued to practice law in the District of Columbia, the only jurisdiction in which she was admitted to practice, between the Court's order of temporary

suspension on May 30, 2012 and her appearance before Judge Edelman on August 7, 2012. FF 65.[16]

On October 1, 2012, Respondent filed an affidavit pursuant to D.C. Bar R. XI, § 14(g) and shortly thereafter responded to Disciplinary Counsel's allegations and inquiries. FF 66. Judge Bush quashed the bench warrant for Respondent's arrest on November 8, 2012,[17] and the Court vacated the order of temporary suspension on January 8, 2013. FF 66.

From August 7, 2012 to the present, it appears that Respondent has "cooperated fully with [Disciplinary] Counsel and stipulated to all the relevant facts." HR at 25; Stip. 73.

J. Findings Relevant to Sanction and Fitness to Practice

The parties' stipulations devoted four brief sentences to "Mitigation Evidence." Stip. 73-76. The Hearing Committee's corresponding findings were also abbreviated. FF 67-69. We adopt the Hearing Committee's findings 67-69 as supported by substantial evidence. We also make additional findings of our own, based on clear and convincing evidence in the record. *See* Board Rule 13.7.

The Hearing Committee's proposed Finding of Fact 67 summarizes Respondent's basic explanation for her misconduct and makes a fundamental credibility determination with which the

[16] Respondent's representation of Eutelsat in the cited civil action was the only instance of unauthorized practice shown by the evidence. During the period of her temporary suspension, Respondent was employed by Eutelsat in a job that did not require a law degree. She had filed the cited civil action as outside counsel for Eutelsat in 2010, before she was hired as an employee, and continued to act as counsel of record in that one case during her employment. Tr. 77:7-80:20.

[17] Respondent testified that she understood that the original show cause order, potentially a matter of criminal contempt, was still unresolved. Although the bench warrant resulting from her non-appearance at the original show cause hearing had been quashed, the show cause order, according to Respondent, "is still pending, as far as I know," although no new hearing date had been set at the time Respondent testified in August 2014. Tr. 86-87.

Board concurs and which we adopt. Finding of Fact 67 is quoted in its entirety here for ease of reference.

> We accept as credible Respondent's statement that some of the murder cases to which she was assigned were difficult for her emotionally and caused her "to shut down." Tr. 59- 65. Specifically, Respondent described a particularly distressful case she handled in which the client was convicted of a "gruesome murder" and expressed no remorse, which "upset [her] very much." Tr. 58-59. Those negative feelings resurfaced when she began receiving calls from Mr. Gilliam with respect to his case, which also involved murder. Tr. 63. Afterward, while the appeals at issue in the instant case were pending, Respondent "would sit down with the transcripts and [she] would sit there and not be able to open it." Tr. 66. She testified that she "wasn't able to deal with what lay behind the pages of the transcript to discover what - what was at issue in these cases." Tr. 67. This "shut down" was limited to "getting into the details of these cases, ordering transcripts, reading through, [and] dealing with the clients . . . ." Tr. 127.

When Respondent began taking steps in August 2012 to address her misconduct, she contacted the D.C. Bar Lawyer Assistance Program and met with mental health counsellor Nicki Irish, who testified for Respondent at the hearing. Tr. 87. Ms. Irish evaluated Respondent over the course of four meetings between August 24 and October 18, 2012. RX 2; Tr. 87, 154. Based on those meetings, Ms. Irish observed that Respondent was reporting anxiety and avoidance behaviors triggered by memories of certain murder appeals she had handled, and that by the spring of 2010, Respondent said she was unable to work on her CJA cases, unable to open the mail and unable to answer the phone. RX 2; Tr. 154; *accord* FF 67. Ms. Irish recommended that Respondent seek psychological treatment for her condition, Tr. 157:13-14, and referred Respondent to see Dr. Ronald Kimball for a more thorough psychological evaluation. Tr. 88.

Dr. Kimball, who testified for Respondent at the hearing, is a Ph.D. psychologist who has practiced in the area of behavioral psychology, among other disciplines, since 1975. Tr. 218:22, 219:8-22. Approximately half of his clients are lawyers, and he sits on the advisory board of the D.C. Bar's Lawyer Assistance Program. Tr. 220:21-221:7. Disciplinary Counsel and Respondent

stipulated that Dr. Kimball is an expert qualified to offer opinion testimony as to Respondent's mental condition. Stip. 76.[18]

Dr. Kimball met with Respondent four times, on January 10, 22, 31 and February 4, 2013. He administered several standard psychological tests in addition to a clinical interview, and also interviewed Ms. Irish and Respondent's employer and friend Stefan Lopatkiewicz (who later testified as a character witness, *infra*). RX 1; Tr. 222-23, 224:12-13. In a four-page report dated February 6, 2013, Dr. Kimball concluded that Respondent exhibited some "experiential avoidance" behavior which led to poor judgment in dealing with the issues related to her CJA cases. RX 1 at 4. However, Dr. Kimball's report stated: "There is no reason . . . that [Respondent] should not continue to operate as a licensed attorney," subject to the proviso that Respondent agreed she should not practice in criminal proceedings, and the further proviso that Respondent should engage in cognitive/behavioral therapy for at least 10 sessions with a behavioral therapist. RX 1 at 4. Dr. Kimball testified that his conclusion at the end of his original assessment in February 2013 was that (even before receiving psychotherapy) Respondent's "judgment was intact and she was quite able to carry out the job of an attorney." Tr. 228:4-6.

Respondent began the recommended behavioral therapy with psychotherapist Elizabeth Piren, MA, LPC on February 20, 2013 and had completed 12 sessions by May 28, 2013, during which Ms. Piren reported that Respondent was cooperative and had made significant progress.

[18] The Hearing Committee did not rely on Dr. Kimbell's expert testimony, apparently because it was not offered to establish that Respondent suffered from any recognized disability or to invoke mitigation of sanction under *In re Kersey*, 520 A.2d 321 (D.C. 1987). FF 68 and n.3. But Respondent never claimed to be disabled, nor did she seek *Kersey* mitigation. Dr. Kimball's testimony was offered to address the issue of whether Disciplinary Counsel had met its high burden of proving, by clear and convincing evidence, a "serious doubt" about Respondent's future fitness to practice that would justify the imposition of a fitness requirement under *In re Cater*, 887 A.2d 1 (D.C. 2005). As discussed below, the Board concludes that no fitness requirement is appropriate here, in part based on Dr. Kimball's uncontradicted expert testimony.

RX 3. Respondent continued her psychotherapy for about 20 sessions in 2013-14. Tr. 88:22-89:1, 229:4-10.

Dr. Kimball spoke with Ms. Piren on July 16, 2014, after her treatment of Respondent. Tr. 227:2-3. Ms. Piren provided additional information about Respondent's psychological history and progress, including some background information that had not been covered in Dr. Kimball's sessions with Respondent. Tr. 227:17-230:19. Dr. Kimball reiterated his conclusion that there was no reason Respondent should not continue to operate as a licensed attorney. Tr. 232:5-15. Dr. Kimball also testified that the progress Respondent achieved in therapy with Ms. Piren, "gave me even more confidence that [Respondent's] judgment has improved and she's very unlikely to get herself in a situation like this again." Tr. 229:1-3. Under cross-examination by Disciplinary Counsel and probing questioning by members of the Hearing Committee, Dr. Kimball reiterated that, even in stressful situations that Respondent would foreseeably encounter in her future law practice, while no one can predict with 100% certainty, he is "pretty confident, especially with the information I received from her therapist about how she has taken some of these issues on psychologically and is doing better with them," that Respondent would avoid a relapse, and that he is "relatively confident" that Respondent's violations would not recur. Tr. 253:7-254:5.

Respondent also called, as a fact witness as well as a character witness, her current and former employer, mentor and friend Stefan Lopatkiewicz. Mr. Lopatkiewicz had known Respondent from 1988 to the date of his testimony in August 2014. Tr. 31:15-18, 181:4-5. He testified about Respondent's consistently excellent abilities and "superlative" performance in various current and former positions. *E.g.* Tr. 193. He spoke highly of her abilities as a lawyer. *E.g.* Tr. 183-184, 202:10-11.

As a fact witness, Mr. Lopatkiewicz testified that he was present, as the company representative of Respondent's client Eutelsat, at the court hearing on August 12, 2012 where the judge refused to let Respondent continue due to her suspended law license. Tr. 193:19-196:3. He testified that he was "stunned" to learn of the suspended license, and met with Respondent after the hearing to discuss the problem. Tr. 195:10, 196:4-197:6. He testified that Respondent told him that she "had gotten to a point where she was not able to support her [CJA] practice any more emotionally. And she had even gotten to the point where she had stopped reading correspondence . . . ." Tr. 196:11-14. He asked Respondent where the unopened correspondence was and she told him she had kept it and hadn't thrown anything out. Tr. 197:13-18. Mr. Lopatkiewicz testified that he offered to look at the correspondence that Respondent told him she was emotionally unable to open. Respondent gave him a box of correspondence which, with her permission, he opened and catalogued in chronological order. The correspondence included, among other things, (i) orders from the Court in CJA cases, (ii) "evidence that some of her clients at the time were complaining that she had not communicated with them[,]" (iii) a show cause order and (iv) notice of the interim suspension of Respondent's law license. Tr. 198:6-199:16.

K. Credibility Determinations

"[T]he Board must accept the Hearing Committee's evidentiary findings, including credibility findings, *if* they are supported by substantial evidence in the record." *In re Bradley,* 70 A.3d 1189, 1193 (D.C. 2013) (per curiam) (emphasis in original) (citation omitted). Although "considerable deference" is accorded the credibility determinations of the Hearing Committee, which had the opportunity to observe the witnesses and assess their demeanor, the Board owes no deference to a credibility determination, even one based on respondent's demeanor while testifying, if that finding has no factual support or is contradicted by the factual record. *Id.*; *see*

also In re Anderson, 778 A.2d 330, 341-42 (D.C. 2001). Thus, the Board must determine whether the objective facts in the record support or contradict the Hearing Committee's findings.

In *Bradley*, the hearing committee found that the respondent "seemed honest" while testifying, and that she simply misremembered certain facts. 70 A.3d at 1193. The Board and the Court gave this finding no deference and instead concluded that the respondent had given intentionally false testimony because the objective facts in the record contradicted her testimony, and "there was no evidence in the record to support a finding that respondent was merely confused and that her detailed testimony was inadvertent and not intentional." *Id.*; *see also In re Brown*, 112 A.3d 913, 917-18 (D.C. 2015) (per curiam) (a hearing committee must explain the reason for its credibility determination).

Here, the Hearing Committee found that "Respondent's testimony that she did not open her mail, receive calls, or review her answering machine between 2009-12 [was] incredible and inconsistent with the record evidence." FF 6. This sweeping credibility finding covers a considerable range of testimony, is materially inconsistent with the facts in the record, and is thus not supported by substantial evidence in the record.

To explain why, we must begin with the imprecise factual stipulations submitted by the parties and adopted by the Hearing Committee. Disciplinary Counsel and Respondent stipulated, and the Hearing Committee found, that throughout the relevant time period from 2008-2012, Respondent's address of record with the Court and the D.C. Bar accurately reflected the address at which she lived, maintained a home office, and received mail: 2800 Wisconsin Avenue, N.W., Apartment 208, Washington, D.C. 20007. The stipulations and proposed findings state that ***all*** notices sent by the Court, ***all*** notices sent by Disciplinary Counsel and ***all*** subpoenas delivered by process servers were sent to that address, and none of the notices or letters was ever returned as

"undeliverable." Stip. ¶¶ 2-3; FF 3-4 (emphasis added). The absolute statements in the stipulations and proposed findings conflict with Respondent's testimony at the hearing and with several exhibits in the record. Respondent testified that, in addition to receiving mail at her home address, she maintained a post office box, P.O. Box 9793, Washington, D.C. 20016, which she used for her CJA criminal practice. *See* Tr. 74:2-12, 117:20-118:8, 142:10-144:6. Disciplinary Counsel established during cross-examination of Respondent that "all your legal mail from the court, from clients, from anything having to do with your law practice would go to that P.O. Box." Tr. 142:10-18. This is consistent with the addresses shown on all of the pleadings, letters and orders from those five cases that are in evidence. *See, e.g.*, BX 2 at 13, 17-27, 30-31, 33, 35-39 and numerous other examples in BX 3-6. Conversely, the correspondence in the disciplinary proceeding from Disciplinary Counsel, the Board and the Court were addressed to Respondent at her Wisconsin Avenue home, her address of record with the Bar. *See, e.g.*, BX 7-8 (Disciplinary Counsel), 9-12 (the Board), and 13-16 (the Court). Thus, the Hearing Committee's blanket non-credibility finding ignored the evidence concerning the post office box and therefore was based on an inaccurate characterization of Respondent's testimony.

More importantly, the Hearing Committee's proposed non-credibility finding ignored the specific testimony of Mr. Lopatkiewicz, which corroborated Respondent's account. Mr. Lopatkiewicz testified that sometime after the August 12, 2012 court hearing, Respondent gave him a box of unopened correspondence containing, among other things, (i) orders from the Court in the five CJA cases at issue here, (ii) complaints from Respondent's CJA clients, (iii) the show-cause order and (iv) the interim suspension of Respondent's license. Thus, the Hearing Committee's failure to credit Respondent's testimony that at some point in 2009-2010 she stopped opening her mail from the Court, from Disciplinary Counsel and from the Board is contrary to the

testimony of Mr. Lopatkiewicz, who received and catalogued the unopened correspondence in 2012. There is no cloud on the credibility of Mr. Lopatkiewicz's testimony.

The Board finds that the clear and convincing evidence supports a finding that Respondent stopped opening her mail related to the five CJA cases and this disciplinary proceeding at some point in late 2009 or in 2010, and that such materials, specifically including the Court's orders, forwarded correspondence from Respondent's CJA clients, the show-cause order and the orders of interim suspension, remained unopened until Mr. Lopatkiewicz opened them in August 2012.

The Hearing Committee also found that "when Respondent filed motions to extend the time for filing an appellate brief, she had no intention of actually filing the brief at issue." FF 6. This is, in substance, a sweeping finding that Respondent was not credible in her representations to the Court and her testimony before the Hearing Committee about every motion filed for an extension of time. *See, e.g.*, Tr. 68:13-19 ("And actually in May of 2010, I filed a unified motion for lifting a number of appeals I was assigned to and I said, 'I need more time on the above referenced appeals. Counsel has been ill. And I think I'm getting better.' The point is that I sat there saying, 'I'm going to break this. I'm going to get over this.' But I couldn't."). The Board concludes that the finding that Respondent moved to extend briefing deadlines, with no intent to brief the matters, is not supported by substantial evidence and is contradicted by the factual record. To explain our conclusion, we address each of the motions for extension of time filed by Respondent.

In the *Williams* case, Respondent filed timely motions for an extension of time on November 3 and 12, 2008, an untimely motion for extension on February 23, 2009 with a March 11, 2009 motion to late-file, and a June 17, 2009 report with request for a continued extension of time. The Court granted all of these motions and, importantly, all of them were based on the need

to complete the transcript on appeal. The record shows that the transcript was not complete until November 2009, and there is no evidence that Respondent made any of these filings in bad faith.

Respondent next filed a motion for an extension of time in the *Williams* case on January 7, 2010, 15 days late, in which she admitted having "mislaid" the Court's briefing order and asked for an extension, which the Court granted. There is no evidence that Respondent made this filing in bad faith, and the fact that she admitted her own fault in the untimely filing sets this motion apart from the many other times that Respondent simply disregarded the Court's briefing orders.

The next two motions filed by Respondent were filed on February 16, 2010, in the *Williams* and *Jones* cases. These motions both referred to the extreme "Snowmageddon" double-blizzard that paralyzed the mid-Atlantic region in mid-February 2010. Everyone who experienced those blizzards and their aftermath knows that Respondent's motions have some merit on their face; and there is no evidence to suggest that they were filed in bad faith.

The only other motions for extension of time that Respondent filed in any of the five cases at issue were the uncontested May 24, 2010 motion in *Gilliam* and the uncontested May 26, 2010 motion filed jointly in *Jones*, *Williams*, *Lee* and *Medley*. These motions were filed after Respondent had already ignored several briefing deadlines set by the Court in all five cases. Both motions stated that Respondent had been "ill" and was trying to catch up with her work in her cases. Respondent testified that, in filing these motions, "I maintained the hope and expectation that I would be able to get back to this, I would be – I would be regenerated somehow and move past this traumatizing stage of mind. . . . I felt I will get back. I will readdress these cases and everything will be fine, so the Court will continue to give me extensions and I'll get myself back on my feet." Tr. 128:2-13. The expert psychological testimony broadly supports that Respondent in 2010 was trapped in a pattern of avoidant behavior in which she was unable to cope with her

CJA cases. There is no evidence that Respondent did not intend to file appeal briefs when she filed one motion for an extension of time in each of her cases in May 2010. Moreover, Respondent had nothing to gain from extensions of time if she intended never to file appeal briefs. While Respondent was earning a significant income from CJA cases until she abandoned her last five CJA clients in 2010, she earned income only after the Court had issued its opinion, Respondent had advised her client of the decision, the client had decided whether or not to take the case to the Supreme Court, and Respondent had filed a voucher and timesheet. Tr. 49:12-50:14. Under that system, Respondent could never expect to earn income from extensions of time unless she intended not only to file the appellate brief, but also to complete the case including any reply briefing or oral argument the Court might require.

The Board therefore finds, by clear and convincing evidence, that Respondent did not manifest any intention not to file a brief in connection with any motion for extension of time that she filed in any of the five CJA criminal appeals at issue here. The Hearing Committee's contrary finding is unsupported by, and substantially contradicted by, the evidence.

III. ANALYSIS AND CONCLUSIONS

The Board owes no deference to the Hearing Committee's proposed conclusions of law, and we review them *de novo*. *Bradley*, 70 A.3d at 1189; *Anderson*, 778 A.2d at 330. To the extent that we agree with the Hearing Committee's analysis, we incorporate it as our own.

A. Rules 1.1(a) (Competent Representation) and 1.1(b) (Skill and Care) (Counts I-V)

Rule 1.1(a) provides that a lawyer "shall provide competent representation to a client." Rule 1.1(b) requires a lawyer to "serve a client with skill and care commensurate with that generally afforded to clients by other lawyers in similar matters."

We agree with the Hearing Committee's conclusion that Respondent violated Rules 1.1(a) and (b). In *In re Evans*, 902 A.2d 56, 69-70 (D.C. 2006) (per curiam), the Court explained that "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." As indicated above, Respondent utterly abandoned her clients and their interests. She did almost nothing to evidence the "skill and care" required by Rule 1.1(b). While she did, in 2008 and part of 2009, order transcripts in the cases, her repeated failure to meet the Court's briefing deadlines, and her subsequent failure to turn over the files to successor counsel "forthwith" (or ever) when ordered to do so "constituted a serious deficiency" in the representations, which caused unnecessary delay, caused her clients anxiety and uncertainty, and required unnecessary work and expense for successor counsel.

B. Rules 1.3(a) (Diligence and Zeal) and 1.3(c) (Reasonable Promptness) (Counts I-V)

We agree with the Hearing Committee's conclusion that Respondent violated Rules 1.3(a) and (c). Rule 1.3(a) provides that a lawyer "shall represent a client zealously and diligently within the bounds of the law." A violation of Rule l.3(a) requires proof of "indifference and a consistent failure to carry out the obligations that the lawyer has assumed to the client or a conscious disregard of the responsibilities owed to the client." *In re Wright*, 702 A.2d 1251, 1254 (D.C. 1997) (citing *In re Reback*, 487 A.2d 235, 238 (D.C. 1985), *adopted in relevant part*, 513 A.2d 226 (D.C. 1986) (en banc)). While Rule 1.3(c) provides that "[a] lawyer shall act with reasonable promptness in representing a client," Comment [8] to the Rule explains that "[e]ven when the client's interests are not affected in substance . . . unreasonable delay can cause a client needless anxiety and undermine confidence in the lawyer's trustworthiness, making it a very serious violation." The absence of "zealous and diligent" representation is obvious in each of the five cases.

Regardless of the merits of the various motions for extension of time, and despite whatever work Respondent did to obtain transcripts, Respondent herself testified that her "shut down" caused her not to read the transcripts and not to prepare and file the appeal brief for any of the five clients. This was the opposite of diligence and zeal. The failure ever to file a brief despite repeated briefing orders, compounded by the failure ever to turn over files to successor counsel as ordered, was the opposite of reasonable promptness.

C. Rule 1.3(b)(1) (Intentional Failure to Seek Client's Lawful Objectives); Rules 1.4(a) (Communication) and 1.4(b) (Failure to Explain Matter to Client) (Counts I-V)

We agree with the Hearing Committee's conclusion that Respondent violated Rules 1.3(b)(1), 1.4(a) and 1.4(b).

Rule 1.3(b)(1) provides that "a lawyer shall not intentionally fail to seek the lawful objectives of a client through reasonably available means permitted by law and the disciplinary rules." As the Court stated in *In re Ukwu*, 926 A.2d 1106, 1116 (D.C. 2007), a violation of Rule 1.3(b) is established "when a lawyer's inaction coexists with an awareness of his obligations to his client." A respondent's intent may be inferred if it is "so pervasive that the lawyer must [have been] aware of it." *Id*. at 1115 (citing *In re Lewis*, 689 A.2d 561, 564 (D.C. 1997) (per curiam)). Respondent admits, and the findings make clear, that her neglect was pervasive. Although she knew what her obligations to her clients required—communicating with them, explaining their legal positions and preparing papers to advance their legal interests in court—Respondent did little or nothing to carry out their objectives beyond the ordering of transcripts which she then failed to deliver to successor counsel. Respondent thus violated Rule 1.3(b)(1).

Rule 1.4(a) requires that a lawyer "keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information." Rule 1.4 (b) requires that

a lawyer "explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation."

The Court made clear in *In re Schoeneman*, 777 A.2d 259, 264 (D.C. 2001) that "[t]he guiding principle" for evaluating whether a respondent has violated Rule 1.4 "is whether the lawyer fulfilled the client's 'reasonable . . . expectation for information.'" In this matter, it is not clear whether Respondent ever communicated with any of her clients with the exception of Brian Gilliam. And after some unpleasant telephone conversations with Gilliam, Respondent admits that she cut off further contact with him. Moreover, the record shows repeated complaints from Mr. Jones and Mr. Medley that they were unable to reach Respondent – letters forwarded by the Court to Respondent, to which she never responded. Even assuming that Respondent sent an introductory form letter to one or more of the clients, that letter, according to Respondent's testimony, would have conveyed nothing about the substance of the client's case. We thus find that Respondent violated Rules 1.4(a) and 1.4(b).

D. Rule 1.16(d) (Termination of Representation) (Counts I-V)

We agree with the Hearing Committee's conclusion that Respondent violated Rule 1.16(d). "Rule 1.16(d) requires a lawyer, in connection with the termination of a representation, to '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.'" *In re Edwards*, 990 A.2d 501, 521 (D.C. 2010) (appending Board Report) (quoting *In re Hallmark*, 831 A.2d 366, 372 (D.C. 2003)). Respondent's failure to turn over the clients' files to successor counsel, despite being ordered to do so "forthwith" by the Court, clearly violated this Rule.

E. Rule 3.4(c) (Knowingly Disobeying an Obligation Under the Rules of a Tribunal) (Counts I-V)

Rule 3.4(c) provides that a lawyer shall not "knowingly disobey an obligation under the rules of a tribunal except for an open refusal based on an assertion that no valid obligation exists." Respondent moved to dismiss the Rule 3.4(c) charge on the grounds that Disciplinary Counsel failed to plead that her conduct was "knowing," which she claims is a necessary element of a violation. We agree with the Hearing Committee that Respondent's motion to dismiss this charge should be denied. We also agree with the Hearing Committee's conclusion that Respondent violated Rule 3.4(c). HR at 21-22.

While "knowledge" is a required element of the Rule, Rule l.0(f) provides that "actual knowledge of the fact in question" may "be inferred from the circumstances." Respondent filed motions for an extension of time to file the brief in each of the five cases, and subsequently failed to file the brief by the deadlines ordered by the Court. As a seasoned appellate lawyer, Respondent was familiar with the Court's rules and procedures. Disciplinary Counsel established on cross-examination that Respondent knew that when she moved for an extension of time the Court would either grant or deny the motion, and in either case would set a briefing deadline. Respondent also testified that she understood that the Court's rules required her to respond to such orders either by filing the brief or by seeking some modification of the briefing schedule. Respondent also testified that she understood that in not responding or not filing the briefs, she was violating the Court's rules. Tr. 118:17-121:3. The Board concludes that it is appropriate to infer that Respondent knowingly disobeyed her obligations to the Court and that Disciplinary Counsel established a violation of Rule 3.4(c) in Counts I-V.

F. Rule 5.5(a) (Unauthorized Practice of Law) (Count VI)

Rule 5.5(a) prohibits a lawyer from "practic[ing] law in a jurisdiction where doing so violates the regulation of the legal profession in that jurisdiction." Respondent moved to dismiss this alleged violation on the grounds that Disciplinary Counsel failed to prove that Respondent "knowingly" violated the Court's temporary order of suspension. We agree with the Hearing Committee's recommendation that Respondent's motion to dismiss this charge should be denied. We also agree with the Hearing Committee's conclusion that Respondent violated Rule 5.5(a). HR at 22.

Respondent contends that Disciplinary Counsel was required to prove that she "knowingly" violated the Court's temporary order of suspension from practice. Disciplinary Counsel maintains that practicing law after the order of suspension issued is sufficient to establish a violation of the Rule, a notion of strict liability. We agree with the Hearing Committee that it is unnecessary to take a position on Disciplinary Counsel's contention. Respondent received notice that Disciplinary Counsel might seek her temporary suspension and actually received at least one of the orders of suspension.

The Board's January 14, 2011 order granting Disciplinary Counsel's motion to compel response to written inquiry warned Respondent that should she refuse to respond to Disciplinary Counsel's inquiries, Disciplinary Counsel "shall consider . . . whether, if the underlying investigation involves allegations of serious misconduct, to seek an order of temporary suspension or imposing temporary conditions of probation, or both, under amended D.C. Bar R. XI, § 3(c)(1) and Board Rule 2.10(b)." Board Rule 2.10(i)(d) requires that notice of the Board order be served upon the respondent "in accordance with the procedures set forth in Section 19(e) of Rule XI[,]" including notice by publication. Disciplinary Counsel provided the required notice in this case. BX 9 at 4.

In addition, the Court's order of suspension and amended suspension order were both addressed by the Court to Respondent at her home on Wisconsin Avenue, N.W., BX 15-16, her address of record with the D.C. Bar, and the parties stipulated that the Court sent mail to Respondent at that address and that the mail was never returned as undeliverable. Stip. 2-3. Respondent testified that she stopped opening the mail and accumulated unopened mail from, among others, Disciplinary Counsel and the Court in one or more boxes in her home. Tr. 74:2-12, 82:20-84:2. Respondent further testified that "[she] knew [she] was getting mail from [Disciplinary] Counsel" and that she was "in trouble to some degree." Tr. 133. She knew "something was going to happen" and that "it was bad." *Id*. Respondent's witness, Stefan Lopatkiewicz, testified that sometime after August 2012, Respondent gave him a box of unopened correspondence. He opened it at her request and found "much correspondence" concerning the five cases at issue here, a show-cause order, and "the documentation that she had been suspended, but she still had her license." Tr. 197:12-200:21. Thus, when Respondent appeared in court attempting to represent Eutelsat in August 2012, she knew or had notice (1) that she had utterly neglected five clients for more than two years, (2) that she had ignored orders she knew the Court must have entered, (3) that she had ignored and chosen not to open all her mail from the Court and Disciplinary Counsel, and (4) that her law license was therefore in jeopardy. She also was in actual possession of at least one of the two temporary suspension orders, since Mr. Lopatkiewicz found it when Respondent asked him to open her mail. Under these circumstances, and given Respondent's willful blindness to the Court's orders of suspension, we find the evidence sufficient to prove that she engaged in the unauthorized practice of law, in violation of Rule 5.5(a). *See In re Kennedy*, Bar Docket No. 370-84 at 6-7 (HC Mar. 27, 1986), *finding adopted*, 542 A.2d 1225, 1227 (D.C. 1988) (unauthorized practice violation where the attorney admitted that he knew he

had failed to pay Bar dues and would be suspended for nonpayment and chose not to claim a certified letter providing notice of his proposed suspension).

G. Rule 8.4(d) (Serious Interference with the Administration of Justice) (Counts I-V)

We agree with the Hearing Committee's conclusion that Respondent violated Rule 8.4(d), but not with all of their analysis.

Rule 8.4(d) provides that it is professional misconduct for a lawyer to "[e]ngage in conduct that seriously interferes with the administration of justice." To establish a violation of Rule 8.4(d), Disciplinary Counsel must demonstrate by clear and convincing evidence that: (i) Respondent's conduct was improper, *i.e.*, that Respondent either acted or failed to act when he should have; (ii) Respondent's conduct bore directly upon the judicial process with respect to an identifiable case or tribunal; and (iii) Respondent's conduct "taint[ed] the judicial process in more than a *de minimis* way," *i.e.*, it must have potentially had an "impact upon the process to a serious and averse degree." *In re Hopkins*, 677 A.2d 55, 60-61 (D.C. 1996). Rule 8.4(d) is violated if the attorney's conduct causes the unnecessary expenditure of time and resources in a judicial proceeding, where the impact is more than *de minimis*. *See In re Cole*, 967 A.2d 1264, 1266 (D.C. 2009). Failure to respond to Disciplinary Counsel's inquiries and court orders also violates Rule 8.4(d). Rule 8.4, cmt. [2]; *see, e.g.*, *In re Askew*, Bar Docket No. 2011-393 at 22-23 (BPR May 22, 2013) (finding a violation of Rule 8.4(d) where the respondent failed to comply with an order requiring her to file a brief and to turn over client files), *aff'd in relevant part*, 96 A.3d at 53.

The Board concludes that Respondent violated Rule 8.4(d) when she (i) abandoned indigent clients she was Court-appointed to represent; (ii) ignored multiple orders by the Court to file briefs; and (iii) ignored the Court's orders to turn over case files "forthwith" to successor counsel. All of this conduct bore directly on the judicial process in more than a *de minimis* way

because it served to countermand judicial authority and to delay judicial consideration of her clients' interests. *See In re Toppelberg*, Bar Docket No. 191-02 at 53 (BPR July 21, 2006), *recommendation adopted*, 906 A.2d 881 (D.C. 2006) (per curiam). The Board does not agree with the Hearing Committee's conclusion that Respondent filed many "frivolous motions needlessly extending the process." As detailed above, the Board finds that Respondent had good grounds to file each of her various motions in these cases up through February 16, 2010, and that the one motion she filed in each case thereafter, on May 24-26, 2010, was not filed in bad faith.

H. D.C. Bar R. XI, §§ 2(b)(3) (Failure to Comply with Board or Court Order) and (2)(b)(4) (Failure to Respond to a Written Inquiry from the Court or the Board) (Count VI)

We agree with the Hearing Committee's conclusion that Respondent violated D.C. Bar R. XI, §2(b)(3), but not §2(b)(4). "Failure to comply with any order of the Court or the Board issued pursuant to [D.C. Bar R. XI]" is a ground for discipline (D.C. Bar R. XI, § 2(b)(3)), as is "[f]ailure to respond to a written inquiry from the Court or the Board in the course of a disciplinary proceeding without asserting, in writing, the grounds for refusing to do so." D.C. Bar R. XI, § 2(b)(4). Respondent failed to comply with orders from the Board and the Court pertaining to Disciplinary Counsel's investigation and the instant disciplinary proceeding. *See* FF 56, 58. Accordingly, we conclude that Respondent violated D.C. Bar R. XI, § 2(b)(3). We do not find that Disciplinary Counsel has proven a violation of D.C. Bar R. XI, § 2(b)(4) because there is no evidence that Respondent failed to respond any particular "inquiry" from the Board or the Court in connection with a disciplinary proceeding; rather, the evidence shows that she ignored *orders* from those authorities.

IV. RECOMMENDED SANCTION

The appropriate sanction must protect the public and the courts, maintain the integrity of the profession, and deter Respondent and other attorneys from engaging in similar misconduct. *In re Martin*, 67 A.3d 1032, 1053 (D.C. 2013). In addition, the sanction imposed must comply with D.C. Bar R. XI, § 9(h)(1), which provides for the imposition of a sanction that does not "foster a tendency toward inconsistent dispositions for comparable conduct or [is] otherwise unwarranted." *In re Elgin*, 918 A.2d 362, 373 (D.C. 2007); *In re Berryman*, 764 A.2d 760, 766 (D.C. 2000). In *Martin*, the Court reiterated that the

> determination of sanctions depends upon a number of factors, such as (1) the seriousness of the conduct, (2) prejudice to the client, (3) whether the conduct involved dishonesty, (4) violation of other disciplinary rules, (5) the attorney's disciplinary history, (6) whether the attorney has acknowledged his or her wrongful conduct, and (7) mitigating circumstances.

67 A.3d at 1053.

As to the first and fourth factors, Respondent's misconduct was serious, substantial and intentional. Over a period of more than two years, she utterly neglected five indigent clients, ignored multiple orders of the Court, failed to cooperate with successor counsel, engaged (briefly) in the unauthorized practice of law, and at first failed so completely to cooperate with Disciplinary Counsel and the Board that a bench warrant was issued for her arrest and her law license was temporarily suspended. As the Court observed in *Askew*, 96 A.3d at 60, it is particularly significant that Respondent was appointed to represent indigent defendants under the CJA. The Court seeks to provide counsel to indigent criminal defendants by "develop[ing] and maintain[ing] a panel of practicing attorneys who are approved by the court as competent to provide adequate representation on appeal for persons qualifying under the [CJA]." *Id*. (quoting Plan for Furnishing Representation to Indigents Under the District of Columbia Criminal Justice Act, § III(A)).

> Needless to say, this court relies on court-approved panel attorneys who receive court appointments to fulfill their obligations to competently represent and zealously advocate for their clients. When a panel attorney so egregiously fails to fulfill this obligation, it undermines the aim of the Criminal Justice Act, and reflects negatively on both this court and the legal profession.

96 A.3d at 60. *Accord In re Murdter*, 131 A.3d 355 (D.C. 2016) (per curiam) (appending Board Report). These serious violations require a serious sanction.

As to the second factor, Respondent's five clients unquestionably were prejudiced, both by being ignored and deprived by their counsel of advice and information and by having their appeals delayed by at least several months each. There is no evidence that any of the clients waived any argument on appeal or suffered any extra incarceration due to Respondent's misconduct, so it appears that serious delay and uncertainty were the extent of the prejudice to Respondent's clients.

As to the third factor, the Board does not conclude that there was any dishonesty or misrepresentation, and to this extent we disagree with those of the Hearing Committee's proposed credibility findings that are not supported by substantial evidence. As discussed in the factual section above, we do not believe the evidence supports a finding that Respondent either lied about not opening her mail or filed motions for extension of time while intending never to file the brief. The evidence in the record shows that Respondent was trying, albeit clumsily and in the end ineffectively, to regain control of herself and her clients' cases.

Respondent had a previous disciplinary history in the form of an informal admonition for failing to communicate with an incarcerated CJA defendant until after the brief was filed and later delaying the transmission of the Court's decision to that client. We agree with the Hearing Committee that this prior discipline should not weigh heavily in aggravation of the sanction here.

We have also considered the fact that Respondent ignored multiple Court orders to turn her files over to successor counsel and instead shredded the confidential materials in the files and placed the public materials in the dumpster. This conduct was unacceptable, but we note that by

the time Respondent destroyed the files, the harm had been done. Several months had passed since the issuance of the Court's orders, and by then, successor counsel had already been forced to order new transcripts and start from scratch without any help from Respondent. We therefore do not agree with Disciplinary Counsel that Respondent's destruction of the files, while condemnable, is evidence of her malicious intent. It does not further aggravate Respondent's already serious misconduct in ignoring the Court's orders to cooperate with successor counsel.

We agree with the Hearing Committee that Respondent has expressed sincere remorse and accepted full responsibility for her misconduct. She has done so in part through her cooperation with Disciplinary Counsel's investigation from August 2012 to date, by the extensive stipulations that shortened the hearing and focused the issues in dispute, and by clear, repeated and credible testimony acknowledging her wrongful conduct and taking full responsibility for the consequences.

Respondent presented evidence of substantial mitigating factors. As the Hearing Committee acknowledged, Respondent has had a long and successful legal career. Her success and experience include dozens of CJA appeals handled professionally and without criticism. Her character witness, Stephan Lopatkiewicz, who is Respondent's current and past employer and has known her since 1988, unreservedly praised her professional abilities and character. The record strongly suggests that Respondent's misconduct, though very serious, was aberrational. Furthermore, the expert testimony and report by Dr. Kimball, which were uncontradicted, established that Respondent's misconduct was substantially affected by her emotional problems. *See, e.g.*, *In re Peek*, 565 A.2d 627 631 (D.C. 1989); *In re Weiss*, 839 A.2d 670, 671 (D.C. 2003) (accepting disability mitigation evidence, even though the respondent withdrew a formal *Kersey* defense, where a causal connection to the misconduct was established). In addition,

Respondent voluntarily sought help from the Lawyer Assistance Program, followed a recommendation to seek psychological assistance, followed the psychologist's advice to undertake psychotherapy, and, according to the expert testimony, substantially benefitted from that therapy. By doing so, Respondent has taken responsibility to get the help she needs and taken concrete and effective steps to ensure that her aberrational behavior does not recur.

A. The Mandate to Achieve Consistency

D.C. Bar R. XI, §9(h)(1) provides that the Court "shall adopt the recommended disposition of the Board unless to do so would foster a tendency toward inconsistent dispositions for comparable conduct or would otherwise be unwarranted." We have thus considered the sanctions imposed in comparable cases. In neglect cases where the respondent's conduct appears unique and aberrational, the Court has sometimes imposed the more lenient sanction of a brief stayed suspension, with conditions. *See, e.g.*, *Askew*, 96 A.3d at 61 (citing *In re Mance*, 869 A.2d 339, 342 (D.C. 2005)); *In re Baron*, 808 A.2d 497, 498-99 (D.C. 2002) (per curiam) (stayed 30-day suspension with one-year probation where respondent was overwhelmed by the responsibilities of being sole caregiver for disabled son and had already taken steps to improve her practice).

In other more serious cases, the Court has imposed a longer period of suspension with a partial stay and probation. Most recently, in *Murdter*, 131 A.3d at 358, the Court imposed a six-month suspension with all but 60 days stayed in favor of a one-year period of probation with conditions for the neglect of five CJA appeals over a period of months. Like Respondent, Mr. Murdter was a successful and experienced lawyer with no prior disciplinary record who apparently lost control of his CJA practice for a period of time due to health-related issues. Unlike Respondent, Mr. Murdter also was convicted of two counts of criminal contempt, for which he

received a suspended sentence of incarceration.[19] Also unlike Respondent, Mr. Murdter apparently kept opening his mail, and therefore promptly transferred case files to successor counsel and cooperated throughout the disciplinary process, without triggering a temporary suspension or engaging in the unauthorized practice of law.

Another recent comparable case is *Askew*, 96 A.3d at 62, in which the Court imposed a six-month suspension with all but 60 days stayed pending the successful completion of a one-year period of probation with conditions, with the direction that she be removed from all CJA panels. Ms. Askew seriously neglected one court-appointed appeal for over 15 months, where she represented an incarcerated client, before she was removed as counsel (compared to the neglect of 6-12 months' duration in Respondent's five cases). She also failed to transfer case files promptly to successor counsel. The Court found that "Ms. Askew'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.'" *Askew*, 96 A.3d at 59 (quoting hearing committee findings). Ms. Askew did not ignore the disciplinary process or engage in the unauthorized practice of law, as did Respondent. *See also In re Ontell*, 724 A.2d 1204, 1205 (D.C. 1999) (per curiam) (90-day suspension with 60 days stayed pending one-year probation, where the respondent neglected client but had been suffering from side effects of medication for a serious medical problem).

In cases of more egregious neglect of court-appointed cases without mitigating factors, the Court has imposed suspensions of six months or longer. *See, e.g.*, *In re Rosen*, 470 A.2d 292, 300-01 (D.C. 1983) (six-month suspension for neglect of one court-appointed case by, among other

[19] It appears from the record before us that Respondent's show-cause hearing for contempt based on the Court's order of January 28, 2011 has not been closed. *See* note 16, *supra*.

things, failing to seek pre-trial release, and unauthorized disclosure of a second client's defense strategy to prosecutors); *In re Lieber*, 442 A.2d 153, 156 (D.C. 1982) (six-month suspension where court-appointed attorney failed to enter an appearance and failed to inform the court that he did not intend to represent the client); *In re Stanton*, 470 A.2d 272, 278-79 (D.C. 1983) (per curiam) (appending Board Report) (suspension of one year and one day for serious neglect of two court-appointed clients by a respondent who had serious prior discipline in two other cases that showed a pattern of substituting his judgment for that of his clients, with no substantial remorse or other mitigation).

The current case is most comparable to *Murdter* and *Askew*, and the same suspension imposed in those cases – a six-month suspension – is appropriate here. Six months is the period of suspension sought by Disciplinary Counsel and recommended by the Hearing Committee majority, and Respondent does not take exception to that aspect of the Hearing Committee's recommended sanction. Indeed, a six-month suspension appears to be the norm in a fairly wide range of cases involving the serious neglect of one or more court-appointed cases, even when there are significant aggravating factors. Suspensions in excess of six months have been imposed only in relatively rare cases where there are very serious aggravating factors such as a pattern of repeated, willful and unmitigated disregard of clients' interests, as in *Stanton*.

In view of Respondent's largely unblemished disciplinary record and her proven efforts to seek help and prevent any recurrence, the Board believes that 90 days of Respondent's suspension should be stayed, provided Respondent agrees to a period of probation with the condition that she continue her work with the Lawyer Assistance Program and follow its recommendations, including participation in any psychological treatment it recommends, to ensure that she has the strongest possible set of skills to prevent any future "shut down" in response to stress in her practice.

In addition, we recommend that the Court, as in *Askew*, direct that Respondent be removed from all CJA panels until she has completed her suspension and probation, without prejudice to her ability to reapply for such appointments thereafter if she can satisfy the requirements.

B. The Fitness Requirement

The Hearing Committee, in addition to the six-month suspension recommended by the majority, unanimously recommended that Respondent's suspension should include a fitness requirement. Disciplinary Counsel also recommended a fitness requirement. Respondent's exception to the Hearing Committee report is primarily directed to the fitness requirement, as are the briefs from Respondent and Disciplinary Counsel.

Before a respondent is required to prove fitness as a condition of reinstatement, "the record in the disciplinary proceeding must contain clear and convincing evidence that casts a serious doubt upon the attorney's continuing fitness to practice law." *In re Cater*, 887 A.2d 1, 6 (D.C. 2005). The burden of proof rests on Disciplinary Counsel. *Id.* at 24. Proof of a "serious doubt" involves more than 'no confidence that [a] Respondent will not engage in similar conduct in the future.'" *In re Guberman*, 978 A.2d 200, 213 (D.C. 2009) (quoting Board Report). It connotes "real skepticism, not just a lack of certainty." *Id.* (quoting *Cater*, 887 A.2d at 24). The analysis is different from that involved in determining the appropriate sanction. "[W]hile the decision to suspend an attorney for misconduct turns largely on the determination of historical facts, the decision to impose a fitness requirement turns on a partly subjective, predictive evaluation of the attorney's character and ability." *Cater*, 887 A.2d at 22.

In recommending a fitness requirement, the Hearing Committee and Disciplinary Counsel focused on the fact that Respondent's "shut down" was not complete, and would not have prevented her from, for example, filing motions to withdraw from her CJA cases, or opening her

mail from Disciplinary Counsel. We agree to the extent that these findings establish that Respondent's misconduct was serious and she had no excuse for it. But that is not the issue where a fitness requirement is involved. Disciplinary Counsel and the Hearing Committee invite us to infer that Respondent's behavior was so egregious that it amounted to a callous disregard of her clients' interests.[20] Simply repeating the catalogue of Respondent's violations does not illuminate our predictive evaluation. In *Guberman*, for example, the Court recognized that Mr. Guberman's misconduct, which involved repeated dishonesty, "was serious, and, concededly, we cannot be certain that respondent will not engage in similar dishonest conduct upon a return to practice, but nothing in the record give[s] us reason to think that misconduct of the type involved here will be repeated." *Guberman*, 978 A.2d at 213.

Here the clear and convincing evidence shows that Respondent has taken substantial steps to prevent a recurrence of her misconduct, working with the D.C. Bar's Lawyer Assistance Program, consulting with a psychologist who testified as an expert in the hearing, and participating in at least 20 therapy sessions with a psychotherapist who reported that Respondent had made substantial progress. As a result, the psychologist, Dr. Kimball, testified that he believed Respondent's "judgment has improved and she's very unlikely to get herself in a situation like this again." Tr. 229:2-3. While it is not possible to say with absolute certainty that Respondent will

[20] To the extent that the Hearing Committee and Disciplinary Counsel base their arguments for a fitness requirement on their contention that Respondent lied about not opening her mail and filed motions for extensions of time without intending to file appellate briefs, we reject those findings for the reasons stated above. The Board also disagrees with Disciplinary Counsel's argument that Respondent's decision to discard the client files, months after she failed to turn them over to successor counsel, showed malicious intent. Throwing the files away in 2011 was wrong, but by then the damage had been done. Successor counsel had already been forced to order new transcripts and start from scratch with no help from Respondent. Respondent's explanation for her disposal of the files was consistent with the uncontroverted expert psychological testimony, and there is no evidence of malice.

not engage in future instances of neglect, the Board concludes that Disciplinary Counsel failed by a wide margin to meet its burden of proof to show, by clear and convincing evidence, that there is a "serious doubt" as to Respondent's current and future fitness to practice law.[21]

V. CONCLUSION

For the reasons stated above, the Board recommends that Respondent be suspended from the practice of law for a period of six months, with all but 90 days stayed, provided that she consents to a one-year period of probation, with conditions. The Board recommends that, within 30 days of the date of the Court's order of discipline, Respondent be directed file with the Board a statement certifying that she accepts the conditions of probation and agreeing that during the period of stayed suspension she (1) shall not commit any other disciplinary rule violations; (2) shall be evaluated by the D.C. Bar Lawyer Assistance Program and sign a limited waiver permitting that Program to confirm compliance with this condition and cooperation with the evaluation process; and (3) shall comply with any recommendations of the Lawyer Assistance Program, including but not limited to attending and completing additional psychotherapy during some or all of the period of probation. *See* Board Rule 18.1(a), (c)-(d).[22] If Disciplinary Counsel has probable cause to believe that Respondent has violated any of the terms of probation,

[21] While we recognize that the fitness determination is not based on the comparability standard of D.C. Bar R. XI, § 9(h)(1), we find it significant that no fitness requirement was imposed or even sought in *Murdter* or *Askew*, two recent cases dealing with comparably serious neglect of court-appointed clients.

[22] D.C. Bar R. XI, § 3(a)(7) requires that the order of probation state "whether, and to what extent, the attorney shall be required to notify clients of the probation." The Board does not find that such notice should be required here. *See In re Edwards*, 870 A.2d 90, 98 (D.C. 2005); *In re Mance*, 869 A.2d at 342-43.

Disciplinary Counsel may seek to revoke Respondent's probation, pursuant to Board Rule 18.3. In addition, the Board recommends that the Court direct that, if not an automatic consequence of her suspension, Respondent be removed from all panel lists for court-appointed counsel in Superior Court and the Court of Appeals, without prejudice to her ability to reapply to serve as court-appointed counsel once she has completed her term of suspension and probation.

BOARD ON PROFESSIONAL RESPONSIBILITY

By: /JCP/
John C. Peirce

Dated: April 22, 2016

All members of the Board concur in this Report and Recommendation except Mr. Carter, who is recused.