DISTRICT OF COLUMBIA COURT OF APPEALS
BOARD ON PROFESSIONAL RESPONSIBILITY

In the Matter of:	)	
	)	
Karen Cleaver-Bascombe	)	
D.C. Bar No. 458922,	)	Bar Docket No. 183-02
	)	
Respondent.	)	

REPORT AND RECOMMENDATION OF
THE BOARD ON PROFESSIONAL RESPONSIBILITY

This matter comes to the Board on Professional Responsibility (the "Board") from Hearing Committee Seven ("Committee"). Respondent is charged with four violations of the D.C. Rules of Professional Conduct arising out of her submission of a CJA Voucher which allegedly charged for work she did not perform, to wit: (i) violating Rule 1.5(a) by charging an unreasonable fee; (ii) violating Rule 3.3(a)(1) by making a false statement of material fact to a tribunal; (iii) violating Rule 8.4(c) by engaging in conduct involving dishonesty, fraud, deceit or misrepresentation; and (iv) violating Rule 8.4(d) by engaging in conduct that seriously interfered with the administration of justice. The Committee found that Respondent knowingly submitted a false CJA voucher in violation of Rules 1.5(a) and 8.4(c) and recommended a three-month suspension with readmission conditioned on Respondent's successful completion of a continuing education course on timekeeping and recordkeeping.

Bar Counsel excepted to the Committee's failure to find violations of Rule 3.3(a)(1) and Rule 8.4(d) and the recommended sanction. Respondent excepted to the Committee's finding of violations and its recommended sanction. Upon review, we sustain the Committee's finding that Respondent violated Rule 1.5(a) and Rule 8.4(c). We depart from the Committee to find that Respondent also violated Rules 3.3(a)(1) and

8.4(d). Because all four violations arise from the same conduct, we find that the Committee's recommended three-month suspension with reinstatement conditioned on the successful completion of a recordkeeping and timekeeping course remains the appropriate sanction.

I. Procedural History

Bar Counsel filed her Specification of Charges on March 28, 2003. Respondent was represented by counsel. Her Answer was filed on August 15, 2003. Bar Counsel filed "Bar Counsel's List of Exhibits" (hereinafter "BX") marked as A through D, and 1 through 7 and Respondent filed "Respondent's List of Exhibits" (hereinafter "RX"), marked as A through J. The Committee held a hearing on September 12, 2003, and September 17, 2003.[1] Bar Counsel called four witnesses: Wallace Lewis (Branch Manger of the Defender Services Branch of the Budget and Finance Division of the Superior Court), Donald C. Whitley (Respondent's client), Michael Menefee (D.C. Jail Custodian of Records) and Colette Koustenis (Charles County States Attorney's Office). Respondent testified under oath and she called two additional witnesses — Dana Friend (Deputy Director of the Budget and Finance Division of the Superior Court) and Howard Exum (D.C. Jail Corrections Officer). Bar Counsel then called Michelle Baker (D.C. Department of Corrections Attendance Clerk) as a rebuttal witness. During Ms. Baker's testimony, Bar Counsel introduced, and the Committee admitted an additional exhibit, BX 8, over Respondent's objection. Over objection, Bar Counsel was permitted to reopen the record to present the testimony of Eileen Baird (Administrative Assistant to D.C. Superior Court Judge Graae) as an additional rebuttal witness.

[1] The September 12, 2003 hearing will be referred to as Transcript ("Tr.") I; the September 17, 2003 hearing will be referred to as Tr. II.

Upon conclusion of the hearing, the Hearing Committee made a preliminary, non-binding determination that Respondent had violated at least one Rule of Professional Conduct. Neither party presented any evidence in aggravation or mitigation of the misconduct. After the Hearing, each party submitted proposed findings of fact and conclusions of law and replies to the other party's brief.

The Committee's Report and Recommendation was issued on May 5, 2004. As noted above, both Bar Counsel and Respondent filed and briefed exceptions. Bar counsel filed a Reply to Respondent's Brief. Oral argument before the Board was on October 21, 2004.

II. Findings of Fact

Although Respondent challenges several of the Committee's findings of fact, we find them to be supported unvaryingly by substantial evidence on the record. Hence, we adopt the Hearing Committee's findings of fact *in toto*. The findings are reproduced below (with minor editorial changes) for ease of reference.

1. Respondent is a member of the Bar of the District of Columbia Court of Appeals, having been admitted on July 10, 1998, and assigned Bar Number 458922. BX A. Respondent has represented clients in criminal matters on a full-time basis since March 1999, in the Superior Court of the District of Columbia. Tr. I at 215-16.

2. By court order issued on February 19, 2002, and retroactive to February 14, 2002, the Superior Court of the District of Columbia ("the Superior Court") appointed Respondent to represent Donald C. Whitley, a defendant in a fugitive from justice/extradition matter bearing Case Number SP-434-02 (hereinafter "the case"). BX 1; Tr. I at 19 (Lewis), 35 (Whitley), 220 (Cleaver-Bascombe). Respondent was

appointed to represent Mr. Whitley in the proceedings instituted by the Superior Court to facilitate the attempt by Charles County, Maryland to extradite him, where he was wanted for fraud. Tr. I at 33 (Whitley), 220 (Cleaver-Bascombe).

3. On February 19, 2002, the court issued simultaneously with and as a part of its order a form entitled "Appointment and Voucher for Legal Services-Initial Claim" ("the voucher"), so that Respondent could receive payment for her time spent working on the case under the District of Columbia Criminal Justice Act, D.C. Code § 11-2601 *et seq.* (2001 ed.) ("CJA"). The voucher included spaces and sections for Respondent's use to itemize her time, expenses and compensation claimed on the case. The voucher also included on its face an oath and affirmation of the correctness of Respondent's claim for compensation, with a line for her signature. BX 1.

4. Respondent represented Mr. Whitley at his arraignment in the case on February 14, 2002. Because Mr. Whitley indicated his desire to contest the extradition, a hearing was scheduled for March 20, 2002. The court set a cash bond amount of $1,000, and committed Mr. Whitley to the custody of the Superintendent of the District of Columbia Jail until such time as he could post the bond. BX 2 at 2, 13; Tr. I at 33-35 (Whitley). Accordingly, Mr. Whitley was incarcerated at the D.C. Central Detention Facility ("D.C. Jail") from February 14 until he posted the bond on February 16. BX 5; Tr. I at 34 (Whitley).

5. On March 19, 2002, the Government filed a motion to dismiss the case, and on March 20, 2002, at the extradition hearing, the Court granted the motion. BX 2 at 8-10.

6. On March 21, 2002, Respondent submitted her voucher, seeking payment for fourteen and one-half (14-1/2) hours of legal services. Respondent claimed, among other items, payment for:

a) a two-hour conference with Donald Whitley on February 15, 2002;
b) a one-hour conference with Mr. Whitley on February 20, 2002;
c) a one-hour conference with Mr. Whitley on March 14, 2002;
d) a one-hour conference with Mr. Whitley on March 19, 2002;
e) one and one-half hours on February 15, 2002 to prepare a "letter to AUSA Lennon/Rosser;"
f) one and one-half hours on March 14, 2002 for "discussions w/Ms. Koustenis[,] Charles County Warrant [Office];"
g) one hour on March 19, 2002, to review the Government's motion to dismiss; and
h) one and one-half hours to prepare a "letter of instruction" to Mr. Whitley.

BX 1. When Respondent executed the voucher, she swore to and affirmed the correctness of her claim for time and compensation in the case. BX 1. Respondent subsequently submitted the voucher to the CJA Accounting Unit for payment, seeking a total of $725.00. BX 1; Tr. I at 17-24 (Lewis).

7. The Guidelines for Attorneys Appointed to Represent Indigents in the Superior Court under the CJA require that, following the Accounting Unit's review of a voucher for mathematical accuracy, obvious overlaps of time, claims that are unallowable, and any other unusual items, the voucher is sent to the appropriate judge for review. Vouchers may not be paid without such judicial approval. Guidelines at 4 (B.C. Brief Attachment A).

8. Accounting Unit reviews of CJA vouchers cannot determine whether a voucher is substantively correct, i.e., whether the services claimed correspond to activities in the case because the Accounting Unit has no access to case jackets. Tr. I at 19-21 (Lewis).

9. On April 5, 2002, after receiving Respondent's voucher, Judge Steffen Graae, the presiding judge in the case, sent a letter to Respondent stating: "Your claims raise serious concerns which I believe we should discuss . . .. Please contact my administrative assistant, Ms. Eileen Baird and set up an appointment for us to meet. Please bring your case file when you come." Judge Graae further stated that if he did not hear from Respondent within 10 days, he would approve the voucher in an amount he deemed appropriate. BX 2 at 3. Respondent did not respond in writing to Judge Graae or arrange to meet with him as he requested. BX 2; Tr. II at 11-14 (Baird).

10. Respondent admitted that she did not respond to Judge Graae's letter of April 5, 2002. She testified that she did not receive the letter until several weeks later, because she was not regularly checking her business mail during this time. Tr. I at 254-55. Respondent testified that after she received the April 5 letter, she called Judge Graae's Administrative Assistant, Eileen Baird, and told her that "[she] was and still [is] in trial, that [she] wasn't going to be able to meet with them . . . and [Ms. Baird] said 'okay' and [she] thought that was the end of it . . . ." Tr. I at 255 (Cleaver-Bascombe).

11. On May 13, 2002, Judge Graae wrote a second letter to Respondent, stating as follows:

> I assume you received my April 5th letter but have decided not to meet with me. As I advised you, I would approve your voucher in an amount I deem appropriate if you did not respond within 10 days.
>
> On further review of your voucher and the court's file, SP 434-02, I have decided not to approve your voucher in any amount. Indeed, I am going to refer the matter for Bar Counsel investigation.

BX 2 at 2. Judge Graae did not reduce the amount of the voucher as he had initially proposed, but instead refused to pay the voucher in its entirety and referred the matter on

the same date to Bar Counsel for investigation. BX 2 at 1. Respondent also testified that after she received Judge Graae's May 13, 2002, letter referring the matter to Bar Counsel, "[she] called [Ms. Baird] again and . . . reminded her that [they] had conversed previously and that [she] was in trial in the [the United States District Court for the District of Columbia] and that [she] was still in trial and that's why [she] didn't respond within 10 days and [Ms. Baird] said, 'Well, [Judge Graae] referred it over to [B]ar [C]ounsel,' and [Respondent] didn't know what else [she] could do then so [she] said okay." Tr. I at 256 (Cleaver-Bascombe).

12. In Bar Counsel's rebuttal case, Eileen Baird testified that Respondent did not call her, or anyone else in Judge Graae's chambers, in response to the April 5, 2002 letter. Tr. II at 13-14, 24-26 (Baird). Ms. Baird testified that Respondent called only once, approximately one week after May 13, 2002, when a letter had been sent referring the matter to Bar Counsel. Tr. II at 13-14 (Baird). Although Ms. Baird did not keep any records of this phone call, she recalled that she put the call through to Judge Graae. The Hearing Committee credited Ms. Baird's testimony, and found Respondent's testimony to the contrary unsupported.

13. Respondent testified that, consistent with her claim for payment for legal services, on the morning of February 15, 2002, she and her investigator, Jocelyn Brown, went to the D.C. Jail and "to the best of her recollection" met with Mr. Whitley. She further testified that, while there, she saw and spoke with Howard Exum, a guard who worked at the facility. Tr. I at 228-30 (Cleaver-Bascombe). The Committee found her testimony unsupported by the evidence.

14. The Committee found that Respondent did not have a meeting or conference with Donald Whitley on February 15, 2002. Mr. Whitley testified that while he was incarcerated at the D.C. Jail from February 14, 2002 to February 16, 2002, neither Respondent nor her investigator, Jocelyn Brown, met with him. BX 5; Tr. I at 34, 36, 53 (Whitley). Despite a showing that Mr. Whitley did not provide accurate information regarding his place of employment and marital status to officials interviewing him for appointment of counsel on February 14, 2002, the Committee found his testimony was credible and that he had no bias against Respondent or reason to minimize or misrepresent his conversations or contact with Respondent.

15. All visitors to the D.C. Jail, including attorneys and investigators, are required to sign a visitors' register when they enter the jail. Moreover, attorneys wishing to visit clients at the jail are required to submit an Inmate Request Form to jail authorities to request a visit with an inmate. Tr. I at 106-08 (Menefee). A review of the D.C. Jail's visitor records and Inmate Request Forms reflects no record or verification that either Respondent or her investigator, Jocelyn Brown, was present at the D.C. Jail on February 15, 2002. BX 6; Tr. I at 85-87 (Menefee). Additionally, attorney visits are logged into a book on the floor in which the legal visit takes place. Tr. I at 95-96 (Menefee).

16. Respondent's investigator, Jocelyn Brown, did not testify. However, Respondent sponsored the testimony of Howard Exum, a former prison guard who once worked for the D.C. Department of Corrections. Mr. Exum stated that on February 15, 2002, when he finished his regular midnight to 7:30 a.m. shift at Community Corrections Center #4 (the "halfway house"), he reported to the D.C. Jail to work an overtime shift. Tr. I at 174, 181-83 (Exum). Mr. Exum stated that when he arrived at the D.C. Jail on the

morning of February 15, 2002, he talked with Respondent and Jocelyn Brown. Tr. I at 162-63 (Exum).

17. The Committee found that the testimony of Mr. Exum was substantially impeached by an affidavit that he had previously executed at Respondent's request (RX B), by cross-examination of Bar Counsel (Tr. I at 171-83), and by the subsequent testimony of Bar Counsel's rebuttal witness, Michelle Baker, the records custodian and timekeeper for employees at the District of Columbia Department of Corrections ("DOC"). Tr. I at 332. Ms. Baker referred to the official written time records of the DOC. She testified that on February 15, 2002, Mr. Exum did not work the midnight to 7:30 a.m. shift at the halfway house, as he testified. Instead, he worked the 3:30 p.m. to midnight shift at the halfway house. Tr. I at 335-37 (Baker); BX 8. Further, despite Mr. Exum's testimony that he was owed two hours overtime pay for reporting to the D.C. Jail on the morning of February 15, 2002,[2] there is no record that Mr. Exum reported to the D.C. Jail for overtime on February 15, 2002, and indeed, no overtime was ever paid to Mr. Exum for such a time period. BX 8; Tr. I at 182 (Exum), 345 (Baker). The Committee found that Mr. Exum's memory regarding the hours and places he worked on February 15, 2002 was inaccurate and his demeanor while testifying, which was evasive and nonresponsive, was such that it could not rely upon his testimony to corroborate Respondent's claims. Therefore, the Committee found the Respondent presented no credible evidence to corroborate her claim that she met with Mr. Whitley at the D.C. Jail on February 15, 2002. Indeed, the Committee found that Bar Counsel presented clear

[2] Mr. Exum testified that he arrived at the D.C. Jail on February 15 to work overtime, but left the facility when officials informed him that he was not needed to work that day. Tr. I at 163 (Exum).

and convincing evidence that Respondent did not meet with Mr. Whitley on February 15, 2002.

18. The Committee likewise found no support for Respondent's claims of three one-hour conferences with Donald Whitley on February 20, 2002, March 14, 2002, and March 19, 2002. The Committee credited Mr. Whitley's testimony that Respondent had only one telephone conversation with him, which lasted just a few minutes. Tr. I at 69-71 (Whitley). While Mr. Whitley could not recall the exact date of this call, he testified that Respondent did not have personal or telephone conferences with him on the dates she specified in her voucher, nor did Respondent meet with Mr. Whitley for the amount of time claimed. In addition, Respondent met with Mr. Whitley in person only three times: twice on the day of his initial court appearance (February 14, 2002) while he was in a holding cell for a total of less than 15 minutes, and once on March 20, 2002, the date of the dismissal of the matter, for no more than five minutes. Tr. I at 71-72 (Whitley). His testimony on this point is consistent with the facts adduced at the hearing.

19. Respondent also claimed compensation for one hour and 30 minutes on February 15, 2002, to write a "Letter to AUSA Lennon/Rosser." BX 1. The letter consists of less than one type-written page and informs the Office of the United States Attorney that Respondent represents Donald Whitley, and it makes a "formal request for any and all discovery materials," citing Superior Court Rule of Criminal Procedure 16 and *Brady v. Maryland,* 373 U.S. 83 (1963). RX E at 229.

20. Respondent claimed compensation for one hour and 30 minutes on February 14, 2002, to write a "letter of instruction to client." BX 1. The one-page letter

advises Mr. Whitley of the charges pending in Maryland, and urges him "to go to Maryland and resolve this outstanding warrant for [his] arrest." RX E at 228.

21. Respondent claimed compensation for one hour and 30 minutes on March 14, 2002, for discussions with Ms. Koustenis of the Charles County, Maryland Warrant Office. BX 1. The Committee found that Respondent did not have a conversation with Ms. Koustenis on March 14, 2002. Rather, as Ms. Koustenis testified, she had only one conversation with Respondent, and that conversation was on March 20, 2002, and lasted for only a "very short time." BX 7; Tr. I at 120. Ms. Koustenis testified that the conversation was simply to confirm that Charles County was dismissing its warrant for Mr. Whitley's arrest. Tr. I at 120. Ms. Koustenis remembered the telephone call after referring to the notes she took of messages she received on her voicemail and the notations she made when she returned the calls. Although the Committee found incredible Ms. Koustenis' further testimony that she has never had a work-related conversation with anyone that lasted more than two minutes during the many years that she has been employed in the Charles County Warrant Office, it was satisfied that her notes concerning messages received and the returning of phone calls corroborates her testimony regarding her conversation with Respondent. Tr. I at 202.

22. Respondent claimed compensation for one hour on March 19, 2002, to review the Government's motion to dismiss. BX 1. The Government's motion to dismiss is three paragraphs long, double-spaced, and does not exceed one page. The motion simply recites a brief conversation that the prosecutor had with authorities in Charles County, Maryland, regarding dismissal of the extradition proceedings. BX 2 at 8; RX D.

III. Analysis

As an initial matter, we review Respondent's challenges to the Committee's Findings of Fact. As noted above, Respondent's arguments do not persuade us to set aside any of the Committee's findings. We then review each of the charges against Respondent. We find that Respondent's conduct in filing a CJA voucher that included charges for work she did not perform violated Rule 1.5(a), Rule 3.3(a)(1), Rule 8.4(c) and Rule 8.4(d).

A. Respondent's Factual Challenges.

The introductory section of Respondent's brief is devoted to factual challenges, and these challenges are repeated in the brief's discussion of each substantive violation and the appropriate sanction for her conduct. We will examine the factual challenges as they are presented in the introductory section of Respondent's brief.

We defer to the factual findings made by the Hearing Committee if supported by substantial evidence in the record, viewed as a whole. Board R. 13.7; *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). We find all of the Committee's factual determinations to be supported by substantial record evidence.

First, Respondent contests the Committee's findings relating to whether she actually visited her client at the D.C. Jail on February 15, 2002, Paragraphs 14-17. Resp. Brief 1-2. She argues that Bar Counsel did not prove by clear and convincing evidence that she did not make the client visit that she charged for in her voucher. *Id*. In support, she offers Mr. Menefee's testimony that he did not check every visitor record kept by the

Jail and that it was conceivable that a person might visit the Jail without signing any of the visitor records. *Id*. Finally, she offers Mr. Exum's testimony that he saw her at the Jail that day should have been credited, in part because he was not impeached by his affidavit. *Id*.

We have reviewed Mr. Menefee's testimony. He is custodian of records for the D.C. Jail. He checked two different sets of records that would have documented that Respondent visited the Jail -- but they did not. Tr. I at 106-108. This provides sufficient support for the Committee's finding. Mr. Menefee's refusal to testify that the Jail's sign in process is foolproof and results in a record of every attorney visit without error (Tr. at I 112) does not provide a basis to overturn this finding.

Nor will we overturn the Committee's rejection of Mr. Exum's testimony as not credible. The technical question of whether Mr. Exum, a guard at the D.C. Jail, was impeached by his affidavit does not negate the findings of the Committee based on its evaluation of his credibility. The Committee expressly found that Mr. Exum's memory regarding dates and times he worked was inaccurate and his demeanor while testifying was evasive and nonresponsive. There is ample support for this finding on the record. *See e.g*. Tr. I at 160-170, 177-181. Accordingly, we will not alter the Committee's finding that Respondent did not meet with her client at the D.C. Jail on February 15, 2002.

Respondent next challenges the findings in Paragraph 18, where the Committee questioned the validity of other conferences with Mr. Whitley that Respondent included on her voucher. Resp. Brief at 3. Respondent offers that the Committee's statement that it "found no support for Respondent's claims of three one-hour conferences with Mr.

Whitley" evidences an improper shifting of the burden of proof to Respondent. *Id*. We do not agree. The Committee explained that this finding was based on Mr. Whitley's testimony that these conferences did not take place. The Committee credited this testimony and did not credit Respondent's testimony to the contrary. *Id*. The record contains enough evidence for a reasonable mind to find sufficient to support that the alleged conferences did not take place. *See Thompson*, 583 A.2d at 1008.

Respondent also disputes the Committee's finding in Paragraph 21 that she did not have a one hour and thirty minute phone call with Ms. Koustenis. Resp. Brief at 6. Respondent provides an alternative explanation for this charge, claiming that work billed "encompasses more than conversation [sic] with Ms. Koustenis." *Id*. at 7. She further argues that the Committee's finding lacks support because Ms. Koustenis does not keep a log of her live conversations. *Id*.

The Committee weighed Ms. Koustenis's testimony and found certain aspects of it incredible, but found that her claim that she had only one short conversation with Respondent to be corroborated by documentary evidence such as the log Ms. Koustenis kept of her telephone messages. Accordingly, a reasonable mind can conclude there is sufficient support for the conclusion reached by the Committee, even in the absence of a log of live conversations and in the face of Respondent's alternative explanation.

Finally, Respondent also disputes the Committee's findings in Paragraphs 9-12 regarding her response to Judge Graae's letters questioning her voucher. These findings do not directly effect the violations at issue, but they were a factor in the Committee's credibility determinations. The Committee credited the testimony of Judge Graae's assistant, Ms. Baird, that Respondent did not respond to the Judge's letters until after the

matter was referred to Bar Counsel. It did not credit Respondent's testimony that she called twice, once before the matter was referred to Bar Counsel and once after.

Respondent argues that there is no clear and convincing evidence that she did not respond to Judge Graae's first letter. Resp. Brief at 6. According to Respondent, the testimony offered by Judge Graae's administrative assistant that she only received one phone call from Respondent, which she forwarded to the Judge, is *not* inconsistent with Respondent's claim that she called chambers twice because someone else in chambers could have answered the call. *Id*. We do not agree. Respondent testified that she spoke with Ms. Baird on both occasions and her testimony does not mention that she spoke to the Judge or anyone else in chambers. (Tr. I at 254-256). Moreover, Judge Graae's letter specifically directed Respondent to call Ms. Baird. BX 2. This is sufficient to support the conclusion reached by the Committee.

For the reasons discussed above, we find the Respondent's arguments that the Committee erred in its fact finding to be unpersuasive and we decline to alter the Committee's Findings of Fact.

B. Rule 1.5 (a) – Charging an Unreasonable Fee

Rule 1.5(a) states simply: "A lawyer's fee shall be reasonable."[3] The Committee found that the fee charged in Respondent's voucher was per se unreasonable because it included charges for services that were not performed. HC Report at 18. Respondent

[3] Rule 1.5(a) lists the following factors to be considered in determining the reasonableness of a fee:

> (1) the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly; (2) the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer; (3) the fee customarily charged in the locality for similar legal services; (4) the amount involved and the results obtained; (5) the time limitations imposed by the client or the circumstances; (6) the nature and length of the professional relationship with the client; (7) the experience, reputation, and ability of the lawyer or lawyers performing the services; and (8) whether the fee is fixed or contingent.

does not challenge the proposition that a fee that includes charges for work not performed is *per se* unreasonable, rather she argues that she did not violate Rule 1.5(a) because she did not receive payment of the fee charged in her voucher. Respondent cites *In re Washington*, 541 A.2d 1276 (D.C. 1988) and *In re Haupt*, 422 A.2d 768 (D.C. 1980), for the proposition that a violation of Rule 1.5(a) requires payment to have been made to the attorney. Although both Washington and Haupt collected the unreasonable fee at issue, neither case can be read as requiring payment before Rule 1.5(a) is violated.

We find that the Rule encompasses charging for an unreasonable fee even if that fee is not collected. Our Rule 1.5 (a) comes directly from the ABA's Model Rules. The ABA 2000 revision of the rules modified Rule 1.5 (a) to expressly address the contention advanced by Respondent. The ABA 2000 revision provides:

> A lawyer shall not make an agreement for, charge or collect an unreasonable fee….

This change was intended to clarify the scope of the former wording, not enhance it. The comment to the ABA 2000 revision states plainly that "[n]o change in substance is intended" by the revised wording. Thus, we conclude that Rule 1.5(a) can be violated by the act of charging an unreasonable fee without regard to whether the fee is collected. Respondent's submission of a false CJA voucher violates our Rule 1.5 (a).

There is at least one case in which it appears that the Court found an attorney had charged an unreasonable fee while not having collected it. *In re Waller*, 524 A.2d 748 (D.C. 1987). In *Waller*, the Respondent demanded that his client pay a contingency fee even though his client fired him before he had performed any substantive work on the

matter. *Id* at 749. The Court found a violation of DR 2-106 (the predecessor to Rule 1.5(a)) without noting whether the fee was actually paid.[4] *Id.*

Respondent argues that our reading would mean that every attorney whose CJA voucher is reduced has violated Rule 1.5(a). We disagree. Superior Court Judges may have many reasons for reducing voucher payments, including taking more time than is necessary to perform a task or making mathematical errors in billing. Not all such instances rise to the level of charging an excessive fee. Our finding that Respondent violated Rule 1.5(a) may be read to suggest only that an attorney who submits a CJA voucher for payment for work not actually performed has violated Rule 1.5(a). Accordingly, we agree with the Committee that Respondent violated Rule 1.5(a) by submitting a voucher that included charges for work she did not perform.

C. Rule 3.3(a)(1) – Making a False Statement of Material Fact to a Tribunal

Rule 3.3 codifies a lawyer's duty of candor to a tribunal. Consistent with this purpose, Rule 3.3(a)(1) provides that "[a] lawyer shall not knowingly . . . make a false statement of material fact or law to a tribunal." Although the Committee found that Respondent's voucher contained false statements of material fact, it found that the false statements were not made to a tribunal. HC Report at 17-18.

We have found no decisions that define "tribunal" as used in Rule 3.3(a)(1). The "Terminology" section of the D.C. Rules of Professional Conduct defines "tribunal" as "[d]enot[ing] a court, regulatory agency, commission, and any other body or individual authorized by law to render a decision of a judicial or quasi-judicial nature, based on

[4] Waller asserted a charging lien over a settlement and his name was on the check issued by the insurance company. *Id.* at 752. Although this likely delayed the proper distribution of settlement funds, there was no allegation Waller actually took the excessive fee he charged.

information presented before it, regardless of the degree of formality or informality of the proceedings." *Id*. at 16. The Committee opined that neither the Accounting Branch of the Superior Court nor Judge Graae functioned as a "tribunal" under this definition when processing the voucher, approving payment or making payment to the attorney. *Id*. at 16-17. We see it differently.

Bar Counsel argues that the Criminal Justice Act directs lawyers to submit claims for compensation to "the Superior Court" which is clearly a tribunal. *Id*. (citing D.C. Code § 11-2604(d)). Respondent argues that the District of Columbia Courts' Financial Operations Division is responsible for the processing and payment of CJA vouchers and this administrate body is not a tribunal. Resp. Brief at 11.

As an experienced CJA Attorney, Respondent knew that Judge Graae had to approve her voucher as the judge presiding over the extradition of Respondent's client. On that voucher, she swore and affirmed the truth and correctness of statements that the Committee found that she knew to be false. RX C. We are not called upon to determine whether there are any departments within the Superior Court that do not have the authority to act in a judicial or quasi-judicial nature. Judge Graae has this authority, and he exercised it in reviewing Respondent's CJA voucher. Accordingly, we find that Respondent violated Rule 3.3(a)(1) by submitting a CJA voucher to the Court for payment knowing it to contain charges for work not performed.

D. Rule 8.4(c) – Dishonesty

Rule 8.4(c) prohibits a lawyer from engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation.[5] The term "dishonesty," while encompassing fraud, deceit, or misrepresentation, also includes "conduct evincing 'a lack of honesty, probity or integrity in principle; a lack of fairness and straightforwardness.'" *In re Shorter*, 570 A.2d 760, 767-68 (D.C. 1990) (per curiam) (citation omitted). When an attorney deliberately and knowingly makes a false representation, proof of deceptive or fraudulent intent is not required. *In re Schneider*, 553 A.2d 206, 209 (D.C. 1989); *see also Shorter at* 767-68 & n.12 (D.C. 1990). It is enough that the representation was made with knowledge of its falsity. *Id.* When an action "is obviously wrongful and intentionally done, the performing of the act itself is sufficient to show the requisite intent for a violation" of Rule 8.4(c). *In re Romansky*, 825 A.2d 311, 315 (D.C. 2003). When dishonest conduct "itself is not of a kind that is clearly wrongful, or not intentional, Bar Counsel has the additional burden of showing the requisite dishonest intent." *Id*.

The Committee found that Respondent knowingly billed for services she did not perform. HC Report at 14. It went on to find that her intent in submitting her voucher was to mislead the Court.[6] *Id*. In our view, the nature of Respondent's dishonesty does not require a specific finding of dishonest intent. The problems with Respondent's voucher were not limited to billing too much for work she actually performed, such as the

[5] Rule 8.4 reads in pertinent part:

> It is professional misconduct for a lawyer to: (c) [e]ngage in conduct involving dishonesty, fraud, deceit or misrepresentation.

[6] The Committee made an alternative finding that Respondent was "reckless in the submission of her voucher" because of her poor timekeeping practices. HC Report at 14-15. The alternative finding is not necessary in view of Respondent's obvious self-interest in seeking as large a payment as possible for her representation of Mr. Whitley.

letter she wrote to her client or the telephone conversation she had with the Charles County Warrant Office. These entries might arguably have been the result of negligent or reckless timekeeping -- although on the facts of this case we do not think so. Respondent's voucher included charges for several meetings she simply did not have. Bar Counsel proved these meetings did not take place yet the Respondent knowingly charged for them on her voucher. This is sufficient proof of a Rule 8.4(c).

In re Schneider provides a helpful analogy. Schneider altered credit card receipts by placing a "1" before each charge and submitted the receipts to his law firm for reimbursement by the client. *Schneider*, 553 A.2d at 207. Schneider claimed that this was a short hand system for accurately reflecting other travel expenses actually incurred. *Id.* at 209. The Court found that his conduct violated DR 1-202(a)(4) (the prior version of Rule 8.4(c)) without regard to the respondent's ultimate intent or motive because he clearly knew that the receipts were altered and thereby contained false information. *Id*. at 210.

Bar Counsel has proven that, *inter alia*, Respondent charged for meetings that never took place. She knew that these meetings did not take place yet she included them on her voucher. We agree with the Committee that this conduct violated Rule 8.4(c) regardless of her actual motive in submitting the voucher.

E. Rule 8.4(d) – Conduct that Seriously Interferes with the Administration of Justice

Rule 8.4(d) proscribes conduct that "seriously interferes with the administration of justice." To establish a violation of Rule 8.4(d), Bar Counsel must show by clear and convincing evidence that:

1. Respondent's conduct was improper, *i.e.*, that Respondent either acted or failed to act when she should have;
2. Respondent's conduct bore directly upon the judicial process with respect to an identifiable case or tribunal; and
3. Respondent's conduct tainted the judicial process in more than a *de minimis* way, *i.e.*, it must have potentially had an impact upon the process to a serious and adverse degree.

In re Hopkins, 677 A.2d 55, 61 (D.C. 1996).

The Committee found that Respondent's Conduct did not violate Rule 8.4(d). HC Report at 20. Although it found that Respondent's conduct was dishonest, the Committee found that this conduct did not bear directly upon the judicial process with respect to an identifiable case or tribunal because the *Whitley* case had been concluded by the time she submitted her voucher. *Id.* The Committee went on to find that, even if Respondent's conduct did meet the second element of *Hopkins*, it did not interfere with the administration of justice, or have the potential to impact the judicial process, in more than a *de minimus* way because no Court actions or decisions were affected, no individuals or cases were adversely affected, and the fraudulent voucher was not paid. *Id.*

Bar Counsel argues that the Committee misapplied *Hopkins* and that a proper analysis would conclude that Respondent's conduct violated Rule 8.4(d). BC Brief at 16. She contends that the Committee failed to properly consider whether Respondent's conduct bore directly on the judicial process with respect to an identifiable tribunal rather than an identifiable case. *Id.* at 17. According to Bar Counsel, Respondent's conduct meets this standard because her "attempted fraud wasted Judge Graae's time and resources, and it threatened court funds available under the CJA program to provide a defense to indigent defendants." *Id.* Bar Counsel further offers that the Committee failed to consider whether this conduct had the potential to taint the judicial process in more

than *a de minimis* way. *Id.* at 18. She argues that Respondent's specific conduct could have deprived the Court of more than a *de minimis* amount of money and if a general practice of filing false vouchers were allowed to go unchecked there was a potential for greater losses. *Id.*

We agree with the Committee that Respondent's conduct was clearly wrongful and therefore satisfies the first element of *Hopkins*. We differ from the Committee in that we find that this conduct also bears directly on the judicial process, as required by the second element of *Hopkins*. Finally, we disagree with Committee's conclusion that this conduct did not affect, or have the potential to affect, the administration of justice in more than a *de minimis* way, as required under the third element of *Hopkins*. Our analysis follows.

Hopkins requires that an attorney's misconduct "bear directly upon the judicial process . . . with respect to an identifiable case or tribunal." *Hopkins*, 677 A.2d at 61. The CJA program is an integral part of the judicial process of the Courts of the District of Columbia and conduct that affects this program satisfies this requirement of Rule 8.4 (d). Under the statutes that regulate the CJA program, the power to appoint and pay lawyers is vested in the Superior Court and its judges. D.C. Code § 11-2601 *et seq.* The Court of Appeals has found that the appointment of counsel under the CJA is a judicial act for which trial judges and the Court employees who administer the program on their behalf enjoy judicial immunity. *Stanton v. Chase*, 497 A.2d 1066, 1068-69 (D.C. 1985). Because the payment of attorneys under the act is directly vested with the Court's judges, we find that the evaluation and approval of attorneys' vouchers under the program is

judicial in nature. Hence, conduct that impacts on the CJA program bears upon the judicial processes of the appointing court.

We find further support for this conclusion in cases where attorneys who violated CJA regulations were found to have violated the predecessor to Rule 8.4(d). In *In re L.R.*, the Court based its finding of a violation on the fact that Respondent's conduct in agreeing to file a motion for a fee offered by an indigent client "is presumptively prejudicial to the administration of the CJA system." 640 A.2d 697, 701 (D.C. 1994) (emphasis added). Similarly, in *In re Willcher*, the Court noted that the Respondent's solicitation of a fee from an indigent client "amounted to a double fraud – one on [the client] who was entitled by the CJA to a 'free lawyer,' and his family; and one on the judicial system itself." 447 A.2d 1198, 1200 (D.C. 1982) (emphasis added). Although the conduct at issue in *Willcher* and *L.R.* also directly affected their clients, which the conduct before us did not, we find that its independent effect on the CJA program provides a sufficient basis for finding that Respondent's conduct bore directly on the administration of justice. Hence, we conclude that Bar Counsel has satisfied the second element of *Hopkins* by proving that Respondent submitted to the Court for payment a CJA voucher for work she did not perform.

The question that remains is whether Respondent's conduct tainted, or had the potential to taint, the processes of the Superior Court or the CJA program in a more than *de minimis* way, as required by the third element of *Hopkins*. In our view, the submission of a patently fraudulent voucher has this effect. The monetary amount of the fraud is not determinative. We further find that the unnecessary burden placed on Judge Graae of having to evaluate and act upon the improper voucher had more than a *de minimis* effect

on the administration of justice. And without doubt the effort to foist fraudulent vouchers on the CJA system, via Judge Graae had the potential to seriously disrupt the CJA program. In this latter regard, we take judicial notice of the criminal cases prosecuted against lawyers who abuse the CJA program. *See Gregory v. United States*, 393 A.2d 132 (D.C. 1978); *Wilcher v. United States*, 408 A.2d 67 (D.C. 1979). This vital program must be protected assiduously against fraud and abuse.

In re Hallmark is not to the contrary. Bar Counsel charged Hallmark with violating Rule 8.4(d) in connection with a CJA voucher that was late and claimed fees in excess of the statutory limit. 831 A.2d 366, 369 (D.C. 2003). The voucher included billing errors and charges for more than 13 hours spent discussing the case with another attorney who testified that he could not recall having spent that much time discussing the case with Hallmark. *In re Hallmark*, BDN 77-96, et al. (BPR May 31, 2001) at 29. But the Board found that Bar Counsel did not prove these charges. *Id.* at 30.The Board ultimately concluded that Hallmark's conduct did not interfere with the administration of justice in more than a *de minimis* way because her voucher–related misconduct related to her failure to respond to a judge's inquiries, not the voucher itself. *Id.* at 30. Notably, the Board was "not willing to say that this single incident, absent any finding of dishonesty on Respondent's part or finding of a pattern of such actions in the past rises to the level of a Rule 8.4(d) violation." *Id.* at 31 (emphasis added).

The Court of Appeals agreed with the Board's finding that there was no violation. *Hallmark*, 831 A.2d at 374-75. Like the Board, the Court noted that: "what we have here is a deficient request for compensation -- which the Hearing Committee found to be the result of negligence, not fraud." *Id.* at 375 (emphasis added). Hence, the Court agreed

with the Board that Hallmark's negligent conduct did not "seriously and adversely affect the administration of justice." *Id*.

Respondent's conduct is clearly more egregious than that at issue in *Hallmark.* Bar Counsel proved that Respondent's voucher was fraudulent. The question before us is whether the knowing submission of a fraudulent voucher either tainted the judicial process in more than a *de minimis* way, or had the potential to do so. We find that it did both.

IV. Sanction Recommendation

The Committee recommended that Respondent be suspended from the practice of law for three months and required to attend continuing legal education course on timekeeping and recordkeeping procedures. Both parties filed exceptions in respect of the sanction recommended by the Committee. Respondent urges that if any sanction must be imposed, it should be a thirty-day suspension stayed for a period of supervised probation. Bar Counsel urges disbarrment or a substantial suspension with a fitness requirement. The appropriate sanction is what is necessary to protect the public and the courts, to maintain the integrity of the profession and "to deter other attorneys from engaging in similar misconduct." *In re Uchendu*, 812 A.2d 933, 941 (D.C. 2002). The sanction imposed must be consistent with cases involving comparable misconduct. D.C. Bar R. XI, § 9(g)(1); *In re Dunietz*, 687 A.2d 206, 211 (D.C. 1996).

A. Length of Suspension

In determining the appropriate sanction, the Board considers the seriousness of the misconduct, sanctions for similar misconduct, prior discipline, prejudice to the client, violation of other disciplinary rules, whether the conduct involved dishonesty, the

respondent's attitude, and circumstances in aggravation and/or mitigation. *In re Hutchinson*, 534 A.2d 919, 924 (D.C. 1987). Although we owe no deference to the Committee's recommended sanctions, for the reasons discussed below we find its evaluation of the appropriate length of suspension persuasive.

1. Seriousness of Misconduct and Sanctions for Similar Misconduct

In making its sanction recommendation, the Committee primarily considered the dishonest nature of the Respondent's actions. HC Report at 22–24. Although we have found two additional violations, we agree with the Committee that the core dishonesty of Respondent's conduct is the linchpin of an appropriate sanction in this matter.

The Committee reviewed sanctions for similar types of misconduct involving fraudulent or dishonest billing and handling of expenses, which ranged from a 30-day suspension to disbarment. *See, e.g*., *Schneider*, 553 A.2d 206 (thirty-day suspension for altering eight credit card receipts submitted to law firm for reimbursement of travel expenses actually incurred); *Bikoff*, 748 A.2d 915 (sixty-day suspension for "mischaracteriz[ing]" expenses to avoid potential controversy with clients); *In re Bernstein*, 774 A.2d 309 (D.C. 2001) (nine-month suspension imposed for charging excessive fee, commingling of client funds and dishonesty); *In re Appler*, 669 A.2d 731 (D.C. 1995) (disbarment for extensive fraudulent billing scheme).

The Committee noted that Respondent's misconduct was more serious than the conduct at issue in *Bikoff* and *Schneider* because in those cases the attorneys did not seek to gain financially through their misrepresentations, but less serious than *Bernstein* where the attorney retained funds that should have been disbursed to his client and lied to the client about his fee. HC Report at 23. None of these cases, however, involved a

respondent who tried to mislead a court. Respondent does not point to any analogous cases in her argument for a less severe sanction. Resp. Brief at 22. Bar Counsel argues that the dishonesty at issue here is more like *Appler* because Respondent, like Appler intended to profit from her misconduct. BC Brief at 22. The Committee found that *Appler* involved conduct far more serious than that at issue here. HC Report at 23. The Committee noted that the Respondent in *Appler* was engaged in a pattern of falsified billing that involved an extended period of time and multiple clients and matters and that the amount diverted was substantial. *Id*. Here we are faced with one dishonest voucher submitted to a Superior Court Judge. We agree with the Committee that this conduct falls short of *Appler*.

2. Prior Discipline

Respondent has had no prior disciplinary actions against her.

3. Prejudice to the Client

Bar Counsel acknowledges that there was no prejudice to Mr. Whitley because of Respondent's misconduct.

4. Attitude of the Respondent

An attorney who presents false testimony during disciplinary proceedings clearly does not appreciate the impropriety of his or her conduct. *See In re Goffe*, 641 A.2d 458 (D.C. 1994). Consequently, dishonesty before the Hearing Committee can be a factor in assessing the proper sanction for disciplinary violations. *Id.* at 466. Bar Counsel asserts that Respondent attempted to mislead the Hearing Committee and that this should be a relevant factor in determining the proper sanction for her disciplinary violations. BC Brief at 22. Respondent argues that she engaged in a truthful and vigorous defense and

this should not be held against her. Rep. Brief at 25-30. She also notes that the Committee did not conclude that she testified falsely. *Id*. at 25.

Respondent is entitled to undertake a vigorous defense of the charges against her. *See In re Kennedy*, 542 A.2d 1225, 1231 (D.C. 1988) (lack of remorse not given special emphasis because attorney is entitled to protest a recommended sanction). Although this would not excuse deliberate dishonesty in these proceedings, we agree with Respondent that the Committee's findings do not support a conclusion that she presented false evidence or testimony. In *Goffe,* the Court's conclusion that respondent did not appreciate the seriousness of his misconduct was based upon a specific finding by the Hearing Committee that he had testified falsely. 641 A.2d at 466. The Court specifically noted that this conclusion was not simply based on the fact that there was "evidence contrary to his testimony."

Here, the Committee found that Respondent's testimony was unsupported by the evidence and not credible. HC Report at 24. It also found that the testimony of Mr. Exum, which was offered by the Respondent, was impeached and unreliable. It did not make any finding that either Respondent or Mr. Exum testified falsely. Accordingly, the Committee did not find that Respondent was deliberately dishonest in her defense of this matter and the Board will not assume that she was when deciding the appropriate sanction for her underlying misconduct.

5. Circumstances in Aggravation and/or Mitigation

Apart from the above, Bar Counsel has not offered any aggravating circumstances and Respondent has not offered any mitigating circumstances.

The Board must consider the "total picture" of Respondent's professional conduct. *In re Washington*, 541 A.2d 1276, 1283 (D.C. 1988) (per curiam). This matter involves a single incident of serious misconduct. Moreover, the Respondent's voucher was submitted to the Court. This is an aggravating factor. On the other hand, Respondent has no prior discipline and there was no allegation of harm or potential harm to her client. Given all of the circumstances involved here, we find that the three-month suspension recommended by the Committee protects the public, the courts, and the profession.

Moreover, a three-month suspension is within the range of sanctions provided for similar cases involving dishonesty. As noted above we view Respondent's misconduct as more serious than the conduct at issue in *Bikoff* and *Schneider*, which warranted thirty and sixty day suspensions respectively, but less serious than *Bernstein*, where a nine month suspension was imposed. In *In re Sandground*, the Court imposed a 90-day suspension for four related violations arising from the Respondent's assisting his client in the concealment of funds in a divorce action. 542 A.2d 1242 (D.C. 1988). The Court found that this sanction was warranted regardless of the fact that Respondent's misconduct did not harm his client and he had no prior disciplinary actions against him, because "the practice of law demands rigid honesty from attorneys if justice is to prevail." *Id.* This mandate persuades us that a three-month suspension is appropriate in this case.

Although it falls to the middle of range of discipline imposed for dishonesty, a three-month suspension is a serious sanction. We are mindful that any suspension has a serious impact on the practice of a sole or small firm practitioner. *See* *Matter of Joyner*,

Bar Docket No. 185-93 at 13 (June 30, 1995). The Board believes that in this instance, a three-month suspension will serve to protect the public and the courts, maintain the integrity of the profession and deter other attorneys from engaging in similar misconduct. *See Uchendu*, 812 A.2d 933, 941 (D.C. 2002).

B. Fitness Requirement

Bar Counsel argues that Respondent's reinstatement should be contingent upon proof of fitness. D.C. Bar R. XI, § 16. To impose a fitness requirement on Respondent, the record in this proceeding must contain clear and convincing evidence that casts a serious doubt on her continuing fitness to practice law. *See In re Cater*, BDN 337-99 *et al.*, at 27 (BPR June 26, 2003). In determining whether serious doubt is raised about a respondent's fitness to practice law, it is instructive to consider the *Roundtree* factors used for evaluating petitions for reinstatement. *Id.* [7]

The first *Roundtree* factor, the nature and circumstances of the misconduct, is often preeminent. *Id*. Respondent's violations all arise from a single incident of dishonesty. This dishonesty was serious, but it did not strike at the core issue of her practice. Accordingly, we do not find that the nature and circumstances of the Respondent's misconduct alone warrant imposition of a fitness requirement.

---

[7] Five factors are considered in determining whether a suspended or disbarred attorney has met the criteria necessary for reinstatement:

> (1) the nature and circumstances of the misconduct for which the attorney was disciplined; (2) whether the attorney recognizes the seriousness of the misconduct; (3) the attorney's conduct since discipline was imposed, including the steps taken to remedy past wrongs and prevent future ones; (4) the attorney's present character; and (5) the attorney's present qualifications and competence to practice law.

In re Roundtree, 503 A.2d 1215, 1217 (D.C. 1985).

The Board has previously noted that "the second *Roundtree* factor is not often helpful as a guide to determining whether a fitness requirement should be imposed because an attorney's right to advocate on his behalf in a disciplinary proceeding should not be used against him as evidence that he failed to recognize the seriousness of his misconduct." *In re Wright*, BDN 377-99 et al., at 58 (BPR April 14, 2004). As discussed above, Bar Counsel has raised serious concerns regarding the manner in which Respondent conducted her defense in this proceeding. Although we understand the gravity of these concerns, the Committee's findings that Respondent's testimony and the testimony of Mr. Exum was incredible do not support a conclusion that Respondent does not appreciate the seriousness of her misconduct.

Bar Counsel further argues that the dishonest manner in which Respondent conducted her defense is evidence of a serious character flaw, the fourth *Roundtree* factor. BC Brief at 24. Once again, because of the limited nature of the Committee's findings, we do not agree. We are not aware of any evidence on the remaining *Roundtree* factors. Consequently, we do not believe that a fitness requirement should be imposed based on the evidence before us.

Our *Cater* standard for imposition of a fitness requirement is pending before the Court of Appeals on Bar Counsel's exception. We note, therefore, that we would also decline to impose fitness under the pre-*Cater* standard. Declining to impose a fitness requirement is consistent with other cases involving isolated incidents of serious dishonesty. *See, e.g., Sandground*, 542 A.2d 1242 (no suggestion of a fitness requirement for violations arising from dishonesty in a single case); *In re Cerroni*, 683 A.2d 150 (D.C. 1997)(reinstatement conditioned upon continuing education where

attorney plead guilty to knowingly making false statements to two government agencies); *Bernstein*, 774 A.2d 309 (D.C. 2001)(reinstatement conditioned upon continuing education and restitution for dishonesty involving legal fees withheld from a client). Accordingly, we decline to recommend that Respondent's readmission be conditioned upon a showing of fitness.

V. Conclusion

The Board sustains the Committee's finding that Respondent violated Rule 1.5(a) and Rule 8.4(c). For the reasons discussed above, the Board departs from the Committee in finding that Respondent violated Rule 3.3(a)(1) and Rule 8.4 (d). We endorse the Committee's recommended sanction of three months suspension with reinstatement conditioned on the successful completion of a recordkeeping and timekeeping course and make that recommendation to the Court of Appeals.

BOARD ON PROFESSIONAL RESPONSIBILITY

By: _____
Martin R. Baach
Chair

Dated: December 17, 2004

All members of the Board concur in this Report and Recommendation, except for Ms. Coghill-Howard who did not participate.