DISTRICT OF COLUMBIA COURT OF APPEALS
BOARD ON PROFESSIONAL RESPONSIBILITY

In the matter of:	:	
	:	
ELLIS S. FRISON, JR.,	:	Board Docket No. 11-BD-083
	:	Bar Docket Nos. 2008-D538 and
Respondent.	:	2010-D129
	:	
A Member of the Bar of the	:	
District of Columbia Court of Appeals	:	
(Bar Registration No. 478092)	:	

REPORT AND RECOMMENDATION OF THE
BOARD ON PROFESSIONAL RESPONSIBILITY

Respondent, Ellis S. Frison, Jr., is charged with violations of Rules 1.1(a), 1.1(b), 1.3(b)(1), 1.3(b)(2), 1.4(a), 1.4(b), 1.6(a), 1.6(e)(5), 1.16(d), 3.1, 3.2(a), 3.3(a)(1), 3.3(a)(4), 3.4(b), 3.4(c), 4.4(a), 8.1(a), 8.1(b), 8.4(c) and 8.4(d) arising out of (1) Respondent's representation of Ronda Nunnally in claims against her employer, (2) disputes between Ms. Nunnally and Respondent regarding legal fees, and (3) Bar Counsel's investigation of the foregoing. Respondent is also charged with violating Rules 3.1, 3.3(a)(1), 3.4(b), 8.1(a), 8.4(c) and 8.4(d), in connection with his representation of Tenedia Davis and her minor daughter in a personal injury action and Bar Counsel's investigation of the foregoing.

Hearing Committee Number One found by clear and convincing evidence that Respondent committed all of the alleged Rule violations (except Rule 8.1(b) in the Nunnally case), and recommended that he be disbarred, and that as a condition of reinstatement Respondent should be required to prove that he has fully paid the $11,000 The Attorney/Client Arbitration Board ("ACAB") award rendered in favor of Ms. Nunnally, plus interest at the legal rate beginning to accrue as of August 3, 2009.

Neither Bar Counsel nor Respondent has taken exception to the Report and Recommendation of the Hearing Committee. Respondent did not participate in any of the proceedings before the Hearing Committee or the Board, after being personally served with a copy of the Specifications of Charges.

The Board, having reviewed the record, concurs with the Hearing Committee's factual findings as supported by substantial evidence in the record, with its conclusions of law, and with the recommended sanction of disbarment. For the reasons set forth in the Hearing Committee's Report and Recommendation, which is attached hereto and adopted and incorporated by reference, the Board recommends that Respondent should be disbarred, and that as a condition of reinstatement Respondent should be required to prove that he has fully paid the $11,000 ACAB arbitration award rendered in favor of Ms. Nunnally, plus interest at the legal rate on that amount beginning to accrue as of August 3, 2009.

The period of disbarment should run for purposes of reinstatement from the filing of the affidavit required by D.C. Bar R. XI, § 14(g). *See In re Slosberg*, 650 A.2d 1329, 1331-33 (D.C. 1994).

BOARD ON PROFESSIONAL RESPONSIBILITY

By: /RPW/
Robert P. Watkins

Dated: May 24, 2013

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

DISTRICT OF COLUMBIA COURT OF APPEALS
BOARD ON PROFESSIONAL RESPONSIBILITY
HEARING COMMITTEE NUMBER ONE

In the Matter of:	:	
	:	
ELLIS S. FRISON, JR.,	:	
	:	
Respondent.	:	Board Docket No. 11-BD-083
	:	Bar Docket Nos. 2008-D538 and
A Member of the Bar of the	:	2010-D129
District of Columbia Court of Appeals	:	
(Bar Registration No. 478092)	:	

REPORT AND RECOMMENDATION OF
HEARING COMMITTEE NUMBER ONE

I. BACKGROUND

A. Introduction

This matter involves two consolidated cases, the "Nunnally Case" and the "Davis Case." In the Nunnally Case (Bar Docket No. 2008-D538), on December 12, 2011, Bar Counsel filed with the Board on Professional Responsibility ("Board") a Specification of Charges ("Specification") and a Petition Instituting Formal Disciplinary Proceedings (BXN-2),[1] alleging that Respondent violated the Rules of Professional Conduct ("Rules" or "Rule") growing out of his representation of Ronda Nunnally ("Nunnally"). These allegations relate principally to: (a) Nunnally's claims for workplace sexual harassment, and claims against her employer, the District of Columbia's Metropolitan Police Department ("MPD"), for retaliation, and for retirement and disability benefits; (b) various subsequent proceedings involving legal fees paid by Nunnally and/or claimed by Respondent; and (c) Bar Counsel's investigation of the foregoing.

[1] Bar Counsel's exhibits in the Nunnally Case are identified in this Report and Recommendation with the prefix "BXN." Bar Counsel's exhibits in the Davis Case are identified in this Report and Recommendation with the prefix "BXD." Bar Counsel's exhibits in the Nunnally Case and the Davis Case are each numbered separately beginning with exhibit "1", *e.g.*, "BXN-1," etc., and "BXD-1," etc.

Also on December 12, 2011, in the Davis Case (Bar Docket No. 2010-D129) Bar Counsel filed with the Board a separate Specification (BXD-2) alleging that Respondent violated various Rules in connection with his representation of Tenedia Davis and her minor daughter in an appeal to the District of Columbia Court of Appeals ("Court of Appeals" or "Court") from an adverse judgment of the Superior Court of the District of Columbia ("Superior Court"), and in Bar Counsel's investigation of the foregoing.

Paragraph 155 of the Specification in the Nunnally Case (BXN-2 at 32-34) alleges that Respondent violated the following Rules:

a. Rule 1.1(a) and/or Rule 1.1(b) (competent representation; skill and care);

b. Rule 1.3(b)(1) (seeking the lawful objectives of his client);

c. Rule 1.3(b)(2) (intentionally prejudicing or damaging his client during the course of the professional relationship);

d. Rule 1.4(a) and/or Rule 1.4(b) (failing to keep his client reasonably informed about her matters, and failing to explain them as reasonably necessary);

e. Rule 1.6(a) and/or Rule 1.6(e)(5) (knowingly revealing confidences and/or secrets of his client, and failing to protect them while seeking legal fees from her);

f. Rule 1.16(d) (on termination of his representation, failing to take timely steps to surrender the client's papers and property to which the client is entitled; to withdraw from all matters in which he was listed as her counsel; and to refund unearned fees);

g. Rule 3.1 (bringing and defending proceedings and/or litigating issues when there was no non-frivolous basis for doing);

h. Rule 3.2(a) (delaying proceedings solely to harass or maliciously injure his client);

i. Rule 3.3(a)(1) (knowingly making false statements of fact to a tribunal and/or failing to correct such statements);

j. Rule 3.3(a)(4) (knowingly offering false evidence);

k. Rule 3.4(b) (falsifying evidence);

l. Rule 3.4(c) (knowingly disobeying obligations under the rules of a tribunal);

m. Rule 4.4(a) (while representing himself as a client, using means whose purpose was to embarrass, delay, or burden his former client);

n. Rule 8.1 (knowingly making false statements of fact in connection with a disciplinary matter, and/or failing to disclose facts necessary to correct a misapprehension known by the lawyer to have arisen in the matter);

o. Rule 8.4(c) (conduct involving dishonesty, fraud, deceit, or misrepresentation); and

p. Rule 8.4(d) (conduct that seriously interferes with the administration of justice).

Paragraph 26 of the Specification in the Davis Case (BXD-2 at 8-9) alleges that Respondent violated the following Rules:

a. Rule 3.1 (asserting issues when there was no non-frivolous basis for doing so);

b. Rule 3.3(a)(1) (knowingly making false statements of fact to a tribunal, and failing to correct such statements);

c. Rule 3.4(b) (falsifying evidence);

d. Rule 8.1(a) (knowingly making false statements of fact in connection with a disciplinary matter);

e. Rule 8.4(c) (conduct involving dishonesty, fraud, deceit, or misrepresentation); and

f. Rule 8.4(d) (conduct that seriously interferes with the administration of justice).

Bar Counsel's proposed sanction in this matter is that Respondent should be disbarred, and that any reinstatement of Respondent should be conditioned on proof of his payment to Nunnally of the $11,000 arbitral award rendered in favor of Nunnally by the D.C. Bar's Attorney/Client Arbitration Board (hereinafter, "ACAB"), discussed *infra* in Section II(A)(8), with interest on that sum running from June 5, 2009 (the date the ACAB award was payable). BC Br. at 2.[2]

For the reasons set forth in Part III of this Report and Recommendation, the Hearing Committee concludes that Respondent committed all of the violations charged by Bar Counsel in the Nunnally Case and the Davis Case, with the exception of Bar Counsel's alternative allegation in ¶ 155(n) of the Specification in the Nunnally Case that Respondent violated Rule 8.1(b) by failing to correct a misapprehension known by him to have arisen in Bar Counsel's investigation of the Nunnally Case. For the reasons set forth in Part IV of this Report and Recommendation, the sanction recommended by the Hearing Committee is that:

(a) Respondent should be disbarred; and

(b) as a condition of any reinstatement, Respondent shall be required to demonstrate that he has fully paid the $11,000 ACAB arbitration award rendered in favor of Nunnally (*see* Section II(A)(8), *infra*), which was confirmed by judgment dated August 3, 2009, entered by the Hon. Eugene Hamilton of the Superior Court (BXN-162), and affirmed by Orders of the Court of Appeals dated February 28, 2011 (BXN-147) and December 2, 2011 (BXN-182), together with all interest thereon beginning as of August

[2] All references in this Report and Recommendation to Bar Counsel's post-hearing brief are designated with the prefix "BC Br."

3, 2009, at the rate applicable to Superior Court judgments.[3]

B. Procedural History

On December 28, 2011, Respondent filed motions with the Board to extend until February 3, 2012, the time to answer the Specifications in the Nunnally Case and the Davis Case.[4] Bar Counsel did not oppose the motions. On January 3, 2012, the Board ordered the Specifications in the Nunnally Case and the Davis Case consolidated for all purposes. On January 11, 2012, the Hearing Committee Chair entered an Order granting the extensions of time until February 3, 2012, sought by Respondent. Respondent did not file his Answers with the Board by February 3, 2012.

A pre-hearing conference was held in this matter on March 29, 2012. Bar Counsel was represented at the pre-hearing conference by Julia L. Porter, Esq., Senior Assistant Bar Counsel. Respondent was not present or represented at the pre-hearing conference. A Pre-Hearing Order was entered on April 3, 2012. Paragraph 2 of the Pre-Hearing Order states that on February 6, 2012, Respondent served Bar Counsel with Answers in the Nunnally Case and the Davis Case, as well as a motion for leave to late-file the Answers, but that he failed to file any of those documents with the Board. *See* Board Rule 19.2. Paragraph 2 of the Pre-Hearing Order therefore directed Respondent to file his pleadings with the Board by April 20, 2012. Respondent failed to do so.

Paragraphs 10 and 11 of the Pre-Hearing Order directed the parties to file with the Board their proposed hearing exhibits and witness lists by May 18, 2012. Because many

[3] If for any reason payment has been made from the D.C. Bar's Clients' Security Fund for any portion of the ACAB award, reinstatement should be conditioned on Respondent's reimbursing the Clients' Security Fund for the full amount it has paid.

[4] Although Respondent is presently working as a civilian attorney, Respondent filed documents in support of his motions indicating that he was receiving treatment in one or more military medical facilities.

of the issues in this matter relate to filings with various courts, Paragraph 10(d) of the Pre-Hearing Order directed the parties insofar as possible to have certified copies of all court documents and proceedings provided with the Board's set of the parties' exhibits, as well as providing the opposing party with certified copies of those exhibits. Bar Counsel timely filed its proposed hearing exhibits and witness lists. Respondent failed to file any proposed hearing exhibits or witness lists. Paragraph 12 of the Pre-Hearing Order scheduled a series of hearing dates beginning on May 29, 2012.

The hearing in this matter began on May 29, 2012, and was concluded on May 30, 2012. At the hearing, Bar Counsel was represented by Senior Assistant Bar Counsel Julia L. Porter, Esq. Respondent was not present or represented at the hearing. In the Nunnally Case, Bar Counsel called three fact witnesses: Nunnally; MPD Captain Melvin Gresham; and Alan Lescht, Esq. ("Lescht"), who served as Nunnally's legal counsel in some of the proceedings discussed in this Report and Recommendation, including particularly as replacement counsel for Respondent in the litigation described below in Section II(A)(2). In the Davis Case, Bar Counsel called one fact witness, Rocco P. Porreco, Esq., who was counsel for one of the defendants in the litigation involved in that case.

On May 18, 2012, Bar Counsel filed 215 proposed exhibits in the Nunnally Case,[5] and 21 proposed exhibits in the Davis Case. At the hearing, Bar Counsel offered eight additional exhibits in the Nunnally Case.[6] All of Bar Counsel's exhibits were admitted into evidence,[7] with the caution (Tr. 810:3-20) that BXN-223 would be given such weight, if any, as the Hearing Committee deemed appropriate.

After Bar Counsel rested its case, the Hearing Committee recessed to consider whether under Board Rule 11.11 it could make a preliminary determination that Bar Counsel had proved at least one violation of any disciplinary Rule. Upon resuming

[5] BXN-117 is a compound exhibit, numbered "117" and "117A." In addition, there is a mis-numbering of exhibits in Bar Counsel's pre-hearing List of Exhibits in the Nunnally Case: a number appears to have been omitted at the bottom of page 17 of Bar Counsel's pre-hearing List of Exhibits, and the document identified at that point – "Certified Copy of Order dated March 16, 2012, denying Motion for Rehearing or Rehearing En Banc" – should have been designated in the pre-hearing List of Exhibits as BXN-184. As a result, the numbering of the Bar Counsel's exhibits in Volume Four for the Nunnally Case relating to bankruptcy litigation in which Nunnally was involved is off by one number, until correct numbering resumes with BXN-206 (because no "Exhibit 205" is listed on page 19 of Bar Counsel's pre-hearing List of Exhibits). However, there actually is a "BXN-205," and all references in this Report and Recommendation to Bar Counsel exhibits for the Nunnally Case in the range from BXN-184 through BXN-205 conform to the actual exhibit numbers, not the numbering used in Bar Counsel's pre-hearing List of Exhibits.

[6] BXN-216 consists of Nunnally's notes commenting on certain billing documents submitted to Bar Counsel and the ACAB by Respondent, which Nunnally used to assist her in testifying about those documents at the hearing. BXN-217 is a comparison prepared by Bar Counsel of various monthly billing documents from Respondent based on copies of those documents admitted as evidence submitted elsewhere in Bar Counsel's exhibits. BXN-218 is an exchange of e-mails dated September 13, 2010, between Nunnally and Respondent, regarding litigation between them. BXN-219 is a timeline prepared by Bar Counsel showing events in various legal proceedings to which Nunnally was a party. BXN-220 is an Affidavit of Service by Bar Counsel on Respondent of various documents relating to the instant matter, including the Pre-Hearing Order. BXN-221 is an e-mail from Bar Counsel to Respondent dated May 29, 2012, providing him with copies of BXN-216 and related documents from Bar Counsel's exhibits, which also advised Respondent that the hearing in this matter would be continuing on May 30, 2012. BXN-222 is an informal admonition issued to Respondent by the Office of Bar Counsel on July 22, 2008. BXN-223 is a December 6, 2004, Order of the United States District Court for the District of Maryland imposing a sanction of $3,000 on Respondent for "vexatious" and "frivolous" filings in litigation not involving Nunnally (perhaps unbeknownst to Bar Counsel, a copy of this Order was already in the record as BXN-166 at 46-48).

[7] *See* Tr. 793:12-794:5 and 807:6-810:21 with respect to Bar Counsel's exhibits in the Nunnally Case, and Tr. 131:13-132:2 with respect to Bar Counsel's exhibits in the Davis Case. All references in this Report and Recommendation to the transcript of the hearing in this matter, which begins with page "77," are identified with the prefix "Tr.". (The reporting company transcribing the hearing also prepared a transcript of the pre-hearing conference in this matter and assigned that transcript page numbers 1 through 76.)

proceedings, the Hearing Committee Chair stated that the Committee had affirmatively made such a preliminary determination. Tr. 795:4-9. Bar Counsel then offered BXN-222 as evidence of prior disciplinary action taken by Bar Counsel against Respondent, and proffered BXN-223 as additional evidence of prior misconduct by Respondent.

On June 1, 2012, Bar Counsel filed with the Board a motion for a protective order, seeking to have certain Bar Counsel exhibits or portions of exhibits in the Nunnally Case placed under seal. Respondent did not respond to Bar Counsel's motion within the time allowed by Board Rule 7.14(a), and by Order dated June 13, 2012, the Board granted Bar Counsel's motion.[8]

On June 5, 2012, the Hearing Committee Chair entered an "Order Concerning Post-Hearing Briefs." In addition setting a schedule for the parties to file post-hearing briefs, because the Specification in the Nunnally Case included allegations that Respondent disclosed Nunnally's secrets and/or confidences, and documents relating to those allegations were included in Bar Counsel's exhibits, ¶ 1(a) of the Chair's June 5, 2012, Order directed the parties to file under seal in a "Brief Appendix" any proposed findings of fact containing "substantive references" to such documents. Paragraph 1(b) of that Order further directed the parties not to include any substantive reference to the contents of sealed documents in their proposed conclusions of law or sanction discussion, and instead to refer only to the paragraph numbers of the relevant proposed findings of fact in their Brief Appendix. Bar Counsel filed its post-hearing brief in this matter on

[8] On June 20, 2012, Bar Counsel filed with the Board a "Motion to Amend the June 13, 2010 [*sic*] Protective Order" entered by the Board, in order to correct a typographical error in Bar Counsel's motion for a protective order filed on June 1, 2012. Bar Counsel's June 20th motion asked that certain designated pages of BXN-52 be placed under seal, rather than similarly numbered pages of BXN-56. Bar Counsel's June 20th motion also asked that BXN-56 remain in the public record of this matter. By Order dated June 27, 2012, the Board granted Bar Counsel's motion to amend the Board's prior protective order.

July 31, 2012.[9] No post-hearing brief was submitted on behalf of Respondent.

II. FINDINGS OF FACT

Section II(A), below, contains findings of fact relating to the Nunnally Case. Because that case raises allegations about Respondent's conduct in various different legal proceedings, Section II(A) in general is organized in separately numbered subsections according the subject matter of each proceeding, but within each subsection the findings of fact in general are organized chronologically. Where any paragraph in Section II(A) contains a substantive reference to evidence constituting secrets or confidences of Nunnally, that paragraph contains a cross-reference to the "Appendix to Report and Recommendation" (hereinafter, "Report Appendix") that is filed under seal concurrently with and as part of this Report and Recommendation. The paragraph numbers in the Report Appendix have the same paragraph numbers as those used in Section II(A).[10]

Section II(B), below, contains findings of fact relating to the Davis Case. Because that case raises allegations about Respondent's conduct in a single proceeding and Bar Counsel's investigation related thereto, the findings of fact in Section II(B) in

[9] Bar Counsel did not file a Brief Appendix.

[10] For the benefit of readers, the following is an outline of Part II of this Report and Recommendation:

Section No.	Title	Pages	Paragraph Nos.
II(A)(1)	Jurisdictional Findings of Fact	10	1-2
II(A)(2)	The "Graham Lawsuit"	10-34	3-64
II(A)(3)	The "Retirement Case"	35-43	65-91
II(A)(4)	The Merit Personnel Act Case	43-54	92-118
II(A)(5)	The "Sanders Lawsuit"	54-56	119-126
II(A)(6)	The "Federal Lawsuit"	56-59	127-135
II(A)(7)	Bar Counsel's Investigation	60-75	136-152
II(A)(8)	The ACAB Arbitration	76-80	153-161
II(A)(9)	The "Confirmation Litigation"	80-94	162-194
II(A)(10)	The Bankruptcy Proceeding	94-102	195-215
II(A)(11)	"*Frison v. Nunnally*"	102-124	216-266
II(A)(12)	The "Moore Lawsuit"	124-127	267-278
II(A)(13)	Other Actions Against Nunnally	127-131	279-286
II(A)(14)	Prior Disciplinary Action	131-132	287
II(B)	The Davis Case	132-146	288-337

general are organized chronologically without any subsections. The paragraphs of Section II(B) are numbered in direct sequence after paragraphs of Section II(A).[11]

A. Findings of Fact Relating to the Nunnally Case

(1) Jurisdictional Findings of Fact

1. Respondent was admitted to practice as a member of the Bar of the District of Columbia Court of Appeals on July 8, 2002, Bar Registration No. 478092. BXN-1.

2. Respondent was personally served with the Specification of Charges (BXN-2) and a Petition Instituting Formal Disciplinary Proceedings in the Nunnally Case on December 14, 2011. BXN-3.

(2) The "Graham Lawsuit"

3. On July 30, 2004, Nunnally, who was then an MPD Lieutenant (BXN-5 at 2 at ¶ 1) and serving as MPD's Deputy Chief Information Officer (BXN-6 at 1), filed a civil Complaint in Superior Court against her direct supervisor, Phillip[12] Graham ("Graham"), MPD's civilian Chief Information Officer (BXN-5 at 2 at ¶¶ 2-3), and against the District of Columbia, alleging sexual harassment by Graham and retaliation in violation of the D.C. Human Rights Act, D.C. Code §§ 2-1401.1—2-1404.04 (2001) ("DCHRA" or "Human Rights Act"). The case was docketed as Civil Action No. 2004 CA 5963 (BXN-5 at 1; BXN-4 at 1), and is referred to herein as the "Graham Lawsuit." The attorney who filed the Complaint on behalf of Nunnally was Dale Edwin Sanders, Esq. ("Sanders") (BXN-5 at 29). The District of Columbia was represented in the Graham Lawsuit by the

[11] Pursuant to Paragraph 13 of the Pre-Hearing Order, the Hearing Committee first heard evidence relating to the Davis Case, due to a scheduling problem involving Bar Counsel's witness in that case. The Hearing Committee, however, deems it appropriate to begin Section II of this Report and Recommendation with findings of fact relating to the Nunnally Case.

[12] Spelled "Philip" (with only one "l") in Nunnally's Complaint (BXN-5 at 1).

District's Office of the Attorney General ("OAG"). Nunnally's Complaint specified in detail many allegations of sexual harassment by Graham (BXN-5 at 3-23), including specific allegations of unwanted physical sexual contact inflicted by Graham,[13] as well as retaliatory acts taken against Nunnally after she complained about Graham's conduct.[14]

4. Nunnally, who joined MPD in 1990 (Tr. 147:7-9 (Nunnally)), is a retired police officer with impeccable credentials and a distinguished record for valor in the line duty. Tr. 147:7-148:19; 243:10-12; 705:1-706:14 (Nunnally); 715:11-716:6 (Gresham). Her demeanor before the Hearing Committee was credible, direct, and thoroughly professional.

5. Despite Nunnally's filing of the Complaint in the Graham Lawsuit in 2004, the retaliatory actions against her continued and grew worse. Tr. 150:18-151:1 (Nunnally).

6. The Complaint in the Graham Lawsuit frankly asserted that Nunnally is not heterosexual (BXN-5 at 2 at ¶ 5), and alleged that Graham's sexual advances toward Nunnally, including various e-mails with her,[15] were uniformly rejected by Nunnally (BXN-5 at 3 at ¶ 7).

7. By Order docketed on July 26, 2005, and filed on July 27, 2005, Judge Alprin of the Superior Court granted a motion by Graham to dismiss Graham as a defendant in the Graham Lawsuit, based on Judge Alprin's interpretation of two cases, *Wallace v. Skadden, Arps, Slate, Meagher & Flom*, 715 A.2d 873 (D.C. 1998), and *Lance v. United*

---

[13] *E.g.*, BXN-5 at 8 at ¶ 23; *id*. at 9 at ¶ 24-25; *id*. at 10 at ¶ 31; *id*. at 11 at ¶ 37; *id*. at 12-13 at ¶ 43; *id*. at 16-17 at ¶ 58; *id*. at 18 at ¶ 64; *id*. at 19 at ¶ 66; *id*. at 21 at ¶ 76; *id*. at 23 at ¶ 85.

[14] *E.g.*, BXN-5 at 3 at ¶ 8 and 10; *id*. at 19 at ¶ 69; *id*. at 21 at ¶ 74; *id*. at 22 at ¶ 82; *id*. at 23 at ¶¶ 86-87; *id*. at 24 at ¶ 89; *id*. at 26-27 at ¶¶ 94 and 97.

[15] *E.g.*, BXN-5 at 6 at ¶¶ 17 and 20; *id*. at 10 at ¶ 29-30; *id*. at 12 at ¶ 39-42; *id*. at 15 at ¶ 53; *id*. at 16 at ¶ 56; *id*. at 19 at ¶ 67; *id*. at 21 at ¶ 75; *id*. at 22 at ¶ 80.

Mine Workers of America 1974 Pension Trust, 335 F. Supp. 2d 358 (D.D.C. 2005), as applied to sexual discrimination claims under the DCHRA. BXN-6 at 4-6.

8. Beginning in February, 2005, Sanders' representation of Nunnally in the Graham lawsuit become increasingly erratic, and in August, 2005, Nunnally discharged him as her attorney. Tr. 152:4-154:6 (Nunnally).

9. Nunnally met Respondent in September, 2005. He told her that he had been a member of the Judge Advocate General's Corps, that he was very experienced in civil rights and employment litigation, and that he could provide competent representation in the Graham Lawsuit. Tr. 154:7-156:2 (Nunnally).

10. In a one-page retainer agreement dated September 12, 2005, Nunnally hired Respondent as her attorney. BXN-7. The retainer agreement indicated that the purpose of the representation was for "Nunnally v. DC PD." *Id.* There was only one signed original of the retainer agreement, and Nunnally kept it; Nunnally provided Respondent with a photocopy of the retainer agreement that same day. Tr. 158:10-20 (Nunnally).

11. Various provisions in ¶ 1 of the retainer agreement dated September 12, 2005, specified (BXN-7): that in addition to paying Respondent an initial retainer of $2,500, Nunnally would be responsible for hourly billings at the rate of $250 per hour, but that "instead of paying the entire *monthly billing*, [Nunnally] may pay a continuing monthly retainer fee of **$400**" (bolding in original; emphasis added); that Respondent would be "entitled to **33 1/3%** [bolding in original] of any money judgment or equivalent award granted by the court minus any monthly retainer fees paid by the client"; that Respondent "**will ask the court to require the opposing party pay** [sic] **all CLIENT'S fees and expenses as part of the judgment**" (bolding and capitals in original); that Nunnally

purportedly granted Respondent a "LIEN" (capitals in original) on all of Nunnally's "salaries, savings, investments, property, pensions, and other assets" in order to pay the "fees and expenses" owed to Respondent; and that the parties were purportedly required "to submit any dispute over fees to non-binding arbitration before litigation."[16]

12. Paragraph 2 of the retainer agreement dated September 12, 2005, stated (BXN-7): "This Agreement is for counseling, advice, and or legal representation in the above action **only** and does not include any representation in any other action. It **DOES NOT** include matters involving a third party, other CLIENT issues, or appellate issues." (Bolding and capitals in original.)

13. Nunnally testified credibly that the retainer agreement dated September 12, 2005 (BXN-7) was the only retainer agreement she ever signed for legal representation by Respondent. Tr. 158:10-159:1; 268:9-14; 306:12-307:1; 311:9-16; 315:8-14; 335:1-9; 341:3-350:21 (Nunnally).

14. Nunnally understood from the retainer agreement and her initial discussion with Respondent that her sole payment obligation under her retainer agreement with Respondent after paying a "non-refundable" (Tr. 156:7 (Nunnally)) retainer of $2,500 was to make the $400 monthly retainer payments called for by that document, plus any expenses Respondent incurred in connection with the representation. Tr. 156:7-10; 506:9-507:112 (Nunnally). Respondent told Nunnally that her legal claims involved "fee-shifting," *i.e.*, Respondent's legal fees would be borne by the defendants, and that since he was basically representing her on a contingency fee basis, if Nunnally's

[16] Court of Appeals Rule XIII gives the client of any District of Columbia lawyer, when any substantial portion of the services are performed by the lawyer in the District of Columbia or the services rendered include representation before a District of Columbia court or agency, the right to invoke *binding* arbitration in a dispute with the lawyer over fees.

litigation was not successful her monetary loss would be limited to what she had already paid Respondent. Tr. 160:11-22; 272:1-8; 507:10-12 (Nunnally).

15. Nunnally's understanding of the financial arrangement with Respondent as described in the preceding paragraph is strongly supported by the record in this case. Respondent did not submit monthly bills to Nunnally as required by ¶ 1 of the retainer agreement; the first time Respondent produced a "bill" was in the summer of 2008, when Respondent attached some "bills" to court pleadings. Tr. 159:8-14; 186:18-187:3; 267:2-19; 268:7-8; 277:11-18; 288:1-17; 354:8-15; 463:6-464:1 (Nunnally). When Nunnally saw one such "bill" in June, 2008, for $229,000, and another in August, 2008, for $221,000 (Tr. 188:3-4 (Nunnally)), she got in touch with Respondent because she was very upset and thought they were "outrageous." Tr. 187:1-4; 269:6-11 (Nunnally). Respondent told Nunnally that the "bills" were "not really for me [Nunnally], that they were just to shock the District to let them know that this case was going to cost them more than just settling with me; it was going to be their legal bills" (Tr. 187:11-15 (Nunnally)). Respondent also told Nunnally that the bills were just "a settlement tactic to get the District of Columbia to come to the settlement table" (Tr. 187:19-21; 269:11-18; 285:1-20 (Nunnally)).[17] Furthermore, the documents used by Respondent as attachments

[17] In a Superior Court filing for *pendente lite* relief in the "MPA Case" (hereinafter discussed) that Respondent made on June 17, 2008, Respondent argued that in Nunnally's pursuit of her sick leave pay, she had incurred "attorney's fees now totaling $229,663.14" (BXN-57 at 5 at ¶ 9), and attached a "bill" in support of that assertion an "Exhibit 6" (BXN-57 at 11) purportedly for "Feb-06" but showing itemized services all for the month of June, 2008. Nunnally's retainer agreement with Respondent nominally specified an hourly fee of fee of $250 (BXN-7), but the 53.5 hours shown on the "bill" provided as BXN-57 at 11 equate to a fee of $18,725, *i.e.*, an hourly charge of $350, a change to which Nunnally testified she had never agreed (Tr. 271:16-22; 306:4-8 (Nunnally)). However, several months later, in a filing on October 28, 2008, made in connection with the same request for *pendente lite* relief, Respondent asserted that Nunnally's legal fees incurred to "secure medical leave and other associated benefits" were $106,649.58 (BXN-60 at 8), and he attached a different "Exhibit 6" (BXN-60 at 12), purportedly a "bill" for "Feb-07." Respondent, however, was not representing Nunnally in the MPA Case in "Feb-07." Tr. 277:19-278:1 (Nunnally).

to his filings purporting to show Nunnally's legal fees were not a compendium of monthly bills, but only individual billing documents. Tr. 188:5-11 (Nunnally). In the years from 2005 to 2008, Respondent never indicated to Nunnally that she owed more than the various monthly amounts she had regularly been paying. Tr. 188:12-189:4; 268:16-20 (Nunnally). In addition, during oral argument before the Court of Appeals discussed below in ¶ 63 relating to Nunnally's appeal from an adverse jury verdict in the Graham Lawsuit, Respondent told the Court, "There was a contingency contract. That's the basis upon which I represented her below." BXN-38 at 31.

16. Pursuant to the retainer agreement (BXN-7), Nunnally paid Respondent the initial retainer of $2,500 (Tr. 156:16-157:5 (Nunnally)), and thereafter regularly paid Respondent the required monthly retainer amount, which sometimes increased due to Respondent's requests to Nunnally for additional funds, so that by the time the attorney-client relationship between Nunnally and Respondent ended, she had paid Respondent over $32,000. Tr. 161:1-15; 362:20-363:9 (Nunnally); BXN-86 at 10.

17. By "Notice of Appearance" docketed on September 15, 2005, Respondent entered his appearance on behalf of Nunnally in the Graham Lawsuit. BXN-8.

18. On October 3, 2005, Respondent filed a motion to reinstate Graham as a defendant in the Graham Lawsuit. BXN-9. By Order docketed November 10, 2005, Judge Alprin denied the motion to reinstate. BXN-4 at 18 (docket entry for 11/10/2005).

19. On March 15, 2006, the Graham Lawsuit was reassigned from Judge Alprin to Superior Court Judge Terrell. BXN-4 at 17 (docket entry for 3/15/2006).

20. Judge Terrell reinstated Graham as a defendant in the Graham Lawsuit (Tr. 163:9-16; 165:1-21[18] (Nunnally)), although a different judge subsequently assigned to the Graham Lawsuit disagreed with that ruling (Tr. 165:22-166:8 (Nunnally)).

21. By Order dated August 8, 2007 (BXN-10 at 34), Judge Terrell denied a motion filed by Respondent in the Graham Lawsuit on February 1, 2007, seeking sanctions pursuant to Sup. Ct. Civ. R. 37(a), and directed that the motion be stricken from the record.

22. On December 2, 2007, Respondent filed in the Graham Lawsuit another motion seeking sanctions pursuant to Sup. Ct. Civ. R. 37(a). BXN-10. The motion was supported by a 13-page memorandum contending that OAG attorneys had engaged in "unethical" and "egregious" acts (BXN-10 at 9 at ¶ 5), had engaged in a "deliberate and continued refusal to respond to timely propounded discovery" (*id*. at 7), and had engaged in "litigious conduct that violates the District of Columbia Rules of Professional Conduct" (*id*.). The motion and memorandum were accompanied by 10 exhibits (*id*. at 20-47).

23. On December 17, 2007, Respondent filed in the Graham Lawsuit a "Motion for Sanctions for Subornation of Perjury and Other Acts of Moral Terpitude [*sic*]" contending that OAG attorneys had engaged in "counseling witnesses to testify falsely," "in conduct involving fraud, dishonesty, deceit, and misrepresentation," and in "instructing subordinates to testify falsely and suborn perjury." BXN-11 at 1. This filing by Respondent was made without the knowledge or consent of Nunnally, and Nunnally was "shocked" to learn at a court hearing she attended that Respondent had filed such a

[18] The reference to the "Purcell Decision" in the cited testimony is to *Purcell v. Thomas*, 928 A.2d 699 (D.C. 2007).

motion after Respondent had been directed by the court to cease such filings. Tr. 176:11-12; 179:16-180:5 (Nunnally). Respondent's motion harmed Nunnally because one of the targets of the motion was a witness Nunnally had expected to call on her own behalf. Tr. 176:19-22 (Nunnally); BXN-90 at 3.

24. Nunnally had an opportunity through attending court hearings in the Graham Lawsuit to observe Respondent's attitude toward opposing counsel, which she described as "extremely acrimonious" and "very hostile," noting that Respondent "bragged about filing complaints against [opposing counsel]" and that "in my 20 years as a police officer I've never seen conduct like that in a courtroom." Tr. 173:17-22 (Nunnally). Not only had Respondent filed bar complaints against opposing counsel, but also he told Nunnally to do the same. Tr. 174:1-9 (Nunnally). Respondent's antagonistic conduct against OAG attorneys was upsetting to Nunnally. Tr. 176:11-22 (Nunnally).

25. On December 19, 2007, Respondent filed in the Graham Lawsuit an "Opposition to Defendant District of Columbia's Amended Motion for Partial Summary Judgment" (BXN-12), supported by a "Sworn Statement" from Gresham (BXN-12 at 13-14). The "Sworn Statement" was executed by Gresham at about 1:30 A.M. (Tr. 183:1-5 (Nunnally)), and although the jurat at the end of the "Sworn Statement" purports to have been "Subscribed and Sworn before me" on December 17, 2007, Gresham never appeared before the notary, Lisa Frison – who is Respondent's spouse (Tr. 183:6-14 (Nunnally)) – whose signature as a notary appears at the end of the "Sworn Statement." Tr. 720:3-7; 722:1-9 (Gresham): 183:15-184:5 (Nunnally).

26. On December 31, 2007, the Graham Lawsuit was assigned via a calendar transfer to Superior Court Judge Combs Greene. BXN-4 at 10 (docket entry for 12/31/2007).

27. At the beginning of 2008, Nunnally started to monitor the court dockets relating to her litigation, "because some of the things [Respondent] said didn't make sense. And some of the delays that he was talking about didn't make sense. And some of the continuances that he blamed on the court just didn't make sense." Tr. 189:19-190:7 (Nunnally).

28. On March 15, 2008, Respondent filed in the Graham Lawsuit a "Motion to Declare the Order Granting Defendant Graham's Motion to Strike or in the Alternative to Dismiss Second Amended Complaint and the Order Granting Defendant District of Columbia's Motion for Partial Summary Judgment Constitute Abuse of Discretion and or Judicial Error" (BXN-13), supported by a 16-page memorandum that, *inter alia*, accused Judge Combs Greene of "judicial bias" (BXN-13 at 8 at ¶ 6), of "open hostility" against Respondent (BXN-13 at 17), and of denying Nunnally "a fair and impartial hearing of her case" (BXN-13 at 19).

29. On March 27, 2008, the OAG filed in the Graham Lawsuit a motion *in limine* and for leave to take the *de bene esse* deposition of Mary Pat Noonan. BXN-4 at 8 (docket entry for 3/27/2008).[19] Ms. Noonan was an important witness. She had been Nunnally's domestic partner and could testify about Nunnally's claims in the Graham

[19] A *de bene esse* deposition is taken of a witness who will not be available for trial, and is therefore intended to be introduced as evidence at trial. Black's Law Dictionary at 476 (4th ed. 1951); Tr. 748:5-17 (Lescht).

Lawsuit (Tr. 748:11-749:7; 757:13-758:6 (Lescht); BXN-15 at 15 at ¶ 37),[20] but her relationship with Nunnally had become "acrimonious" (Tr. 191:13 (Nunnally)); BXN-15 at 15 at ¶ 37).[21] *See* ¶ 39, *infra*, regarding the taking of Ms. Noonan's deposition.

30. On June 11, 2008, Respondent filed in the Graham Lawsuit a "Motion to Recuse Judge Natalie Combs-Green [*sic*]"[22] (BXN-14), accusing Judge Combs Greene of violating the Judicial Code of Conduct. The motion was supported by a 20-page memorandum and numerous exhibits, including the purported affidavit[23] of Gresham (BXN-14 at 30-31). The memorandum asserted, *inter alia*, that "Judge Combs-Green [*sic*] was hostile, verbally abusive, insulting, and wanted to intimidate undersigned counsel for having filed a motion for sanctions" (BXN-14 at 17), and that the judge engaged "in a tirade of accusations, hostile and intimidating statements clearly intended to intimidate undersigned counsel as well as the witnesses" (*id*. at 18).

31. On June 14, 2008, Respondent filed in the Graham Lawsuit a "Motion to Strike as Void or Otherwise Vacate Each Order Entered by Judge Natalie Combs-Green [*sic*; *see* n.22, *supra*] as Inapposite to the Law of the Case and Precedence in This Jurisdiction" (BXN-15). The motion was supported by a 15-page memorandum and numerous exhibits, asserting that actions by Judge Combs Greene contravened prior actions taken by Judge Terrell (BXN-15 at 17-18).

---

[20] Ms. Noonan also had co-owned a residence with Nunnally (Tr. 191:12 (Nunnally)), and was a Ph.D. psychologist (Tr. 193:12 (Nunnally)). Part of Nunnally's case involved testimony from her own psychotherapist. *See* ¶ 46, *infra*.

[21] Nunnally had owned a house with Ms. Noonan, but Nunnally's ownership interest in it terminated on unfavorable terms. Tr. 191:12-16 (Nunnally).

[22] Should be *Natalia* Combs *Greene* (with no hyphenation).

[23] *See* ¶ 25, *supra*.

32. By Order filed in the Graham Lawsuit on June 19, 2008, Judge Combs Greene denied (without prejudice) the motion by Respondent described in the preceding paragraph, due to Respondent's failure to comply fully with the all of the Superior Court's electronic filing procedures. BXN-16.

33. On June 20, 2008, Respondent filed in the Graham Lawsuit a motion to reconsider the Order described in the preceding paragraph. BXN-17. The memorandum submitted in support of the motion averred that the defect under the Superior Court's electronic filing procedures which caused that Order to be entered was cured. BXN-17 at 4 at ¶ 4.

34. By Order filed in the Graham Lawsuit on June 26, 2008, Judge Combs Greene denied (without prejudice) the motion to reconsider described in the preceding paragraph, because Respondent still had not complied fully with all of the Superior Court's electronic filing procedures. BXN-18.

35. Despite the fact that ¶ 2 of Respondent's retainer agreement with Nunnally (BXN-7) provided that no appellate services were covered, on July 25, 2008, Respondent filed in the Court of Appeals a 31-page "Petition for Writ of Mandamus or in the Alternative Writ of Prohibition," supported by 6 exhibits. BXN-30. Exhibit 1 filed with the Court of Appeals (BXN-30 at 33-34) was another copy of the purported "Sworn Statement" by Gresham. *See* ¶ 25, *supra*. The relief sought by Respondent was to have Judge Combs Greene removed from the Graham Lawsuit, to have that case consolidated with another pending Superior Court case involving Nunnally, to have the judge in the other case vacate all rulings by Judge Combs Greene, and to have Graham reinstated as a defendant in the Graham Lawsuit. BXN-30 at 32 (proposed Order).

36. By Order filed in the Graham Lawsuit on August 6, 2008 (BXN-19), Judge Combs Greene denied Respondent's prior recusal motion (BXN-14), because the recusal motion did not meet the requirements of *In re Bell*, 373 A.2d 232, 233 (D.C. 1977), that the alleged bias and prejudice of the judge whose recusal is sought must stem "from an extrajudicial source" rather that from "what the judge learned from participating in the case" (BXN-19 at 1), and because the recusal motion was not supported by a certificate of good faith as required by Sup. Ct. Civ. R. 63-I (*id*. at 2).[24]

37. To Nunnally's observation, Respondent showed a lack of respect for and hostility toward Judge Combs Greene from the time the judge assumed responsibility for the Graham Lawsuit, and went on to file a judicial disabilities complaint against the judge, in addition to the request for a writ of mandamus (BXN-30). Tr. 174:10-20; 242:10-14 (Nunnally). Nunnally was concerned by Respondent's attacks on Judge Combs Greene – particularly the complaint to the Committee on Judicial Disabilities and Tenure – and their effect on her case. Tr. 185:14-186:12 (Nunnally).[25]

38. By Order dated August 12, 2008 (BXN-31), the Court of Appeals denied as premature the "Petition for Writ of Mandamus or in the Alternative Writ of Prohibition"

---

[24] Superior Court Civil Rule 63-I provides:

> "(a) Whenever a party to any proceeding makes and files a sufficient affidavit that the judge before whom the matter is to be heard has a personal bias or prejudice either against the party or in favor of any adverse party, such judge shall proceed no further therein, but another judge shall be assigned, in accordance with Rule 40-I(b), to hear such proceeding.
>
> "(b) The affidavit shall state the facts and the reasons for the belief that bias or prejudice exists and shall be accompanied by a certificate of counsel of record stating that it is made in good faith. The affidavit must be filed at least 24 hours prior to the time set for hearing of such matter unless good cause is shown for the failure to file by such time."

[25] Respondent told Nunnally that Judge Combs Greene "was prejudiced against him because he was a dark-skinned African American, and she was a light-skinned African American," because Nunnally had made a complaint against a mayoral appointee (Graham), and because Judge Combs Greene "had a bad romantic relationship" with a police officer. Tr. 185:21-186:5 (Nunnally).

filed by Respondent on July 25, 2008 (s*ee* ¶ 35, *supra*), believing that Respondent's motion to recuse Judge Combs Greene was still pending.

39. On August 12, 2008, the video-taped *de bene esse* deposition of Mary Pat Noonan referred to above in ¶ 29 was taken, but Respondent was not present at the deposition to represent Nunnally's interests. BXN-20; Tr. 190:15-192:2 (Nunnally). Respondent's failure to attend this deposition caused serious harm to Nunnally's case, because no one was available to ask questions which would impeach or contradict the testimony of Ms. Noonan, a person who was hostile to Nunnally. Tr. 757:10-758:6 (Lescht); 191:10-16 (Nunnally). Testimony from Ms. Noonan's deposition was used at the trial of the Graham Lawsuit in a manner which weakened Nunnally's case. Tr. 748:21-749:3; 757:13-16 (Lescht); 193:3-16 (Nunnally). Respondent was clearly on notice that Ms. Noonan was a hostile witness: Nunnally had provided Respondent with a large binder of documents that could be used to impeach Ms. Noonan (Tr. 191:17-22 (Nunnally)), and Respondent himself had previously acknowledged several serious bases for impeaching Ms. Noonan's credibility (BXN-15 at 15-16 at ¶ 37). Nunnally coincidentally learned that Ms. Noonan's deposition was about to be taken, and immediately telephoned Respondent. Tr. 192:8-11 (Nunnally). Respondent told Nunnally that "he was out having pizza with his daughter," and that he would resolve the problem of his not attending Ms. Noonan's deposition by issuing a trial subpoena for her (Tr. 192:11-14 (Nunnally)), even though the whole purpose of taking a *de bene esse* deposition is that the witness being deposed will *not* be available at trial. Tr. 748:5-17 (Lescht). Nunnally was very upset that Respondent did not attend Ms. Noonan's deposition. Tr. 192:15-16 (Nunnally).

40. On August 22, 2008, Respondent filed with the Court of Appeals a "Motion for Reconsideration" (BXN-32), advising the Court (*id*. at 4) that its prior Order dated August 12, 2008 (BXN-31) denying his motion for a writ of mandamus or prohibition against Judge Combs Greene was incorrectly premised on the pendency of Respondent's recusal motion, which Judge Combs Greene had already denied (s*ee* BXN-19, filed August 6, 2008).

41. On August 27, 2008, Defendant District of Columbia, in anticipation of the pretrial in the Graham Lawsuit, filed a "Motion *In Limine*" seeking to preclude Nunnally from recovering damages based on any incident occurring after July 16, 2004. BXN-21. The basis of the motion was that Nunnally had failed to file an adequate notice under D.C. Code § 12-309[26] for any injury occurring after that date. BXN-21 at 1. The memorandum filed in support of this motion states that plaintiff (Nunnally) sent two notice letters: an initial notice letter was dated July 16, 2004; and a second notice letter, dated January 24, 2007 – *i.e*., approximately 17 months *after* Respondent was retained to represent Nunnally in the Graham Lawsuit. BXN-21 at 4. The memorandum goes on to assert that the January 24, 2007, notice letter – which was filed by "plaintiff's lawyer," *i.e.*, Respondent (*id*.) – failed to satisfy the notice requirements of D.C. Code § 12-309 because it added nothing to what was already contained in Nunnally's 2004 notice letter. *Id*. Defendant District of Columbia's Motion *In Limine* to preclude Nunnally from

[26] The memorandum filed in support of the District of Columbia's motion quotes D.C. Code § 12-309 as stating (BXN-21 at 5):

> An action may not be maintained against the District of Columbia for unliquidated damages to person or property unless, within six months after the injury or damage was sustained, the claimant, his agent, or attorney has given notice in writing to the Mayor of the District of Columbia of the approximate time, place, cause, and circumstances of the injury or damage. A report in writing by the Metropolitan Police Department, in regular course of duty, is a sufficient notice under this section.

recovering damages based on any incident occurring after July 16, 2004, was later granted in the Pretrial Order for the Graham Lawsuit. *See* ¶¶ 43-44, *infra*.

42. Respondent failed to advise Nunnally of the Defendant District of Columbia's Motion *In Limine* filed August 27, 2008, referred to in the preceding paragraph, or provide her with a copy of it, or consult with her concerning that motion; Nunnally learned of the existence of that motion only at the pretrial conference in the Graham Lawsuit on September 11, 2008, discussed in the next paragraph. Tr. 193:17-195:7 (Nunnally).

43. A pretrial conference was held in the Graham Lawsuit on September 11, 2008, and a Pretrial Order in the case was docketed on September 12, 2008. BXN-22. Among other things, the Pretrial Order granted Defendant District of Columbia's Motion *In Limine*, discussed above in ¶¶ 41-42, thereby precluding Nunnally from recovering damages based on any incident occurring after July 16, 2004. BXN-22 at 3.[27] Nunnally attended the pretrial conference (Tr. 195:8-10 (Nunnally)), during which Judge Combs Greene asked Respondent if he had filed an opposition to Defendant District of Columbia's Motion *In Limine,* and after Respondent at first tried to evade the judge's question and then asked for an extra day to file an opposition, Judge Combs Greene denied Respondent's request and granted the motion. Tr. 193:17-194:16 (Nunnally).[28]

[27] The Pretrial Order, *id.*, also noted a defense objection to all of plaintiff's exhibits because they had not been provided until the day before pretrial.

[28] In addition to granting Defendant District of Columbia's Motion *In Limine*, the Pretrial Order had additional adverse effects on Nunnally's ability to present her case at trial, stating (BXN-22 at 3), "No references to Philip Graham's case" and "No reference to sexual assault and battery as those claims have been dismissed." The effect of these provisions in the Pretrial Order was to bar Nunnally from presenting evidence relating Graham or to Graham's physical assaults on Nunnally. Tr. 196: 2-12 (Nunnally).

44. The granting of Defendant District of Columbia's Motion *In Limine* discussed in the preceding paragraph had a material adverse effect on Nunnally, because she was thereby prohibited from discussing any retaliatory acts taken against her beginning on or after July 16, 2004, "which basically cut out the retaliation portion of [Nunnally's] case." Tr. 194:17-195:4 (Nunnally).

45. By Order dated September 23, 2008 (BXN-33), the Court of Appeals denied Respondent's "Motion for Reconsideration" filed August 22, 2008 (s*ee* ¶ 40, *supra*), because Respondent's motion to recuse Judge Combs Greene failed to comply with the requirements of Sup. Ct. Civ. R. 63-I[29] for filing a certificate of good faith and showing personal bias, as Judge Combs Greene had ruled in her Order filed August 6, 2008 (BXN-19).

46. On October 2, 2008, a hearing in the Graham Lawsuit was held before Judge Combs Greene (a transcript is provided as BXN-23), regarding a motion by Defendant District of Columbia to strike Ms. Deany Laliotis, Nunnally's psychotherapist (Tr. 172:6-9 (Nunnally)), as a plaintiff's witness. BXN-23 at 51. Nunnally was upset when she heard Judge Combs Greene admonishing Respondent at the hearing (*id*. at 18), because the judge – in order to protect Nunnally – had granted a motion by Defendant District of Columbia to have Nunnally's medical records filed under seal, but Respondent had filed such documents as part of the public record. Respondent had not previously discussed or consulted with Nunnally about the subject of protecting Nunnally's medical records by filing them under seal. Tr. 173:5-9 (Nunnally). Respondent's reaction to Judge Combs Greene's admonition was "he just kind of chuckled" (Tr. 172:13-173:3 (Nunnally)).

[29] *See* n.24, *supra*.

47. At the end of the hearing on Defendant District of Columbia's motion to strike Ms. Laliotis as a plaintiff's witness, Respondent – without Nunnally's consent and without consulting with her – initiated an off-the-record discussion with OAG counsel regarding a trial continuance (BXN-23 at 56; Tr. 332:12-13 Nunnally)), leading to a postponement of trial in the Graham Lawsuit until April 13, 2009 (*id*. at 65), although the trial had been set to take place in about a week (BXN-23 at 55). The record indicates that a principal motivation for Respondent's seeking and agreeing to the trial continuance was the fact that he then had several untimely motions pending that the court was about to deny (BXN-23 at 54-55);[30] the scheduled trial date could have been preserved by OAG counsel taking a prompt pre-trial deposition of Ms. Laliotis (BXN-23 at 54).

48. The trial continuance ordered at the October 2, 2008, hearing had a drastic effect on Nunnally: "I almost passed out in court. I couldn't handle the idea that this was being continued yet again. I was looking forward to probably losing my case, but at least I would be done with [Respondent] . . . ." Tr. 198:3-10 (Nunnally).[31]

---

[30] A pretrial in the Graham Lawsuit had been held on September 11, 2008 (BXN-22), and ¶ 6 of the Pretrial Order pointedly stated, "There are no pending motions, and no further motions will be entertained, absent exceptionally good cause" (BXN-22 at 6). However, on October 1, 2008, Respondent filed a "Motion in Limine for Discovery Violations by the District of Columbia" (BXN-4 at 5; docket entry for 10/1/2008), and on September 30, 2008, Respondent filed a "Motion to Vacate the Order Granting Defendant District of Columbia [*sic*] Motion for Partial Summary Judgment" (BXN-4 at 5; docket entry for 9/30/2008).

[31] Nunnally testified further (Tr. 199:11-200:11 (Nunnally)):

> ". . . after this hearing he [Respondent] and I had an argument outside. I'm like, why are you continuing this again? I can't deal with this. I haven't been paid. I'm retired. I'm not allowed to work. [*See* ¶ 66, *infra*.]
>
> "I was very upset, very distraught, and he said that I was going to lose my trial. But we would win at the court of appeals, which would take two to three years down the road, and that I should put all my eggs in the federal court basket. [*See* Section II(A)(6), *infra*.] He had filed a federal court case, and that we just needed to leave this behind; that Judge Combs Greene would never let us win.
>
> "So I said, well, why didn't we go forward in two weeks? And he said, oh, there's strategy behind this, and the District will get scared. And he came up with some other excuse.

49. On November 28, 2008 (a Friday), Nunnally sent Respondent an e-mail discharging him as her attorney, and directing Respondent to inform all opposing counsel that he no longer represented her. Tr. 170:15-16; 199:4-6 (Nunnally); BXN-86 at 8-9. Nunnally's e-mail to Respondent was very detailed:

a. Paragraph 1 of the e-mail (BXN-86 at 8) directed Respondent to file motions to withdraw in the Graham Lawsuit as well as two other matters (a workers' compensation case and a federal court suit, both discussed hereinafter[32]), and to stay the proceedings until Nunnally retained new counsel. Because a deposition in one matter was scheduled for December 2, 2008 (the following Tuesday), Nunnally directed Respondent to advise opposing counsel of his discharge and file the motions to withdraw and for a stay on November 28, 2008, and to e-mail Nunnally a copy.

b. Paragraph 2 of Nunnally's e-mail (BXN-86 at 8) specified the opposing attorneys, as well as an individual at the MPD Retirement Board where another proceeding was pending, whom Respondent was to notify by e-mail of his discharge and of the motions to withdraw/stay, and directed Respondent to provide Nunnally with copies of all of the e-mails.

c. Paragraph 3 of Nunnally's e-mail (BXN-86 at 9) directed Respondent to have *all* documents involved in any way in his representation of Nunnally ready for pickup at Respondent's office by noon on Friday, December 5, 2008.

> "And then he got really upset because I told him I had no money. And he can't even get my retirement done. [*See* Section II(A)(3), *infra*.] And, you know, I needed to get closure. And I wasn't able to pay my rent. I wasn't able to pay for food.
>
> "And he just told me to take a couple of Xanax and call him later."

[32] *See* Sections II(A)(4) and II(A)(6), *infra*.

50. When Respondent was discharged as Nunnally's attorney, he immediately threatened her (BXN-86 at 4; BXN-87 at 1, 10;[33] Tr. 243:15-19 (Nunnally), as he had already done when he told her, ". . . if I didn't . . . like his legal services that I could fire him. But nothing that Sanders, my previous attorney had done to me or the Police Department had done to me would compare to what he would do to me." Tr. 287:18-22; (Nunnally). *See also* Tr. 243:5-9; 334:11-16;[34] 696:8-15 (Nunnally); BXN-86 at 2 (penultimate paragraph); BXN-95 at 3 (second paragraph); ¶ 136, *infra*.

51. In carrying out his threats as described in the preceding paragraph, and in the stream of litigation discussed in the remainder of this Report and Recommendation, Respondent turned Nunnally's life upside down. Nunnally is now registered with electronic court docket monitoring systems that she checks every day to see what new suits or pleadings Respondent has filed against her. Tr. 568:4-22 (Nunnally). To defeat Nunnally's attempt to keep track of Respondent's actions, Respondent interfered with Nunnally's electronic registration as described in the preceding sentence. Tr. 568:11-17 (Nunnally). Respondent publicly filed Nunnally's medical records, as well as privileged attorney-client communications that interfered with Nunnally's continuing efforts to obtain redress in the Federal Lawsuit discussed in Section II(A)(6), *infra* (Tr. 577:2-19; 642:3-643:13 (Nunnally)), and initiated correspondence with various governmental authorities baselessly accusing Nunnally of wrongdoing. Tr. 641:1-11; 651:6-652:4; 656:16-657:20 (Nunnally). The extraordinary personal, financial, and emotional toll on

[33] E-mail dated December 5, 2008, from Respondent to Lescht claiming legal fees in excess of $300,000 and stating, "Unless told otherwise I shall serve you with any complaint and summons I file against Nunnally in this jurisdiction or Maryland."

[34] "Earlier, in August [2008], Mr. Frison had sent me an e-mail where he received a letter of admonishment from the D.C. Bar for he tormented a former client and claimed that he did all of that and got away with it, and nothing would happen to him if he tormented me." *See* Section II(A)(14), *infra*.

Nunnally of Respondent's retaliatory actions against her as detailed in this Report and Recommendation were described extensively by Nunnally at Tr. 694-704, and have been taken into account by the Hearing Committee. In summary, as Nunnally testified:

> . . . he's done everything he can to try to destroy me, and he's used the court system to do that.[35]
>
> * * *
>
> I didn't deserve this. You know, I paid him, I used the appropriate channels, and, you know, I want my life back, and I don't want to have to look at the court docket every day to see what next.[36]

52. Shortly after discharging Respondent as her attorney, Nunnally retained Lescht, who has specialized in representing plaintiffs in employment law cases since at least 1995 (Tr. 738:4-7 (Lescht)), to represent her in the Graham Lawsuit. BXN-87 at 10; Tr. 738:20-740:2 (Lescht)). Respondent failed to turn over documents in the Graham Lawsuit to Lescht or Nunnally in accordance with Nunnally's directions in her November 28, 2008, e-mail discharging Respondent (BXN-86 at 9). BXN-87 at 10-11 (e-mail dated December 5, 2008, from Nunnally to Respondent); Tr. 330:10-331:6; 234:9-17 (Nunnally).

53. On December 8, 2008, notwithstanding the requirements of Respondent's own retainer letter calling for arbitration before any litigation relating to legal fees (BXN-7 at ¶ 1), Respondent filed in the Graham Lawsuit a *pro se* "Motion to Intervene" (BXN-24). The motion stated that Respondent was Nunnally's "former counsel of record" in several proceedings referred to in Nunnally's November 28, 2008, e-mail to Respondent (*see* ¶ 49, *supra*), that "[l]egal fees in the instant action [*i.e.*, the Graham Lawsuit] alone total $242,832.34," and that Respondent claimed "an interest in any judgment and other

[35] Tr. 699:20-22 (Nunnally).

[36] Tr. 703:13-16 (Nunnally).

tangible benefits/award received by [Nunnally] in the captioned action." BXN-24 at 1. The memorandum filed in support of Respondent's motion asserted that "Sup. Ct. R. 24 et seq. provides that because [Respondent] claims an interest relating to the dispute," he was entitled to intervene. BXN-24 at 3. Attached to Respondent's motion as Exhibit 2 (BXN-24 at 7) was a purported "bill" for $242,832.34 bearing a date of "Dec-08"[37] captioned "Nunnally v. Phillip Graham and District of Columbia," identifying the case in question as "Violation of the Human Rights Act." Respondent's "bill" for legal fees of $242,832.34 made multiple false statements of fact to the court, and the facts and circumstances described and referred to in the following subparagraphs establish that Respondent's false statements of fact were knowingly made:

a. The legal services on which the "bill" was based were not a truthful representation of Respondent's work for Nunnally, as demonstrated in ¶¶ 147-52.

b. The "bill" for "Dec-08" was one of several mutually-inconsistent "bills" in varying amounts for the same month, as demonstrated in ¶¶ 149-50 and 197, *infra*.

c. The "bill" presented claims for "services" after Respondent had been discharged on November 28, 2008 (*see* ¶ 49, *supra*).

d. The first line-item of the "bill" purports to indicate that Respondent was discharged as counsel on December 1, 2008, not November 28, 2008 (*see* ¶ 49, *supra*).

e. The 8 hours of time billed for "Dec-08" at a total of $2,800 amount to an hourly billing rate of $350, but Respondent's retainer agreement with Nunnally (BXN-7 at ¶ 1) provided for an hourly billing rate of $250.

[37] The first time Nunnally saw a copy of Respondent's "bill" for $242,832.34 was when he e-mailed her a copy the day after he was discharged, saying that the bill was payable immediately. Tr. 288:13-17; 520:8-521:7 (Nunnally).

f. Respondent's actual fee arrangement with Nunnally was principally contingent, calling only for a fixed monthly payment of $400 plus expenses incurred (*see* ¶¶ 11 and 14-16, *supra*).

54. By Order dated January 5, 2009 (filed January 6, 2009), Judge Combs Greene denied Respondent's Motion to Intervene, stating, "Petitioner [*i.e.*, Respondent] provides no legal basis under the Rules or case law for his Motion." BXN-25 at 1.

55. Although Superior Court cases are generally adjudicated within 12 to 15 months, because of the numerous filings by Respondent in the Graham Lawsuit, Lescht found the case to have been pending for an unusually long time. Tr. 740:6-14 (Lescht). Lescht called the filings in the Graham Lawsuit "unusual," referring to "all sorts of accusations against the other lawyers, against the judge . . . . Bar complaints against everybody involved in the case" and "[j]ust inflammatory filings that I've never seen before" since he began practicing law in 1987. Tr. 741:4-742:13 (Lescht).

56. Because Nunnally's workplace retaliation claims had become focused in a separate federal lawsuit (hereinafter discussed), the Graham Lawsuit as it came to Lescht was not Nunnally's entire case, but principally her sexual harassment claims. Tr. 745:14-746:12 (Lescht).

57. Because Respondent failed to attend Ms. Noonan's *de bene esse* deposition as noted above in ¶ 39, Nunnally's case at trial of the Graham Lawsuit was weakened. Tr. 748:5-749:3; 758:1-6 (Lescht).[38] Testimony from Ms. Noonan's *de bene esse* deposition

[38] Nunnally's case at trial of the Graham Lawsuit was further weakened by the fact that although the District of Columbia had actually conducted, and documented (BXN-12 at 9; BXN-39 at 19-21), internal investigations concluding Graham sexually harassed Nunnally, because Respondent failed to include all of the documents relating to the investigations in his pretrial designation of evidence, Lescht was not able to make full use of them. Tr. 749:16-753:11; 757:17-758:1 (Lescht); Tr. 244:19-245:5; 332:8-17 (Nunnally).

that was derogatory of Nunnally was particularly damaging to Nunnally at trial in the Graham Lawsuit, because the record in the case also contained three or four e-mails from Nunnally to Graham that might be construed as not rejecting outright Graham's sexual harassment. Tr. 763:22-764:6 (Lescht).

58. After Lescht began representing Nunnally, he received e-mails from Respondent claiming legal fees in excess of $300,000. Tr. 761:13-762:1 (Lescht). Before trial began in the Graham Lawsuit, Lescht had settlement discussions with OAG counsel who offered $75,000 to settle the case, but because Respondent continued to claim legal fees from Nunnally of $300,000 or more, Nunnally felt she had no choice but to proceed to trial. Tr. 762:19-765:5 (Lescht); 339:2-12 (Nunnally) (referring to BXN-87at 10, an e-mail from Respondent to Lescht dated December 5, 2008, claiming legal fees exceeding $300,000); BXN-26 at 2 (letter from Respondent dated April 13, 2009 – the date of trial in the Graham Lawsuit – to Lescht, demanding $500,000 to settle Respondent's claims against Nunnally for legal fees) and Tr. 522:6-9 (Nunnally).[39]

59. The result of the trial in the Graham Lawsuit was that the jury returned a defense verdict. Tr. 755:21-756:5 (Lescht).

The trial court's rulings on these issues became a principal focus in Nunnally's subsequent appeal from an adverse jury verdict. BXN-35 at 3 (arguments I, II, and III); Tr. 244:19-245:9 (Nunnally).

[39] Respondent's letter to Lescht also contained an unsubtle threat to sue Lescht for "Tortuous [sic] interference with contract (Nunnally and persons advising Nunnally to commit fraud and to breach)." BXN-26 at 2 at ¶ "XII." Respondent actually carried out his threat on March 8, 2012, in a Court of Appeals filing against Lescht and another attorney in Lescht's law firm, as well as an attorney identified as "Cal Steinmetz" (Mr. Steinmetz undertook representation of Nunnally in the "Sanders Lawsuit" discussed in Section II(A)(5), *infra*) (BXN-214 at 3 at ¶ 14)), Wallace E. Shipp, Jr., as Bar Counsel, and the District of Columbia, all in a purported "Original Action" allegedly predicated on "Affiliated Cases" identified as the Bar Docket Numbers in the instant matter, as well as ACAB # 2008-09/036, ACAB # 2010-11/023, and ACAB # 2011-12/007. *See* BXN-214 at 1 and ¶ 283, *infra*. However, only "ACAB # 2009-09/036" involved Nunnally. *See* ¶ 153, *infra*. "ACAB # 2010-11/023" involved a client of Respondent named Vanessa Moore. BXN-214 at 26 at ¶ 123. "ACAB # 2011-12/007" does not appear to be identified at all in the body of BXN-214.

60. On May 20, 2009, Nunnally filed a notice of appeal from the adverse trial judgment in the Graham Lawsuit, designated by the Court as appeal no. 09-CV-0505. BXN-34 at 1. On May 26, 2009 – more than two weeks after the ACAB proceeding hereinafter discussed in Section II(A)(8) denied all of Respondent's legal fee claims (BXN-107 at 2) – Respondent filed a notice of appeal (BXN-27) as a purported intervenor, designated by the Court as appeal no. 09-CV-0506 (BXN-34 at 4). On June 24, 2009, the Court of Appeals *sua sponte* ordered both appeals consolidated for all purposes. BXN-34 at 1 and 4 (docket entries for 06/24/2009).

61. Even though the issue of Nunnally's ACAB arbitration was not presented in the Graham Lawsuit, on December 10, 2010 (BXN-34 at 3; docket entry for 12/10/2010), Respondent filed a brief in the Graham Lawsuit appeal relating to the ACAB arbitration award which denied Respondent's claims against Nunnally for legal fees and ordered Respondent to refund $11,000 to her. BXN-36 at 2. Respondent's brief knowingly and falsely stated to the Court that Nunnally had received a lucrative settlement from the District of Columbia, including compensation of $250,000 (BXN-36 at 12). Respondent's statement regarding the "settlement" was knowingly false; there was no such settlement 762:19-765:5 (Lescht), and the only benefit Nunnally had received as of that time was an interim retirement award of $1,938 per month. Tr. 531:19-532:11; 533:14-534:6 (Nunnally). *See also* ¶ 77, *infra*.

62. In his brief and appendix filed with the Court of Appeals in the Graham Lawsuit appeal, Respondent placed in the public record direct quotations disclosing communications between Nunnally and Respondent. BXN-36 at 7-10.

63. Oral argument in the Graham Lawsuit appeal was held on January 12, 2012 (BXN-34 at 3; docket entry for 01/10/2012)[40] (a transcript of argument is provided as BXN-38). The Court expressed frank puzzlement about Respondent's standing as a purported appellant. BXN-38 at 23,[41] 26,[42] and 28-31.[43] The Court's questions to Respondent referred to in the previous citations make it clear that Respondent's pursuit of

[40] Bar Counsel's brief notes that the Specification in the Nunnally Case covers conduct by Respondent through the end of November, 2011, and that misconduct not charged in the Specification is intended to be used only as an aggravating factor. BC Br. at 63 at n.10. The Hearing Committee believes that actions of Respondent occurring after November, 2011, are an extension of – and highly relevant to an understanding of – Respondent's conduct prior to November, 2011. This Report and Recommendation therefore includes various findings of fact concerning conduct of Respondent after November, 2011. Any actions of Respondent occurring after November, 2011, will not be considered by the Hearing Committee in evaluating Respondent's alleged violations of the Rules in the Nunnally Case, but may be considered as aggravating factors in the Hearing Committee's sanction recommendation. In the case of the oral argument in the appeal of the Graham Lawsuit in January, 2012, that is the subject of this paragraph of Section II(A)(2), Respondent's colloquoy with the Court of Appeals may not itself constitute misconduct, but Respondent's prior actions in pursuing an appeal of the denial of his motion to intervene in the Graham Lawsuit may.

[41] "CHIEF JUDGE WASHINGTON: Mr. Frison, why do you think that this was an appropriate vehicle for you to appeal your issues?"

[42] "CHIEF JUDGE WASHINGTON: * * * The question for us is why is this appeal appropriately before us at this time, given the fact that there was this ACAB award. It was – – she went to the Superior Court to have it confirmed."

[43] "CHIEF JUDGE WASHINGTON: * * * [D]id you have an appealable order or not?
"MR. FRISON: Yes.
"CHIEF JUDGE WASHGINTON: Did you appeal?
"MR. FRISON: Yes.
* * *
"JUDGE: And there was a summary affirmance, was there not?
"MR. FRISON: That's correct, Your Honor.
"JUDGE: There was a summary affirmance, and you filed a petition for rehearing?
"MR. FRISON: Yes Your Honor, I did.
"JUDGE: That was denied.
"MR. FRISON: Yes, it was.
* * *
"JUDGE: So I'm focused on 04-5963 [the Graham Lawsuit; *see* ¶ 3, *supra*], which is what you have appealed here. That's before us.
"MR. FRISON: Yes, Your Honor.
"JUDGE: And I'm trying to find what was decided there that related to your attorney's fees?"

his appeal from the denial of his motion to intervene in the Graham Lawsuit lacked any substantial basis in law and fact that was not frivolous.[44]

64. As of the close the hearing in this matter, the Graham Lawsuit appeal remained *sub judice*. Tr. 531:6-10 (Nunnally).

(3) The "Retirement Case"[45]

65. *See* Report Appendix.

66. Nunnally remained in off-duty status pursuant to the action of the Police Fire Clinic for a period exceeding 172 days, and after that period an MPD officer such as Nunnally with more than five years of service is entitled to make a retirement claim. Tr. 203:8-12 (Nunnally); BXN-39 (referring to Nunnally as being on "Sick Leave" since 1/19/07 and being in "LWOP" [leave without pay] status beginning on July 7, 2007). While an MPD officer is on sick-leave, the officer must remain at home on weekdays between 8:00 A.M. and 4:00 P.M., and cannot perform any other work; if the officer wishes to leave home on weekends beyond a 25-mile radius from the District of Columbia, MPD's Chief of Police must grant permission for such absence. Tr. 212:13-20 (Nunnally).

67. In February, 2007, Nunnally was notified that the stress she reported to the Police Fire Clinic was deemed not "work-related," and Nunnally filed an administrative appeal that was heard in May, 2007. The result of that appeal was a determination in August, 2007, that Nunnally's stress was not "work-related" but due instead to the sexual

[44] In order to emphasize the points being made, at times the findings of fact in this Report and Recommendation will track the language of Rule 3.1, Rule 4.4(a), or other provisions of the Rules that could be included solely in – and will be reiterated in – the Hearing Committee's Conclusions of Law.

[45] This Subsection II(A)(3) deals with the administrative proceeding involving Nunnally's claim for retirement benefits. That proceeding is hereinafter referred to as the "Retirement Case."

harassment which caused Nunnally to file the Graham Lawsuit. Tr. 203:17-204:2 (Nunnally). After receiving the August, 2007, ruling, Nunnally asked Respondent if he would be handling her "work-related" claim, described by Nunnally as the equivalent of a "Workmen's Compensation" claim (Tr. 201:1-4 (Nunnally)) arising under the "Merit Personnel Act,"[46] because it was related to her sexual harassment claims in the Graham Lawsuit, and Respondent said he would do so. Tr. 204:9-19 (Nunnally).

68. In October, 2007, the Police Fire Clinic referred Nunnally's case to the "Police and Firefighters' Retirement and Relief Board" (BXN-39, docket entry dated 10/3/07) (hereinafter, the "Retirement Board"), and Nunnally herself submitted the documents required for the Retirement Board to consider her claim for retirement benefits. Tr. 205:1-22 (Nunnally).

69. After Nunnally submitted documentation to the Retirement Board in support of her claim for retirement benefits, Nunnally asked Respondent if he could assist her in proceedings before the Retirement Board, and he said that he could, since they were basically the same as the "Merit Personnel Act" matter referred to in ¶ 67, *supra*. Tr. 205:1-7 (Nunnally).

70. On January 16, 2008, Respondent wrote to the Retirement Board stating that it had not considered Nunnally's retirement claim as expeditiously as required, and requested a prompt hearing date. BXN-40.

71. Respondent did not provide Nunnally with a copy of his January 16, 2008, letter to the Retirement Board (BXN-40), and she did not obtain a copy of it until after she had discharged Respondent and filed an "FOIA" request (*see* ¶ 90, *infra*). Tr. 207:16-208:16 (Nunnally).

[46] *See* Section II(A)(4), *infra*.

72. By letter dated January 18, 2008, the Retirement Board notified Respondent that a hearing on Nunnally's retirement claim was set for January 31, 2008. BXN-41 at 3.

73. Respondent did not provide Nunnally with a copy of the Retirement Board's January 18, 2008, letter (BXN-41), and she did not obtain it until after she had discharged Respondent and filed an "FOIA" request, nor did Respondent inform Nunnally of the January 31, 2008, hearing date. Tr. 208:17-210:6 (Nunnally). Nunnally did not attend the hearing on January 31, 2008, because Respondent never advised her of it, nor did Respondent attend. BXN-39 (docket entry dated 1/31/08 – "Hearing held - Member and Attorney 'NO SHOW,' case re-scheduled"); Tr. 209:12-210:6 (Nunnally). However, Respondent *did* charge Nunnally 4 hours of time for the hearing he did not attend. BXN-94 at 32 (time entry for 1/31/2008).

74. On February 14, 2008, a hearing was held before the Retirement Board on Nunnally's retirement claim. Tr. 210:10-15 (Nunnally). One of the members of the Retirement Board considering Nunnally's case was Ross M. Buchhholz, Esq., an OAG attorney. BXN-42 at 1. Nunnally informed Respondent at the beginning of the hearing that Mr. Buchholz had been an attorney adverse to her at a Superior Court hearing relating to Nunnally's Merit Personnel Act/"Workmen's Compensation" claim. Respondent did not raise this conflict issue with the Chair of the Retirement Board, but Nunnally herself did so, and the hearing Chair asked Mr. Buchholz about the conflict. Mr. Buchholz said he would cease representing the District of Columbia in the Merit Personnel Act proceeding, but Respondent did nothing further to seek Mr. Buchholz's recusal from the Retirement Board proceeding. Tr. 219:5-221:9 (Nunnally).

75. Respondent failed to subpoena any witnesses to support Nunnally's case before the Retirement Board on February 14, 2008 (Tr. 211:2-3 (Nunnally), but the District's own expert witness (a Dr. "Huggonnet"[47]) testified very favorably to Nunnally and opined that she should be retired immediately (Tr. 211:3-7; 212:21-213:7 (Nunnally)).

76. After this very favorable testimony, legal counsel for the District of Columbia asked for a continuance, to which Respondent agreed without consulting Nunnally (BXN-100 at 4), and despite Nunnally's directing Respondent to request an immediate award of interim retirement benefits. Tr. 211:10-21 (Nunnally). Pending a final determination of retirement benefits, an MPD officer is entitled to request interim retirement benefits at a minimum level based on financial, medical, or emotional reasons. Tr. 212:4-10; 213:8-10 (Nunnally).

77. Respondent told Nunnally he did not ask for interim retirement benefits because he believed she was not eligible for them, but after Nunnally discharged Respondent she was successful herself in obtaining interim retirement benefits in June, 2009. Tr. 213:15-214:1;[48] 664:3-16 (Nunnally). Respondent's failure to request an immediate award of interim retirement benefits on February 14, 2008, prejudiced Nunnally, because she had been without sick-leave pay since July 7, 2007. S*ee* ¶ 66, *supra*.

78. On February 26, 2008, Respondent wrote to the Retirement Board advising that "my family and I have experienced several medical emergencies that have

[47] Spelled "Hugonnet" in the transcript of the Retirement Board proceedings provided as BXN-42.

[48] At this point in the hearing, the accumulated weight of testifying about so many unpleasant memories and events caused Nunnally to lose her composure, and a recess was taken. Tr. 214:2-9. *See also* Tr. 660:15-16 (Nunnally)

incapacitated us," and therefore there would be a delay in providing medical records relating to Nunnally which the Retirement Board had requested. BXN-43. The language from Respondent's letter quoted in the previous sentence was a knowingly false statement of fact to the Retirement Board because, as Nunnally testified, there were no emergencies affecting Respondent that would have required a delay in her Retirement Board case during February or March, 2008 (Tr. 224:11-17 (Nunnally)); furthermore, and at least as of March 4, 2008, Respondent filed a Superior Court brief and multiple exhibits on Nunnally's behalf in a different matter (BXN-55).[49]

79. On March 5, 2008, Respondent wrote to the Retirement Board advising that that a continued hearing in the Retirement Case set for March 6, 2008, needed to be postponed because "Nunnally has been given NOTICE by her physician that she must submit a biopsy" on that date, and asked for a postponement until March 20, 2008. BXN-44 (capitals in original). The language from Respondent's letter quoted in the previous sentence was a false statement of fact to the Retirement Board, and Respondent knew his statement was false because Nunnally has never had a biopsy (Tr. 224:18-22 (Nunnally)), and Respondent was familiar with Nunnally's medical conditions from his work on the Graham Lawsuit and from the testimony at the Retirement Board proceeding on February 14, 2008; furthermore, Respondent failed to provide the Retirement Board with any substantiating documentation about Nunnally's alleged "biopsy," and Respondent concealed his letter from Nunnally (*see* ¶ 81, *infra*).

80. On March 12, 2008, Respondent wrote to the Retirement Board again, advising that he had been notified that day "of a catastrophic injury to an immediate family member" which would require his being in South Carolina for a sustained period

[49] *See* ¶ 102, *infra*.

of time beginning on March 14, 2008, and requested a further postponement of the Retirement Case until March 27, 2008. BXN-45. The language from Respondent's letter quoted in the previous sentence was a false statement of fact to the Retirement Board, and Respondent knew his statement was false because he had informed Nunnally that he was going on a "spring break" in March, 2008 (Tr. 225:1-8 (Nunnally)); furthermore, on March 15, 2008 – the day *after* Respondent represented his presence was allegedly required in South Carolina – Respondent filed in the Graham Lawsuit his extensive "Motion to Declare the Order Granting Defendant Graham's Motion to Strike or in the Alternative to Dismiss Second Amended Complaint and the Order Granting Defendant District of Columbia's Motion for Partial Summary Judgment Constitute Abuse of Discretion and or Judicial Error" (BXN-13); *see* ¶ 28, *supra*.

81. Respondent did not provide Nunnally with copies of his letters to the Retirement Board dated February 26, 2008, March 5, 2008, and March 12, 2008 (BXN 43-45); Nunnally obtained copies of those letters only in December, 2011, in unrelated litigation with the District of Columbia. Tr. 223:7-19 (Nunnally).

82. Nunnally's Retirement Case hearing did not resume until July 31, 2008. Respondent told her the delay was because the Retirement Board lacked a quorum. Tr. 226:6-12 (Nunnally). However, without first consulting Nunnally (BXN-100 at 4), Respondent told Nunnally that for the July 31, 2008, hearing he was waiving a quorum. Tr. 226:18-22 (Nunnally); BXN-46 at 4-5.

83. Respondent's waiver of a quorum resulted in a Retirement Board hearing panel consisting solely of District of Columbia employees. Tr. 227:7-15 (Nunnally); BXN-46 at 1. In contrast, the Retirement Board panel which heard Nunnally's case on

February 14, 2008, contained two public members, *i.e.*, an independent attorney and an independent physician. BXN-42 at 1. Furthermore, only one person (MPD Inspector Westover) who heard the initial testimony of Dr. Huggonnet favorable to Nunnally in the Retirement Case on February 14, 2008, was part of the Retirement Board panel which heard her case on July 31, 2008 (c*ompare* BXN-42 at 1 *with* BXN-46 at 1; Tr. 228:18-22 (Nunnally)). In addition, the hearing was chaired by an OAG attorney, which Nunnally found problematic because Respondent would be recognized by the Retirement Board Chair as a known antagonist of OAG attorneys (Tr. 228:2-9 (Nunnally)). *See*, *e.g.*, ¶¶ 21-24, *supra*, regarding the motions Respondent filed in 2007 against OAG attorneys in the Graham Lawsuit, seeking to sanction them for alleged misconduct.

84. The Retirement Board hearing on July 31, 2008, began with brief testimony from Dr. "Huggonnet,"[50] but he did not have before him a disability checklist for Nunnally that he had discussed in his prior testimony (BXN-46 at 8), nor did Respondent bring a copy of the checklist to the hearing (BXN-46 at 9-10), and the members of the Retirement Board could not locate that document (BXN-46 at 14). Respondent also had Nunnally testify only in an abbreviated way (BXN-46 at 18-23).[51]

85. By letter dated July 31, 2008 (BXN-47), the Chair of the Retirement Board advised Respondent that the record for the July 31, 2008, hearing would be closed on August 15, 2008, and asked Respondent to submit copies of documents Respondent said he would provide (BX-46 at 23, 34-35, 41), and to clarify whether the disability checklist

[50] Spelled "Hugonnet" in the transcript of the Retirement Board hearing. BXN-46 at 4.

[51] During the Retirement Board hearing, Respondent noted that he had spent 23 years in the military, and then retired. BXN-46 at 26.

for Nunnally referred to in the preceding paragraph had been prepared by Dr. Huggonnet or by someone else.

86. Respondent did not provide Nunnally with a copy the Retirement Board's letter dated July 31, 2008 (BXN-47), nor was that letter ever answered by Respondent: no copy of a response was provided to Nunnally pursuant to the FOIA request she made for her Retirement Board records. Tr. 230:11-231:4 (Nunnally).

87. By letter dated August 28, 2008 (BXN-48), Respondent sent the Chair of the Retirement Board a copy of a civil complaint filed in federal court on behalf of Nunnally (*see* Section II(A)(6), *infra*), stating that the Retirement Board and its members had not yet been made defendants in that suit, and implying this would be done unless the Retirement Board promptly awarded Nunnally all requested benefits.

88. Respondent did not provide Nunnally with a copy his letter dated August 28, 2008 (BXN-48), nor did Nunnally know of its existence until much later when she learned about it in discussions with Bar Counsel (Tr. 231:5-21 (Nunnally)), and Nunnally would not have approved suing the members of the Retirement Board in her federal court case (Tr. 232:5-16 (Nunnally)).

89. As discussed in ¶ 49, *supra*, when Nunnally discharged Respondent as her attorney on November 28, 2008, she directed him to file immediate withdrawal notifications in all matters in which he represented her, and requested all of her files. Respondent never provided Nunnally with the many documents he had relating to the Retirement Case (Tr. 234:18-236:12 (Nunnally)), and at least as of the end of January, 2009, Respondent's withdrawal had not been submitted to the Retirement Board: when Nunnally contacted the Retirement Board in January, 2009, to request her Retirement

Case records, Nunnally was informed that her request could not be granted because she was still represented by legal counsel (Tr. 232:20-233:18 (Nunnally)).

90. Respondent failed to turn over to Nunnally her files relating to the Retirement Case. In order to obtain her Retirement Case records, by letter dated February 7, 2009 (BXN-50), Nunnally made a formal FOIA request. Nunnally's Retirement Case records were lengthy and reproducing them would have cost her many hundreds of dollars if she had been charged at the normal rate, but Nunnally was finally able to negotiate an arrangement at an acceptable cost for obtaining copies of the Retirement Case records she needed. Tr. 234:3-22; 237:5-238:4; 331:6-7 (Nunnally); BXN-51.

91. Nunnally remained without a final award of retirement benefits until April, 2010 (Tr. 213:8-11 (Nunnally)), when the Retirement Board awarded her the lowest possible retirement benefit, *i.e.*, 30% of 70% of her salary, taxable. Tr. 245:18-20 (Nunnally).

(4) <u>The Merit Personnel Act Case</u>

92. As noted above in ¶¶ 65-68, the Retirement Case was preceded and precipitated by the equivalent of a "workmen's compensation" claim by Nunnally under the Merit Personnel Act, hereinafter referred to as the "MPA Case." *See also* Tr. 247:18-250:9 (Nunnally).

93. Nunnally initiated the MPA Case in January, 2007, by filing an "Injury or Illness Report" on form "PD 42," based on the effects that the sexual harassment and workplace retaliation described above in ¶ 3 at nn.13-14 had on her health. BXN-52 at 6-7; Tr. 253:4-21 (Nunnally); Report Appendix ¶ 65. Due to her stressed condition, Nunnally misdated the "PD 42" as "1/22/07," although it was actually filed on January

19, 2007. Tr. 255:5-14 (Nunnally). Nunnally informed Respondent on January 19, 2007, by telephone and e-mail of the dating error. Tr. 256:21-257:5; 274:3-6 (Nunnally).

94. On January 20, 2007 Nunnally e-mailed MPD Lieutenant Fitzgerald (BXN-52 at 12)[52] about the mistake in her dating of form "PD 42," and also faxed Lt. Fitzgerald (BXN-52 at 13-14) a corrected copy of the "PD 42" on which Nunnally *manually* crossed out the date "1/22/07" and *manually* inserted the corrected date of "1/19/07." Nunnally's manually-corrected "PD 42" is part of the official administrative record in the MPA Case. BXN-52 at 1 and 14.

95. The filing date of a "PD 42" is very significant because it starts a "time clock" (Tr. 274:14-16 (Nunnally)) for making an initial ruling on the work-related or "POD" (*i.e.*, "performance of duty") status of an injury or illness. As even OAG counsel conceded, the regulation governing work-related illnesses "provides for the *automatic* placement of a member on POD sick leave until a final determination is made if the Director of the Medical Services Section fails to make a POD determination on the PD Form 42 within thirty (30) calendar days." BXN-58 at 2 (emphasis added). *See also* Tr. 262:10-18 (Nunnally); BXN-56 at 5 and BXN-68 at 7 (both quoting the relevant regulation).[53] Sick leave compensation for Nunnally would have been a bi-weekly payment of $3,434.38. BXN-57 at 5 at ¶ 9.

---

[52] At the bottom left corner of Nunnally's "PD-42" (BXN-52 at 6), Lt. Fitzgerald was designated by Nunnally (Tr. 255:19-256:4) as the "Duty Official Notified" to whom Nunnally reported her medical condition on January 19, 2007.

[53] MPD General Order PER 100.11 (IV)(A)(1) provides:

> "Within thirty (30) calendar days from the date the member reports a claim of an injury/ illness, [the Department shall] make a determination whether the injury /illness is POD or non-POD.
>
> "If the Department fails to make a ruling within thirty (30) days, the claim shall be presumed to be a POD [Performance-of-Duty] injury/illness, and the member will receive non-chargeable sick leave, and [the Department] will pay reasonable medical expenses

96. By Memorandum dated February 20, 2007 (BXN-52 at 3-5) – *31 days* after the date Nunnally actually filed her "PD 42" – the director of MPD's Medical Services Section issued the initial ruling on Nunnally's "PD-42," classifying it as "Non-Performance of Duty" (BXN-52 at 3), *i.e.*, not work-related. The last page of that Memorandum (BXN-52 at 5), however, indicates that Nunnally did not receive a copy of the initial ruling until February 28, 2007.

97. The bottom right-hand corner of Nunnally's form "PD 42" (BXN-52 at 6) likewise indicates a non-work-related ("Non-POD") determination made on "2/20/07" – *i.e.*, *31 days* after the actual date Nunnally filed her "PD 42."

98. By Memorandum dated February 28, 2007 (BXN-52 at 17-19), Nunnally objected to the initial ruling on her "PD 42" made by the director of MPD's Medical Services Section, and asked for reconsideration of that determination. *Inter alia*, Nunnally specifically objected both to the delay until February 28, 2007, in receiving the initial ruling on her "PD 42, " and to the fact that "my corrected PD Form 42 reflecting the appropriate date of January 19, 2007, was not submitted." BXN-52 at 18.[54]

99. The formal ruling on Nunnally's "PD 42" was not made until August 14, 2007, and the entire written decision constituting the formal ruling was not provided to her until August 22, 2007. BXN-54 at 2 at ¶ 1; BXN-68 at 1.

> supported by appropriate documentation until he/she receives a formal ruling on his/her claim. Even if the claim is eventually determined to be non-POD, the Department shall not 'reach back' to recover costs incurred as a result of the Department's failure to make a ruling within 30 days."

[54] Nunnally's objection observed (BXN-52 at 18), "I have been required to drive to the First District every Wednesday, since January 21, 2007, to sign a piece of paper while I have been on medical leave under the care of a licensed physician." Thus, if the determination on Nunnally's "PD 42" actually was made as stated on "February 20, 2007" (a Tuesday), there is no apparent reason why it could not have been given to her the next day.

100. On September 14, 2007, Respondent filed in Superior Court on Nunnally's behalf a 4-page "Petition for Review of Agency Decision" (BXN-54; Tr. 250:3-11 (Nunnally)), designated as Superior Court docket number 2007 CA 6295 (BXN-53 at 1), seeking review of the adverse administrative action in the MPA Case described in the preceding paragraphs.

101. After the initial Superior Court filing relating to the MPA Case, there were several preliminary court hearings,[55] and on February 8, 2008, a court scheduling conference set a filing date of March 3, 2008, for Petitioner's (*i.e.*, Nunnally's) brief in the MPA Case, as well as filing dates for a brief by the District of Columbia, and for a reply brief. BXN-53 at 4 (docket entry for 02/08/2008).

102. On March 4, 2008, Respondent filed in Superior Court a brief entitled "Appeal From Non-POD Determination" in support of Nunnally's request for review of the adverse administrative action in the MPA Case (BXN-55), and on April 23, 2008, Respondent filed a reply brief (BXN-56). Despite Nunnally's having advised Respondent that the actual filing date of her "PD 42" was January 19, 2007 (s*ee* ¶ 93, *supra*), Respondent's "Appeal From Non-POD Determination" incorrectly referred to the filing date of Nunnally's "PD 42" as January 22, 2007. BXN-55 at 4 and 9.

103. Attempting to remedy his incorrect description of the filing date for Nunnally's "PD 42" as noted in the preceding paragraph, Respondent represented in his reply brief in the MPA Case (BXN-56 at 4 at ¶ 6) that the "PD 42" provided as "Exhibit 2" to the reply brief (BXN-56 at 16) was "[a] signed copy . . . which also reflects the 'Date and Time Reported Sick' as '1/19/07'." "Exhibit 2," however, was neither the

[55] During one of the hearings, the court apparently expressed puzzlement at Respondent's not having taken any further action after his initial Superior Court filing in the MPA Case. Tr. 258:13-17 (Nunnally).

original "PD 42" Nunnally filed (BXN-52 at 6), nor the corrected "PD 42" Nunnally faxed to MPD Lt. Fitzgerald on January 20, 2007 (BXN-52 at 14; *see* ¶ 94, *supra*): the "Date This Report Prepared" box at the top right-hand corner of "Exhibit 2" (BXN-56 at 16) – "1/19/07" – is typewritten, but the actual corrected "PD 42" with the date of "1/19/07" was *manually* changed by Nunnally (BXN-52 at 14). Tr. 261:10-262:3 (Nunnally). In light of the foregoing facts, Respondent's statement to the court that "Exhibit 2" was "[a] signed copy . . . which also reflects the 'Date and Time Reported Sick' as '1/19/07'" was a knowingly false statement of fact; Respondent's changes to Nunnally's "PD 42" constituted the alteration and falsification of evidence; and Respondent's tendering the altered "PD 42" to the court constituted a knowing offer of false evidence to the court.

104. Respondent did not provide Nunnally with copies of his "Appeal From Non-POD Determination" brief (BXN-55) or his reply brief (BXN-56); after discharging Respondent, Nunnally had to pay the court to obtain copies of those and other MPA Case documents filed in Superior Court. Tr. 258:21-259:5; 260:4-12; 289:7-12 (Nunnally).

105. On June 17, 2008, Respondent made a Superior Court filing in the MPA Case entitled "Motion for Award of Pendente Lite Sick Leave Payments" (BXN-57). The memorandum Respondent submitted in support of the motion explicitly argued that because the District of Columbia did not make its initial work-related ruling on Nunnally's "PD 42" within the 30-day period required by MPD General Order 100.11,[56]

[56] *See* n.53, *supra*.

Nunnally was entitled to continuous "POD" sick leave compensation beginning as of January 19, 2007. BXN-57 at 6 at ¶ 11.[57]

106. Respondent further argued in his "Motion for Award of Pendente Lite Sick Leave Payments" (BXN-57 at 5 at ¶ 9) that "Per . . . DCMPD GO 100.11, et seq., Lt. Nunnally was entitled and remains entitled to sick leave pay . . . and attorney's fees now totaling $229,663.14." Respondent's legal fee claim made multiple false statements of fact to the court, and the facts and circumstances described and referred to in the following subparagraphs establish that Respondent's false statements of fact were knowingly made:

a. Respondent submitted as "Exhibit 6" to the motion (BXN-57 at 11) a "bill" purportedly for "Feb-06," but showing work done during June, 2008.

b. The "bill" was headed "Nunnally v. Phillip Graham and the District of Columbia," and was described as relating to a "Violation of the Human Rights Act," not the MPA case.

c. Although some of the services in the "bill" are related to the MPA Case, other services identified in the "bill" clearly are not, *e.g.*, time entries for 6/2/2008 ("Mtn to set aside Order on Laliotis"); 6/8/2008 ("Writ of Mandamus or in the alternative of Prohibition"); 6/11/2008 ("Mtn and Mem to Recuse Judge Combs-Green"); and 6/15/2008 ("Mtn and Mem to Vacate Judge Combs-Green Orders").

d. On October 28, 2008, Respondent made a completely inconsistent claim of $106,649.58 for legal fees in the MPA Case; *see* ¶ 111, *infra*.

[57] Not being in "POD" status, Nunnally was placed in "Leave Without Pay" status as of July 7, 2007. BXN-39; Tr. 206:3-8 (Nunnally).

e. On June 18, 2009, Respondent filed with the court a "bill" for his work on the MPA Case, but in the amount of only $12,000. S*ee* ¶ 115, *infra*. Furthermore, he subsequently filed a bankruptcy claim against Nunnally for his work on the MPA Case in the amount of $15,000 (BXN-195). S*ee* n.113, *infra*.

f. Other knowingly false statements of fact inherent in the $229,663.14 "bill" regarding billing inaccuracies and hourly billing rate are outlined in ¶ 53, *supra*, relating to the "bill" Respondent filed with his motion to intervene in the Graham Lawsuit.

107. On June 27, 2008, OAG counsel filed an opposition (BXN-58) to Respondent's "Motion for Award of Pendente Lite Sick Leave Payments," arguing (*inter alia*) that Nunnally was not entitled to an automatic presumption of "POD" status because "the determination in this case was made on February 20, 2007, within twenty-nine (29) days after the filing of Petitioner's PD 42," *i.e.*, OAG counsel assumed a filing date for Nunnally's "PD-42" *after* January 19, 2007.[58]

108. On October 24, 2008, Judge Hedge of the Superior Court held a hearing on Respondent's "Motion for Award of Pendente Lite Sick Leave Payments," the transcript of which is provided as BX-59. The court asked Respondent if the basis of Nunnally's request for interim relief was that the agency had not acted within 30 days, and Respondent replied affirmatively. BXN-59 at 4. Given the various versions of Nunnally's "PD 42" in the record, however, the court remained uncertain as to the actual filing date of Nunnally's "PD 42." BXN-59 at 7.

[58] OAG's computation of the determination period makes sense only if the filing date is assumed to be January 22, 2007, *and* the filing date is counted in the 29-day computation. Using OAG's methodology, however, a filing date of January 19, 2007 (Nunnally's actual filing date) results in a delay of *32* days, not 31.

109. The Superior Court docket for the MPA Case reflects that on October 24, 2008, Judge Hedge denied the motion for *pendente lite* sick leave. BXN-53 at 3 (docket entry for 10/24/2008).

110. After the October 24, 2008, hearing, Nunnally asked Respondent to explain why there were confusingly-dated versions of her "PD 42" before the court, and Respondent laughingly replied, "that's a question for them to answer." Tr. 264:20-265:4 (Nunnally). Respondent, however, took no action to correct for the court the misimpression created by the altered "PD 42" (BXN-56 at 16) he submitted as "Exhibit 2" to his reply brief. Tr. 265:21-266:8 (Nunnally).[59]

111. On October 28, 2008, Respondent made a supplemental Superior Court filing in the MPA Case, stating, "Nunnally's legal expenses incurred in securing her medical benefits totaled $106,649.58" (BXN-60 at 8) – a significantly lower number compared to the "bill" for $229,663.14 (BXN-57 at 11) that Respondent had told the court just three months earlier represented his legal fees in the MPA Case (*see* ¶ 106, *supra*). Purporting to support this fee claim, Respondent submitted to the court a "bill" to Nunnally (BXN-60 at 12) for $106,649.58 dated "Feb-07," *i.e.*, more than a year prior to Respondent's supplemental court filing.[60] However, as noted in ¶ 100, *supra*, Respondent's first Superior Court filing in the MPA Case did not occur until September 14, 2007, eight months *after* the "bill" for "Feb-07"; prior to September 14, 2007, Nunnally herself handled all of the administrative proceedings in the MPA Case. Tr. 277:19-278:1

[59] Replacement counsel for Respondent in the MPA Case, Frederick Schwartz, Esq., later clarified for the Court of Appeals the correct dating of Nunnally's form "PD 42." Tr. 266:3-8; 251:11-13 (Nunnally).

[60] Nunnally first saw a copy of Respondent's "bill" for "Feb-07" (BXN-60 at 12) when she received a copy of Respondent's supplemental filing in October of 2008; she did not receive it prior to that time. Tr. 277:10-18 (Nunnally).

(Nunnally); s*ee* ¶¶ 93-99, *supra*. In light of the facts and circumstances described and referred to in this paragraph, Respondent's statement that "Nunnally's legal expenses incurred in securing her medical benefits totaled $106,649.58," and the $106,694.58 "bill" in that amount submitted by Respondent, were knowingly false statements of fact made to the court.

112. On October 30, 2008, without first discussing the matter with Nunnally, Respondent made a Superior Court filing in the MPA Case entitled "Motion to Show Cause Why Lt. Nunnally Has Not Been Retired Per General Order 100.11." BXN-61; Tr. 278:20-279:7 (Nunnally).

113. When Nunnally discharged Respondent as her attorney on November 28, 2008, she directed him to withdraw immediately as her counsel in the MPA Case (*see* ¶ 49, *supra*), but because Respondent did not do so, on June 12, 2009, Nunnally sent Respondent an e-mail (BXN-63) directing him again to withdraw as her legal counsel in the MPA Case. Tr. 290:5-13 (Nunnally).

114. It was not until June 18, 2009, after Nunnally e-mailed Respondent (BXN-63) and contacted the court (Tr. 250:17-21; 289:13-21 (Nunnally)), that Respondent filed a motion to withdraw as Nunnally's counsel of record in the MPA Case (*see* BXN-64, "Motion to Withdraw, Nunc Pro Tunc"), but he failed to provide Nunnally with a copy of that document. Tr. 291:11-17 (Nunnally). Respondent's motion made numerous false statements of fact to the court, and the facts and circumstances described and referred to in the following subparagraphs establish that Respondent's false statements of fact were knowingly made:

a. The motion falsely stated (BXN-64 at 1) that Respondent had already filed a praecipe of withdrawal, a purported copy of which, entitled "Praecipe of Withdrawal as Counsel of Record" (BXN-64 at 5), was attached to the motion as "Exhibit 2." The certificate of service at the end of the "Praecipe of Withdrawal as Counsel of Record" states that it "was served electronically on December 5, 2008 and is linked to original filing of December 1, 2008." Respondent, however, did not provide Nunnally with a copy of the praecipe (Tr. 292:4-10 (Nunnally)), and the court docket in the MPA Case does not reflect the filing of any such praecipe as stated in the certificate of service (the MPA Case court docket entry at the top of BXN-53 at 3 is dated "11/13/2008"; the date of the next court docket entry at the bottom of BXN-53 at 2 is "6/18/2009").

b. The purported praecipe (BXN-64 at 5) falsely stated that "on December 1, 2008, Lieutenant Nunnally terminated undersigned as her counsel," whereas even Respondent's own "Exhibit 1" to his withdrawal motion, *i.e.*, a copy of Nunnally's e-mail discharging Respondent (BXN-64 at 3), established that Respondent was terminated as counsel on November 28, 2008.

c. The purported praecipe (BXN-64 at 5) falsely stated that "plaintiff has been provided copies of all filings," but Respondent failed to do so. *See* ¶ 104, *supra*.

d. The purported praecipe (BXN-64 at 5) falsely stated that "plaintiff . . . has retained new counsel," but as of the date of the purported praecipe (December 1, 2008) Nunnally had not done so. Tr. 290:14-20; 292:10-18 (Nunnally).

e. The motion falsely stated that Nunnally had engaged in purported settlement discussions with the District of Columbia that were conditioned on her

discharging Respondent as her attorney (BXN-64 at 1), but no such settlement ever happened. Tr. 355:15-21; 661:16-663:11 (Nunnally).

115. On June 18, 2009, Respondent made an additional Superior Court filing in the MPA Case entitled "Motion to Intervene," in which he stated, "Legal fees in the instant action have not been paid by [Nunnally] and approximate $12,000." BXN-65 at 1. The language quoted in the preceding sentence was a knowingly false statement of fact by Respondent to the court, and Respondent's motion to intervene made other knowingly false statements of fact, as shown by the facts and circumstances described and referred to in the following subparagraphs:

a. The certificate of service attached to Respondent's motion stated (BXN-65 at 2), "I hereby certify that a copy of Petitioner's Motion to Intervene was served electronically on all interested parties on June 18, 2009," but Respondent failed to serve Nunnally with a copy of the motion. Tr. 292:19-293:2 (Nunnally).

b. The statement in the motion that Respondent was owed approximately $12,000 was a knowingly false statement of fact because when the motion to intervene was filed on June 18, 2009, Nunnally had already received an ACAB award denying all of Respondent's claims for legal fees and ordering Respondent to refund $11,000 to Nunnally. Tr. 293:6-13 (Nunnally); BXN-66. *See* Section II(A)(8), *infra*.

c. Respondent's claim of $12,000 for legal fees in the MPA Case was completely inconsistent with his prior claims for legal fees submitted to the court in the MPA Case of $229,663.14 and $106,649.58, as described in ¶¶ 106 and 111, *supra*.

d. Respondent failed to advise the court that over five months earlier Judge Combs Greene had already denied a similar motion by Respondent for leave to

intervene in the Graham Lawsuit, ruling that "Petitioner [*i.e.*, Respondent] provides no legal basis under the Rules or case law for his Motion." BXN-25 at 1.

116. By Order filed July 9, 2009 (BXN-68 at 1), Judge Hedge of the Superior Court denied Respondent's "Motion to Show Cause Why Lt. Nunnally Has Not Been Retired Per General Order 100.11" (s*ee* ¶ 112, *supra*), remanding the matter to MPD to determine how many days of sick leave Nunnally was entitled to (BXN-68 at 9), and stating (BXN-68 at 8):

> The discrepancies between the dates on which petitioner filed the PD form 42 and on which the Medical Services Section first ruled on petitioner's claim render the number of days of sick leave to which petitioner may be entitled uncertain.

117. By separate Order also dated July 9, 2009 (BXN-69), the court granted Respondent leave to withdraw as legal counsel for Nunnally, and denied his motion to intervene as moot.

118. On July 10, 2009, the MPA Case was dismissed (BXN-53 at 2 (docket entry for 07/10/2009)), and on August 7, 2009, Nunnally filed a Notice of Appeal (BXN-53 at 2 (docket entry for 8/13/2009)).

(5) <u>The "Sanders Lawsuit"</u>

119. As noted in ¶ 3, *supra* Nunnally was originally represented in the Graham Lawsuit by Sanders.

120. On April 9, 2008, Sanders sued Nunnally in the Circuit Court for the City of Alexandria, Virginia (BXN-70, hereinafter referred to as the "Sanders Lawsuit"), claiming that Nunnally owed him $34,834.58 in legal fees and costs relating to in the Graham Lawsuit. Nunnally was "upset" and "shocked" when Sanders sued her, because

she had long since parted ways with Sanders in 2005,[61] and paid him in full. Tr. 310:19-311:1 (Nunnally).

121. Respondent told Nunnally that he would prepare a motion to dismiss the Sanders Lawsuit in return for her helping Respondent to effect service of some legal papers;[62] no separate retainer agreement was signed by Nunnally and Respondent in connection with the Sanders Lawsuit. Tr. 311:9-16; 315:8-14 (Nunnally).

122. On April 29, 2008, Nunnally filed in the Sanders Lawsuit a "Motion to Dismiss Or In The Alternative to Quash Service" and a supporting legal memorandum (BXN-71 at 1-14), both prepared by Respondent. Tr. 312:20-313:4 (Nunnally).

123. Respondent had told Nunnally that he was a member of the Virginia Bar (Tr. 311:17-20 (Nunnally)), and that he would represent her at the hearing on the motion she filed in the Sanders Lawsuit (Tr. 316:4-6 (Nunnally)). However, on the day of the hearing Respondent told Nunnally to represent herself, stating he would be a witness and that she could "figure it out," thus leaving Nunnally unprepared and without assistance to handle the hearing on her own. Tr. 312:2-7; 316:6-13 (Nunnally).

124. After the hearing on Nunnally's motion in the Sanders lawsuit, she called the Virginia Bar and learned that Respondent was not admitted to practice law in Virginia. Tr. 312:8-10 (Nunnally). Nunnally confronted Respondent with this information, and he told her he was a member of the "Virginia Federal Bar" but could not practice before the court where the Sanders Lawsuit had been filed, a distinction that Respondent had not explained to Nunnally. Tr. 312:14-19 (Nunnally).

---

[61] *See* ¶ 8, *supra*.

[62] *See* BXN-89 at 2 at ¶ 16.

125. Nunnally's motion in the Sanders Lawsuit was denied (Tr. 316:22-317:1 (Nunnally), and on July 2, 2008, Nunnally filed an Answer and a Counterclaim (BXN-72) in the Sanders Lawsuit, prepared by Respondent (Tr. 317:2-17 (Nunnally)) even though he was not a member of the Virginia Bar.

126. Respondent did not assist Nunnally in the Sanders Lawsuit after the filing of her Answer and Counterclaim, and she secured legal counsel properly admitted to practice law in Virginia (a "Mr. Steinmetz";[63] Tr. 318:4-12 (Nunnally)) who effected a settlement on her behalf involving a payment to Sanders of only $2,000. Tr. 317:18-319:4 (Nunnally).

(6) The Federal Lawsuit

127. From an early point after he began representing Nunnally, Respondent told Nunnally he would take steps to assert her claims in federal court. Tr. 200:17-19; 319:5-15 (Nunnally); BXN-73. In that connection Nunnally provided Respondent with an initial $500 check for filing fees in federal court,[64] and in August of 2008 Respondent finally accomplished the federal court filing after Nunnally advanced an additional filing fee of $300.[65] Tr. 319:16-320:10 (Nunnally).

128. Prior to filing suit in federal court, Nunnally had pursued various administrative EEO and workplace retaliation claims. Tr. 321:10-322:1 (Nunnally); BXN-74. In connection with those claims, MPD's Internal Affairs Bureau wrote to Respondent on October 16, 2007, asking him to make Nunnally available within the next

[63] Hereinafter referred to as "Steinmetz."

[64] BXN-91 at 7 (check no. 740 for $500 dated 4/15/07).

[65] Before Respondent actually filed suit in federal court, Nunnally called the court to find out the amount of the filing fee and was informed it was only $300. Tr. 320:3-8 (Nunnally).

15 days so that she could be interviewed for the investigation of her claims. BXN-75. Although Nunnally is shown as having been sent a "cc" of that letter, she did not receive it, and in any event Respondent never discussed with Nunnally the request from MPD's Internal Affairs Bureau. Tr. 324:5-18 (Nunnally).

129. On August 22, 2008, Respondent filed a suit on Nunnally's behalf in the United States District Court for the District of Columbia, designated as case no. 1:08-cv-01464 (BXN-77 at 1), alleging gender-based discrimination and employment-related retaliation in violation of Title VII of the 1964 Civil Rights Act, 42 U.S.C. §§ 2000e—2000e-17 (2006) (BXN-77 at 1 and 6). That litigation is hereinafter referred to as the "Federal Lawsuit."

130. Although in June of 2008 Respondent sent Nunnally a draft of the Complaint in the Federal Lawsuit, Respondent did not provide her with a copy of the Complaint he actually filed, either contemporaneously, or after he was discharged as Nunnally's attorney; she obtained a copy of the Complaint herself only after she discharged Respondent as her attorney. Tr. 325:3-326:6 (Nunnally). The draft Complaint Nunnally received from Respondent differed substantially from what Respondent actually filed, one principal difference being that the draft Nunnally had received was captioned "Nunnally v. District of Columbia Government." Tr. 325:16-20 (Nunnally).

131. Respondent's Complaint in the Federal Lawsuit began by naming as defendants MPD Chief Lanier and other MPD officials (BXN-77 at 1-2) as well as the MPD itself (BXN-77 at 2), but *not* the District of Columbia. The Complaint then named the United States Senate and House of Representatives as additional defendants (*id.*), which were allegedly liable because of their authority "under Article 1, Section 8, United

States Constitution [to] 'exercise exclusive legislation in all cases whatsoever over' the District of Columbia," making them "responsible for the District of Columbia Budget and any Appropriation from which a judgment would or could be paid." BXN-77 at 5 at ¶ 10.[66] Each of the first four Counts in the Complaint sought $100,000,000 in compensatory damages, $100,000,000 in punitive damages, and legal fees. BXN-77 at 11-14. Count V of the Complaint sought a declaration that the United States Congress was responsible for paying any judgment rendered. BXN-77 at 14-15.

132. On September 29, 2008, all of the District of Columbia defendants moved to quash service of process due to Respondent's failure to meet the basic requirements of Fed. R. Civ. P. 4 (BXN-78 at 3-6), noting also that MPD was not *sui juris* (BXN-78 at 4 at n.1). On November 18, 2008, the court granted the District of Columbia's motion, ruling that since the individual defendants were sued only in their official capacities "there is no need to name them as defendants at all" (BXN-79 at 2), that the MPD was indeed not *sui juris* (*id*.), and that Respondent had failed to name or serve the District of Columbia, "[t]he proper defendant in this case" (*id*.). The court *sua sponte* substituted the District of Columbia as the defendant in the Federal Lawsuit (*id*. at 3), and dismissed the Senate and House of Representatives as defendants because "the complaint includes no claims against these entities" (*id*. at n.4).

133. On November 26, 2008, Respondent filed an Amended Complaint in the Federal Lawsuit, naming the District of Columbia as one defendant. BXN-80 at 1. However, despite the terms of the court's order described in the preceding paragraph, Respondent's Amended Complaint also named the "United States of America" as a

[66] The Complaint also continued Respondent's altercation with Judge Combs Greene. BXN-77 at 9-11. *See* ¶¶ 28; 30-38; 40; 45, *supra*.

second defendant (*id*.). The Amended Complaint (BXN-80 at 2 at ¶ 3) also repeated essentially the same allegations against the Senate and House of Representatives as ¶ 10 of the original Complaint (BXN-77 at 5), and Count VI of the Amended Complaint continued to seek a declaration that Congress was responsible for any judgment rendered in the Federal Lawsuit (BXN-80 at 12 at ¶ 49).[67]

134. On December 2, 2008, Respondent filed in the Federal Lawsuit a "Notice of Termination as Counsel of Record." BXN-81.[68] On December 15, 2008, Respondent filed in the Federal Lawsuit a separate "Motion to Withdraw as Counsel of Record." BXN-84. The Certificate of Service at the end of the motion asserts that Respondent served Nunnally with a copy of the motion by mail, but Respondent did not do so. Tr. 328:22-329:4 (Nunnally). Attached to Respondent's December 15, 2008, filing as "Exhibit 1" is an altered copy of Nunnally's November 28, 2008, e-mail discharging Respondent, making it seem as if Nunnally had sent the e-mail on December 1, 2008. BXN-84 at 3; Tr. 329:5-16 (Nunnally).

135. Following the termination of Respondent's representation of Nunnally in the Federal Lawsuit, the court allowed her to proceed *in forma pauperis* and appointed legal counsel to represent her. Tr. 299:9-17 (Nunnally).

---

[67] The Amended Complaint also repeated the allegations about Judge Combs Greene (BXN-80 at 6-7), and sought the same levels of compensatory and punitive damages under each substantive Count as the original Complaint (BXN-80 at 8-12).

[68] On December 3, 2008, the Office of the United States Attorney for the District of Columbia sent Nunnally an e-mail pointing out that the Amended Complaint filed by Respondent continued to name the "United States of America" as a defendant, and asked if Nunnally would consent to its dismissal as such. BXN-82. By Notice of Dismissal filed on December 10, 2008, Nunnally, *pro se*, agreed to the dismissal. BXN-83. Tr. 327:11-328:18 (Nunnally).

(7) Bar Counsel's Investigation

136. Nunnally filed an initial complaint dated December 1, 2008, with Bar Counsel concerning Respondent's conduct in representing her. BXN-86.[69] Nunnally testified that her filing the Bar Complaint was driven by fear: "Mr. Frison had already threatened me. And he sent me an e-mail demanding payment of $220-plus-thousand dollars, and claiming he was going to do various things to harm me." Tr. 334:6-10 (Nunnally). *See also* ¶¶ 50-51, *supra*.

137. *Inter alia*, Nunnally's initial Bar Complaint (BXN-86) described how Respondent had been so busy in the Graham Lawsuit attacking Judge Combs Greene and OAG counsel (*see* ¶¶ 21-24; 28; 30-38; 40; 45, *supra*) that Respondent failed to oppose a motion *in limine* by the District of Columbia which would preclude Nunnally from recovering damages based on incidents occurring after July 16, 2004, a motion that the court summarily granted as unopposed (*see* ¶¶ 41-44, *supra*). BXN-86 at 2. Nunnally also noted Respondent's agreeing to a trial continuance in the Graham Lawsuit without first consulting her, and his failure to appear at Ms. Noonan's *de bene esse* deposition (*see* ¶¶ 47-48; 39; 57, *supra*). BXN-86 at 2-3. Nunnally also referred to Respondent's acceding to a continuance in the Retirement Case just after testimony highly supportive of her position had been given, to Respondent's delays in pressing forward with that case, and to the prejudice incurred by Nunnally when a different Retirement Board panel eventually heard the Retirement Case (*see* ¶¶ 75-76; 82-83, *supra*). *Id*. at 3. Nunnally also brought to Bar Counsel's attention Respondent's delay in filing the Federal Lawsuit, and the many mistakes Respondent made in his Complaint and Amended Complaint (*see* ¶¶ 127; 131-33, *supra*). *Id*. In addition, Nunnally referred Bar Counsel to Respondent's

[69] Stamped as received by Bar Counsel on December 2, 2008.

failure to bill her on a monthly basis (*see* ¶¶ 14-15, *supra*), and his failure to comply with her instructions to him when he was discharged (*see* ¶¶ 49; 52; 89-90; 104; 113-14, *supra*). *Id*. at 4.

138. In a supplemental filing with Bar Counsel dated December 7, 2008 (BXN-87),[70] Nunnally highlighted, *inter alia*, Respondent's continued failure – notwithstanding Nunnally's November 28, 2008, e-mail (BXN-86 at 8-9) – to make her files available by December 5, 2008 (*see* ¶ 49; 52; 89-90, *supra*).[71] Nunnally also referred again to the strange and inconsistent "bills" Respondent had created (BXN-87 at 1 and 7-10), including a claim for "hourly billings [that] now exceed $300,000" (BXN-87 at 10), an amount for which Respondent had never billed Nunnally (Tr. 339:2-12 (Nunnally)). Nunnally also raised for Bar Counsel the issue of Respondent's ineffectual representation in the Sanders Lawsuit (*see* ¶¶ 123-24, *supra*). BXN-87 at 2.

139. By letter dated December 18, 2008 (BXN-88), Respondent replied to Bar Counsel's inquiry concerning the matters raised by Nunnally in her filings with Bar Counsel. Respondent's reply asserted, "Lt. Nunnally signed several subsequent retainer agreements that she has not provided Bar Counsel" (BXN-88 at 15), and attached to his reply six different retainer agreements purportedly entered into by Nunnally (BXN-88 at 23-28). Nunnally, however, had signed only one retainer agreement with Respondent. *See* ¶¶ 10 and 13, *supra*. Furthermore, Nunnally denied signing the additional retainer

[70] Stamped as received by Bar Counsel on December 9, 2008.

[71] However, Respondent did eventually provide some documents in CD format. Tr. 330:15-331:6 (Nunnally); BXN-87 at 10 (e-mail dated December 5, 2008, from Respondent to Lescht, stating, "I shall copy to a disk all filings I have initiated or responded to in the five cases in which I have represented [Nunnally's] interest").

agreements and testified credibly and cogently[72] that except for the first such retainer agreement dated September 12, 2005 (BXN-88 at 23; *see* ¶¶ 10 and 13, *supra*), the five other purported retainer agreement were knowingly false creations by Respondent (Tr. 341:3-350:21 (Nunnally)). For the foregoing reasons, the Hearing Committee finds that the five additional retainer agreements Respondent submitted to Bar Counsel were falsified evidence, were knowingly offered by Respondent as false evidence, and that Respondent's statement to Bar Counsel that "Lt. Nunnally signed several subsequent retainer agreements that she has not provided Bar Counsel" (BXN-88 at 15) was a knowingly false statement of fact.

[72] *E.g.*, the "retainer agreement" dated "January 21, 2007" (BXN-88 at 24) refers at the top right to a matter identified as "Nunnally v. DCMPD (MPA)," but the a final administrative decision in the MPA Case was not rendered until 8 months later in August, 2007, and Respondent's first court filing in that case did not occur until September 14, 2007 (*see* ¶¶ 99-100, *supra*) (Tr. 341:15-20 (Nunnally); the "retainer agreement" dated in September of 2007 (BXN-88 at 25) refers at the top right to a matter identified as "Nunnally v. Retirement Board," but it was not until October, 2007, that the Police Fire Clinic referred Nunnally's case to the "Police and Firefighters' Retirement and Relief Board," and Nunnally herself then submitted the initial documents needed to begin consideration of her claim for retirement benefits (*see* ¶ 68, *supra*) (Tr. 342:16-22 (Nunnally); the "retainer agreement" dated "June 1, 2008" (BXN-88 at 26) refers at the top right to a matter identified as "Nunnally v. Judge Combs-Greene" [*sic*] and obligates Nunnally to base monthly retainer payments of $1,150, but by that time Nunnally had been without income for approximately a year (*see* ¶¶ 66 and 77, *supra*, and BXN-95 at 3 (fourth paragraph)), she could not have afforded to undertake such a continuing financial commitment (Tr. 343:15-344:7 (Nunnally)), and the list of payments Nunnally actually made to Respondent (BXN-91 at 15) is inconsistent with any such payment stream after June 1, 2008; and the "retainer agreement" dated "March 15, 2008" (BXN-88 at 27) refers at the top right to a matter identified as "Sanders v. Nunnally," but the Complaint by Sanders in that case was not filed until April 9, 2008, and was totally unexpected by Nunnally (*see* ¶ 120, *supra*) (Tr. 344:8-21 (Nunnally)).

Nunnally's testimony is also consistent with an exchange of e-mails she had with Respondent after he was discharged. On December 1, 2008, Respondent e-mailed Nunnally (BXN-92 at 20), "I shall provide you a final status report along with my final bill. I suggest you review *the retainer agreement*" (emphasis on the singular). Later that day, Nunnally replied (*id*. at 20 at ¶ 5), "you have referenced your retainer/contingency *agreement* with me, dated 9/12/05 . . . ." (emphasis on the singular). Respondent carried on the e-mail exchange later that day (BXN-92 at 24 at ¶ 4), stating, "I suggest you review *the Retainer Agreement*" (again, emphasis on the singular). *See* Tr. 363:12-364:11 (Nunnally). Last, none of the monthly retainer amounts specified in the purported additional retainer agreements (*i.e.*, BXN-88 at 24, dated January 21, 2007, for $700 per month; BXN-88 at 25, dated September 8, 2007, for $850 per month; BXN-88 at 27, dated March 15, 2008, for $1,000 per month; and BXN-88 at 26, dated June 1, 2008, for $1,150 per month) corresponds to any of the monthly "Payment Due" amounts specified in the "bills" Respondent submitted to Bar Counsel (BXN-94 at 3-43) or delivered to the ACAB (BXN-104 at 2-41). *See* "Table 3" in attached Exhibit A.

140. Also attached to Respondent's December 18, 2008, reply to Bar Counsel was an affidavit (BXN-88 at 29-45) purportedly signed electronically by Nunnally and electronically notarized on September 24, 2007 (BXN-88 at 45), and Respondent's reply to Bar Counsel stated (BXN-88 at 2), "The undisputed facts of the litigious circumstances that compelled my actions on behalf of Lt. Nunnally can be found at her Affidavit, Tab 7[.]" As Nunnally testified, however, that document was neither signed nor notarized by her at that time, although she did sign a version of it years earlier. Tr. 351:11-352:18 (Nunnally). Nunnally's testimony makes eminent sense. Although a Second Amended Complaint was filed in the Graham Lawsuit on or about September 24, 2007 (BXN-4 at 12; docket entries for 09/24/2007 and 09/25/2007), the purported affidavit dated in 2007 that Respondent provided to Bar Counsel does not refer to any events after 2004. *See* BXN-88 at 43-44. In light of Nunnally's testimony that the harassment and retaliation involved in the Graham Lawsuit continued and grew worse even after she filed suit against Graham (*see* ¶ 5, *supra*), it is logical that an affidavit submitted in support of the Second Amended Complaint in 2007 would have been updated with events after 2004, but such updating is not present in the 2007 Affidavit proffered to Bar Counsel by Respondent. In light of the foregoing facts and circumstances, the September 24, 2007, "affidavit" (BXN-88 at 45) was a knowing fabrication by Respondent, and its submission to Bar Counsel, as well as Respondent's statement, "The undisputed facts of the litigious circumstances that compelled my actions on behalf of Lt. Nunnally can be found at her Affidavit, Tab 7" (BXN-88 at 2) were knowingly false statements of fact.

141. In his December 18, 2008, reply to Bar Counsel, Respondent purported to respond to Nunnally's complaints concerning his failure to bill her on a monthly basis

and the exorbitant and improper legal fees he was charging her (*see* ¶¶ 53; 58; 136, *supra*) by representing to Bar Counsel (BXN-88 at 15):

> Lt. Nunnally has been provided a monthly report as to her expenses throughout the period I have represented her. Tab 43. She has acknowledged such Notice and at times has attempted to comply with payments. Tab 44.

Respondent, however, did not provide Bar Counsel with the monthly billing statements he allegedly sent to Nunnally; indeed, "Tab 43" and "Tab 44" referred to by Respondent, relating to a CD of documents he provided to Bar Counsel – and purporting to provide those bills – were blank. Tr. 354:8-19 (Nunnally).[73] *See also* ¶¶ 145-46, *infra*. Furthermore, Respondent's statement that he "provided a monthly report as to [Nunnally's] expenses throughout the period I have represented her" was a knowingly false statement of fact to Bar Counsel. *See* ¶ 15, *supra* (testimony by Nunnally that Respondent did not bill her on a monthly basis), and ¶¶ 147-52, *infra* ("bills" lacked veracity and were fabrications by Respondent).

142. In his December 18, 2008, reply to Bar Counsel, Respondent stated (BXN-88 at 21):

> On or about November 28, 2008 I received a call from a person identifying himself as an employee of the Office of Assistant Attorney General [sic]. The caller stated that he overheard agents in his office agreeing to enter into a comprehensive settlement with Lt. Nunnally but that the terms entailed her firing me as her attorney and joining in a complaint to bar counsel.

Aside from the inherent vagueness and non-credibility of the statement quoted above, Nunnally was never a party to any such agreement or discussions, and Respondent's statement to Bar Counsel quoted above was a knowingly false statement of fact, as

[73] In response to a question from the Hearing Committee, Bar Counsel confirmed that the CD which Respondent provided along with his December 18, 2008, reply was indeed blank at Tabs 43 and 44. Tr. 356:10-22.

testified by Nunnally (Tr. 355:5-21; 600:16-19; 660:2-663:22 (Nunnally)). Nunnally's testimony on this point is thoroughly credible. Lescht testified that the only meaningful settlement proposal by OAG in the Graham Lawsuit was an offer of $75,000 made at the time of trial. Tr. 762:19-765:5; 777:16-778:4 (Lescht). As noted above in ¶ 135, because of her indigence, legal counsel was appointed for Nunnally by the court in the Federal Lawsuit, and as noted *infra* in ¶ 162 at n.87, Nunnally was also granted leave to proceed *in forma pauperis*[74] when she filed her suit to confirm the ACAB award in her favor. Furthermore, less than a year after the supposed telephone call that Respondent received from one unnamed OAG employee who allegedly overheard other unnamed OAG "agents," and well after Nunnally filed her Bar Complaint against Respondent, on September 28, 2009, Respondent – destitute[75] – filed for bankruptcy (BXN-185 at 1), a situation inconsistent with the hypothetical lucrative settlement arrangement falsely described by Respondent to Bar Counsel.

143. On January 2, 2009, Nunnally provided Bar Counsel with comments (BXN-89) on Respondent's December 18, 2008, initial reply to Bar Counsel (BXN-88). One of Nunnally's comments (BXN-89 at 1 at ¶ 7) was that Respondent had altered evidence by having his wife notarize documents for people who did not actually appear for notarization. The affidavit of MPD Captain Gresham has already been discussed (*see* ¶¶ 25 and 35, *supra*), and Nunnally documented an additional example of this practice (BXN-89 at 6 ("Affidavit of George Crawford")), explaining why Mr. Crawford did not appear and could not have appeared before Respondent's wife as stated in the affidavit. Tr. 357:5-359:2 (Nunnally).

[74] BXN-158 at 3 (docket entry for 06/11/2009).

[75] Tr. 590:10-591:10 (Nunnally).

144. By letter dated April 13, 2009, Respondent submitted to Bar Counsel a supplemental reply to Nunnally's ethical complaint (BXN-92). Attached to the supplemental reply was a purported "bill" to Nunnally dated "Aug-08" for $222,352.00 captioned "Nunnally v. Phillip Graham and District of Columbia" and "Violation of Human Rights Act" (BXN-92 at 14). However, as Nunnally testified with respect to that bill (and others), "They're not based on any reality that I'm aware of." Tr. 304:4-13 (Nunnally). Furthermore, as demonstrated in ¶¶ 147-52, *infra*, Respondent's "bills" lack credibility; the $222,352.00 "bill" for "Aug-08" showing 5 hours of time totaling $1,750 – an hourly billing rate of $350 – exceeded the $250 hourly rate specified in Respondent's retainer agreement with Nunnally (BXN-7 at ¶ 1); and as noted in ¶ 147, *infra*, four months later on August 10, 2009, Respondent submitted to Bar Counsel an identically-captioned "bill" also purportedly for "Aug-08" (BXN-94 at 40), but in the much lower amount of $98,268.00.

145. In a letter dated July 7, 2009 (BXN-93 at 1), Bar Counsel told Respondent that even though Bar Counsel had previously subpoenaed Respondent's office file and all documents relating to his representation of Nunnally (BXN-93 at 2-3), "the CDs that you provided do not contain any billing statements – other than the billing statements that you apparently attached to pleadings as exhibits. * * * . . . please provide copies of all your billing statements . . . ."). *See* ¶ 141, *supra*.

146. By letter dated August 10, 2009 (BXN-94 at 1-2), Respondent replied to Bar Counsel's request for copies of his bills to Nunnally, stating, "I have attached hereto copies of billing statements provided Ronda Nunnally. * * * Nunnally was provided billings each month." Respondent sent Bar Counsel a set of consecutive monthly "bills"

running from "Sep-05" (BXN-94 at 3) through "Dec-08" (BXN-94 at 43), except that there is no "bill" for "Oct-08." All of the "bills" bear the headings, "Nunnally v. Phillip Graham and District of Columbia" and "Violation of the Human Rights Act."

147. The "bill" for "Aug-08" that Respondent submitted to Bar Counsel with his cover letter dated August 10, 2009 (BXN-94 at 1-2), bearing the headings described at the end of the previous paragraph, shows a "Total Due" of $98,268.00 (BXN-94 at 40), but four months earlier, with his cover letter to Bar Counsel dated April 13, 2009 (BXN-92 at 1-3), Respondent submitted to Bar Counsel a "bill" that was also for "Aug-08," with identical headings, showing a total due of $222,352.00 (BXN-92 at 14).

148. The "bill" for "Nov-08" (BXN-94 at 42) Respondent submitted to Bar Counsel with his cover letter dated August 10, 2009 (BXN-94 at 1-2) shows a "Total Due" of $97,406.49 (BXN-94 at 42).

149. For no apparent reason, Respondent's "bill" for the very next month – "Dec-08" (BXN-94 at 43) – shows a "Previous Balance" of $114,489.71, and jumps to a new "Total Due" of $115,384.61, even though there are no time charges or expenses incurred shown on that "bill." Furthermore, along with his "Motion to Intervene" in the Graham Lawsuit filed on December 8, 2008, Respondent submitted to the court a completely different "bill"– also for "Dec-08" (BXN-24 at 7) – in the amount of $242,832.34. *See* ¶ 53, *supra*.

150. The Hearing Committee has prepared its own analysis of the sets of "bills" Respondent delivered to Bar Counsel with his letter dated August 10, 2009 (BXN-94), and those he submitted to the ACAB on May 4, 2009 (BXN-104 at 2-41). *See* attached Exhibit A. "Table 1" of Exhibit A demonstrates that except for the first month of his

representation of Nunnally, the "Total Due" in the "bills" Respondent delivered to the ACAB unaccountably grew at a much faster monthly rate than the "bills" Respondent submitted to Bar Counsel, even though "Table 2" of Exhibit A demonstrates that as a general rule the hours and expenses shown on both sets of "bills" were the same for each month. This increasing monthly disparity in "Total Due" continued until the "bills" for "Dec-08," when the $115,384.61 "Total Due" in the version of the "bill" for "Dec-08" Respondent submitted to Bar Counsel inexplicably jumped to match the $115,384.61 "Total Due" shown in the version Respondent delivered three months earlier to the ACAB. Furthermore, the initial ACAB counterclaim amount of $97,755.56 by Respondent (*see* ¶ 159, *infra*) does not correspond to any "Total Due" amount shown in "Table 1" of Exhibit A.

151. Nunnally testified credibly[76] and in detail[77] concerning the many falsehoods in the "bills" Respondent delivered to the ACAB (BXN-104), which generally mirror the "bills" Respondent produced to Bar Counsel (BXN-94). *See* "Table 2" in the attached Exhibit A. The Hearing Committee has deemed Nunnally's detailed testimony about Respondent's "bills" from "Sep-05" through "Jun-07" sufficient to find a lack of veracity running throughout the sets of "bills" Respondent delivered to Bar Counsel and to the ACAB.[78] Without meaning to slight the many other points made by Nunnally in her

[76] "I only communicated with [Respondent] via my e-mail or my cellphone. So I had cellphone bills available to me, and the times that I met with him, they were on my calendar that I kept. As a police officer, we keep a calendar of everything we do. And so I had those calendars available to me . . . ." Tr. 400:9-14 (Nunnally).

[77] The portions of the transcript containing Nunnally's testimony about Respondent's "bills" are Tr. 379-407 and Tr. 457-511, *i.e.*, approximately 80 pages of testimony.

[78] *See also* ¶ 73, *supra*, relating to an improper 4-hour time charge by Respondent for January 31, 2008.

testimony about the "bills," the Hearing Committee believes the following items most readily demonstrate that lack of veracity:[79]

a. The charge on 9/14/2005 (BXN-94 at 3 and BXN-104 at 2) for 4.5 hours of time, plus the charges for mileage and parking, were largely a fabrication. Nunnally actually met with Respondent on September 12, 2005, in a courthouse cafeteria only for about an hour during a lunch break in a trial. Tr. 155:2-16; 380:21-381:3; 385:7-10; 401:11-21 (Nunnally).

b. Respondent double-charged for a praecipe entering his appearance in the Graham Lawsuit, first for 2 hours, and then for an additional hour (BXN-94 at 3 and BXN-104 at 2, duplicated time entries for 9/15/2005). Tr. 381:6-11 (Nunnally).

c. Respondent charged 1 hour of time at the end of September, 2005, for allegedly conferring with Nunnally (BXN-94 at 3 and BXN-104 at 2, time entry for 9/28/2005). There is a pattern that runs throughout the "bills" that Nunnally reviewed with the Hearing Committee of Respondent's charging substantial month-end blocks of time for alleged and vaguely-described conferences with Nunnally.[80] As Nunnally

[79] The following subparagraphs provide cross-citations first to the "bills" Respondent provided to Bar Counsel as BXN-94, and then to the "bills" Respondent delivered to the ACAB as BXN-104.

[80] *See* BXN-94 at 4 and BXN-104 at 3 (2-hour time charge on 10/30/2005); BXN-94 at 5 and BXN-104 at 4 (3-hour time charge on 11/30/2005); BXN-94 at 6 and BXN-104 at 5 (2.5-hour time charge on 12/25/05 (Christmas Day); BXN-94 at 7 and BXN-104 at 6 (2-hour time charge on 1/29/2006); BXN-94 at 8 and BXN-104 at 7 (2-hour time charge on 2/28/2006); BXN-94 at 9 and BXN-104 at 8 (2-hour time charge on 3/30/2006); BXN-94 at 12 and BXN-104 at 11 (2-hour time charge on 6/28/2006); BXN-94 at 13 and BXN-104 at 12 (1-hour time charge on 7/29/2006 – a Saturday); BXN-94 at 14 and BXN-104 at 13 (2-hour time charge on 8/31/2006); BXN-94 at 15 and BXN-104 at 14 (1-hour time charge on 9/27/2006); BXN-94 at 18 and BXN-104 at 17 (10-hour time charge on 12/30/2006); BXN-94 at 19 and BXN-104 at 18 (3-hour time charge on 1/31/2007); BXN-94 at 20 and BXN-104 at 19 (1-hour time charge on 2/26/2007); BXN-94 at 21 and BXN-104 at 20 (2-hour time charge on 3/26/2007); BXN-94 at 27 and BXN-104 at 26 (1.5-hour time charge on 9/29/2007 – a Saturday); BXN-94 at 29 and BXN-104 at 28 (1-hour time charge for "11/31/07" [*sic*; November has only 30 days]; BXN-94 at 36 and BXN-104 at 33 (2-hour time charge on 4/30/2008); and BXN-94 at 39 and BXN-104 at 36 (1.5-hour time charge for 7/30/2008). *See also* Tr. 383:12-13; 386:10-21; 389:6-8; 403:2-404:11; 477:11-17; 483:2-7; 484:2-7; 485:2-7 (noting the lack of a rationale for Respondent to charge 2 hours of "discussion" at the end of August, 2006, when the docket

credibly testified, she had neither the time, nor the resources, nor the inclination to engage in long conversations with Respondent. Tr. 487:2-4; 510:4-11 (Nunnally). Nunnally recalled only one lengthy telephone conversation with Respondent, and her description of that event reflects no credit on Respondent. Tr. 510:18-511:8 (Nunnally).

d. Respondent charged 2.5 hours on 10/6/2005 to "[discuss] options with client" (BXN-94 at 4 and BXN-104 at 3), which did not occur (Tr. 383:3-7 (Nunnally)), and allegedly took place just a week after Respondent's alleged 1-hour general review discussion with Nunnally (BXN-94 at 3 and BXN-104 at 2, time entry for 9/28/2005).

e. Respondent charged mileage on 10/13/2005 for receiving an "Order Granting Mtn to Enlarge Time" (BXN-94 at 4 and BXN-104 at 3), although the docket sheet for the Graham Lawsuit (BXN-4 at 18, docket entry for 10/13/2005) clearly specifies that the Order was mailed. Tr. 383:9-10 (Nunnally).

f. Respondent double-charged on 12/2/2005 for "Receiv[ing] referral to mediation" (BXN-94 at 6 and BXN-104 at 5, time entries for 12/2/2005; the time entries at the beginning of the "bill" for this month are somewhat out of sequence), one for 0.5 hours, and the other allegedly for 2 hours, plus mileage and parking, although Respondent actually received the mediation notice by mail. Tr. 387:14-388:6; 458:12-459:17 (Nunnally).

g. Respondent charged multiple hours for discussion time with Nunnally during December, 2005 (BXN-94 at 6 and BXN-104 at 5), which according to Nunnally's review of her records "did not happen." Tr. 400:2-15 (Nunnally).

---

sheet for the Graham Lawsuit (BXN-4 at 16) reflects nothing was happening in the case from July 7, 2006, to December 19, 2006); 486:15-16 (same observation as the preceding reference for 1 hour of discussion charged on 9/27/2006); 490:22-491:5 (time charge for 12/30/2006); and 498:19-22 (time charge for 3/26/2007) (Nunnally).

h. Respondent charged 1.5 hours on January 10, 2006, for allegedly having "[d]iscussed case with client" (BXN-94 at 7 and BXN-104 at 6), shortly after his alleged Christmas Day 2.5-hour discussion with Nunnally (BXN-94 at 6 and BXN-104 at 5). However, the Graham Lawsuit was then quiescent,[81] and Nunnally had no record of the alleged 1.5-hour conversation. Tr. 466:15-467:2 (Nunnally).

i. Respondent charged 0.5 hour in January of 2006 for reading a "certificate of discovery" (BXN-94 at 7 and BXN-104 at 6, time entry for 1/19/2006), which is a simple, one-sentence document. Tr. 467:14-20 (Nunnally).

j. Respondent charged 1 hour (plus mileage) on 3/20/2006 (BXN-94 at 9 and BXN-104 at 8) for an "Order sua sponte assigning case to Judge Terrell," but the docket in the Graham Lawsuit (BXN-4 at 17) clearly states, "Order Sua Sponte to Reassign Case to Judge Terrell Entered on Docket 3/20/2006. Signed by Judge Alprin 3/17/2006. *Copies mailed*." (Emphasis added.) Tr. 477:1-10 (Nunnally).

k. Respondent's "bill" for "Apr-06" has a specific 2-hour time entry on 4/10/2006 (BXN-94 at 10 and BXN-104 at 9) illogically referring to discussions with Nunnally "throughout the month," but as Nunnally observed and the docket for the Graham Lawsuit reflects, nothing was happening in that case in the period from March 20, 2006, through June 27, 2006. BXN-4 at 17; Tr. 479:17-480:3 (Nunnally).

l. Respondent's "bill" for "May-06" has a specific 1-hour time entry on 5/12/2006 (BXN-94 at 11 and BXN-104 at 10), again illogically asserting that Respondent discussed options with Nunnally "throughout the month"; as pointed out in

[81] The docket in the Graham Lawsuit shows no activity between December 20, 2005, when an Order was entered granting a consent motion filed on December 15, 2005, and January 12, 2006. BXN-4 at 16-17.

the preceding subparagraph "k," nothing was happening in the Graham Lawsuit at that time.

m. Respondent charged 0.5 hour (plus mileage) on 6/27/2006 (BXN-94 at 12 and BXN-104 at 11) for "receiving" a notice of a July 7, 2006, hearing, but the docket in the Graham Lawsuit clearly states, "Notice of Hearing *Mailed Next Business Day*." BXN-4 at 17 (emphasis added); Tr. 482:7-19 (Nunnally).

n. Respondent's pattern of charging large blocks of time at the end of a month has already been noted above in subparagraph "c," but with regard to the 2-hour charge on 6/28/2006 in Respondent's "bill" for "Jun-06" (BXN-94 at 12 and BXN-104 at 11), Nunnally's testimony was particularly specific and emphatic: "I can actually say factually this did not happen. Last night I was going back through the files . . . I have my cell phone bill for June 2006, and I have no phone conversations with [Respondent] for June of 2006." Tr. 483:2-7 (Nunnally).

o. On 7/17/2006, Respondent charged 0.5 hour for "Status hearing forwarded to Smith returned." BXN-94 at 13 and BXN-104 at 12. Nunnally cogently observed, "According to the court docket [BXN-4 at 16], my previous counselor was sent a status of the hearing, and it was returned because their mail address was incorrect. To me, it doesn't make sense why [Respondent] would have taken . . . a half hour to read that." Tr. 483:16-21 (Nunnally). To the Hearing Committee, it also makes no sense that Respondent would even have received notice of that docket entry, so as to be able to charge for it. The time charge in question appears to be better explained – as quite a number of Respondent's charges appear to be – by Respondent's doing an *ex post facto*

review of the docket sheet in the Graham Lawsuit, and then belatedly creating "bills" to match the docket sheet.

p. Respondent charged 2 hours of time on 10/2/2006 (BXN-94 at 16 and BXN-104 at 15) as having "Reviewed the case with client," when five days earlier on 9/27/2006 (BXN-94 at 15 and BXN-104 at 14) he had charged 1 hour of time to do exactly the same thing; furthermore, the docket for the Graham Lawsuit suit indicates nothing substantive occurring between July 7, 2006, and December 19, 2006. BXN-4 at 16; Tr. 487:9-16 (Nunnally).

q. Respondent charged 1 hour of time on 11/5/2006 (BXN-94 at 17 and BXN-104 at 16) as having "Discussed case with client via email and telephone." Nunnally pointed out that November 5, 2006, was a Sunday, and denied the existence of any substantive contact with Respondent on that date. Tr. 488:10-14 (Nunnally).

r. Respondent's "bill" for "Dec-06" (BXN-94 at 18 and BXN-104 at 17) asserts he had 2 hours of discussion with Nunnally on 12/1/2006, and 10 hours of discussion with her and others on 12/30/2006. Nunnally testified, "I have the phone bill for December 2006, and I did not have any conversations with [Respondent] in December of 2006." Tr. 488:21-489:1 (Nunnally).

s. Respondent's "bill" for "Dec-06" (BXN-94 at 18 and BXN-104 at 17) also charges 1 hour of time (plus mileage) on 12/19/2006 for "ADR Notices," but the docket in the Graham Lawsuit for that date states, "ADR Notices Issued Next Business Day" (BXN-4 at 16), and as Nunnally observed, "the ADR notice is simply a date, and he claims it took him one hour to read that." Tr. 490:15-21 (Nunnally).

t. Respondent charged 3 hours of time on 1/6/2007 (BXN-94 at 19 and BXN-104 at 18) for "Review of case and discussed with client," when seven days earlier on 12/30/2006 (BXN-104 at 17) he had charged ten hours of time for alleged discussions with Nunnally and others. Nunnally testified, "I have the cell phone bill, and that did not occur." Tr. 491:11-15.

u. Respondent charged 0.5 hour of time on 1/18/2007 to review a short notice of a forthcoming hearing. BXN-94 at 19 and BXN-104 at 18; Tr. 491:16-19 (Nunnally).

v. Nunnally pointed to Respondent's clearly having created alternative versions of his "bill" for "Feb-07." Tr. 493:3-9 (Nunnally). In a supplemental court filing in the MPA Case on October 28, 2008, Respondent submitted a "bill" for "Feb-07" (BXN-60 at 12) with most of the descriptions of services redacted (s*ee* ¶ 111, *supra*), but delivered to Bar Counsel and to the ACAB an un-redacted version of the "bill" for that month (BXN-94 at 20 and BXN-104 at 19). A comparison of the readable portions of the "bill" for "Feb-07" filed in the MPA Case (BXN-60 at 12) and the clear-text versions (BXN-94 at 20/BXN-104 at 19) delivered to Bar Counsel and to the ACAB shows they are basically the same document, with several startling changes. First, the court filing was captioned, "Nunnally v. DCMPD" and "Workers Comp; HRO; Breach of Contract"; the captions in the version of the "bill" for "Feb-07" that Respondent delivered to Bar Counsel and to the ACAB were changed to read "Nunnally v. Phillip Graham and District of Columbia" and "Violations of the Human Rights Act." Second, the time entry for 2/26/2007 in the court filing was for 3 hours; the time entry for that date in the version delivered to Bar Counsel and to the ACAB was only 1 hour. Third, the "Total Due"

shown in the document Respondent filed with the court was $106,649.58; the "Total Due" shown in the version Respondent delivered to Bar Counsel was $47,344.89; and the "Total Due" in the version Respondent delivered to the ACAB was $54,270.09. In its review of the record in this matter, the Hearing Committee has found few instances where Respondent's willingness to alter and falsify evidence he submitted to tribunals and Bar Counsel is demonstrated so convincingly as the foregoing comparison.

w. Respondent charged 2 hours of time on 3/5/2007 (BXN-94 at 21 and BXN-104 at 20) for an "Opp to Mtn to Intervene"; however, he had previously charged 2 hours of time for the same task on 2/11/2007 (BXN-94 at 20 and BXN-104 at 19). The docket in the Graham Lawsuit indeed reflects the filing of such a document by Respondent on 2/11/2007 (BXN-4 at 16), but not on 3/5/2007 (although Respondent did make several other filings on the latter date (BXN-4 at 15-16)). Tr. 497:14-20 (Nunnally).

152. Bearing in mind Nunnally's credible testimony that Respondent *never* submitted monthly bills to her (*see* ¶ 15, *supra*) and how the amounts of Respondent's "bills" described in ¶¶ 144-51, *supra*, and ¶¶ 154-55; 197, *infra*, vary without any apparent rationale, and that Respondent described his work for Nunnally as being a contingent fee case (*see* ¶¶ 14-15, *supra*), and further considering the substantive problems with the "bills" detailed in ¶ 151, *supra*, the Hearing Committee finds that the "bills" Respondent submitted to Bar Counsel with his letter dated August 10, 2009 (BXN-94 at 1-2; *see* ¶ 146, *supra*) (as well as those he delivered to the ACAB (BXN-104 at 2-41)) were false and fictitious accountings retrospectively fabricated by Respondent, and that Respondent's statement to Bar Counsel that "I have attached hereto copies of

billing statements provided Ronda Nunnally. * * * Nunnally was provided billings each month" (BXN-94 at 1) was a knowingly false statement of fact to Bar Counsel.

(8) The ACAB Arbitration

153. By "Request for Arbitration" dated December 1, 2008 (received by the ACAB on December 3, 2008), BXN-95 at 1, and designated as ACAB case no. 2008-09/036 (*see* BXN-96 at 1), Nunnally initiated a claim for binding ACAB arbitration against Respondent, seeking repayment in the amount of $30,000. The "Statement of Claim" Nunnally filed with the ACAB stated that Respondent "now claims over $229K" (BXN-95 at 3 (fifth paragraph)). Nunnally attached to her ACAB "Statement of Claim" a copy of Respondent's $229,663.14 "bill" for "Feb-06" (BXN-95 at 5),[82] which, however, indicated services rendered by Respondent during June, 2008.[83] Nunnally also attached to her ACAB "Statement of Claim" a tally of all of her payments to Respondent through November 7, 2008 (BXN-95 at 7). Nunnally thereby explicitly placed at issue in the ACAB arbitration all of Respondent's legal fee claims.

154. By letter dated December 29, 2008 (BXN-98), Respondent filed with the ACAB a reply to Nunnally's request for arbitration. Attached to Respondent's ACAB reply (BXN-98 at 3-8) were copies of the six retainer agreements (five of which were the same fabricated documents Respondent had previously submitted to Bar Counsel on December 18, 2008; *see* ¶ 139, *supra*), and Respondent claimed that in connection with all of those agreements Nunnally now owed him more than $250,000 (BXN-98 at 2). To support this claim, Respondent submitted to the ACAB as "Exhibit 7" (BXN-98 at 9) yet

[82] Captioned "Nunnally v. Phillip Graham and District of Columbia" and "Violation of the Human Rights Act."

[83] The $229,663.14 "bill" was attached as "Exhibit 6" to Respondent's "Motion for Award of Pendente Lite Sick Leave Payments" filed in the MPA Case on June 17, 2008 (BXN-57 at 11). *See* ¶ 106, *supra*.

another purported "bill" to Nunnally for "Dec-08,"[84] which he had not previously sent her (Tr. 365:18-366:7 (Nunnally)), this time in the amount of $243,589.84, and showing work on at least five different matters: "DC Superior Court"; "Federal Case"; "MPA Case"; "Virginia Case"; and "Retirement Board" (BXN-98 at 9).

155. The "Total Due" of $243,589.84 specified in the "bill" for "Dec-08" (BXN-98 at 9) described in the preceding paragraph that Respondent submitted to the ACAB on December 29, 2008, is vastly higher than the $115,384.61 "Dec-08" bill (both identically captioned) Respondent submitted to Bar Counsel (BXN-94 at 43), and also differs from the $242,832.34 "bill" for "Dec-08" (BXN-24 at 7) Respondent submitted to the court, on December 8, 2008 along with his "Motion to Intervene" in the Graham Lawsuit (s*ee* ¶ 53, *supra*). Furthermore, while the "Dec-08" bill Respondent submitted to the ACAB on December 29, 2008 (BXN-98 at 9) shows charges for work done on "12/1/2008" and "12/5/2008," the "Dec-08" bill Respondent submitted to Bar Counsel (BXN-94 at 43) shows no such charges, and indicates only that on "12/1/2008" Respondent was "Given Notice by client of termination," and that on "12/31/2009" [*sic*; should have been typed as "2008"] Respondent credited Nunnally for payments made in May and September of 2007. In addition, while the version of the "bill" for "Dec-08" Respondent filed in court on December 8, 2008, with his Motion to Intervene (BXN-24 at 7) shows the sum of $1,000 under the heading "Total Number of Cases and Charges," the version of the "bill" for "Dec-08" submitted by Respondent to the ACAB three weeks later on December 29, 2008 (BXN-98 at 9) shows the sum of $1,300 under that heading, and adds two more cases for which charges are being made.

[84] Like the other versions of Respondent's "bills" for "Dec-08" (BXN-94 at 43 and BXN-24 at 7), the version submitted to the ACAB by Respondent on December 29, 2008 (BXN-98 at 9) is also captioned "Nunnally v. Phillip Graham and District of Columbia" and "Violation of the Human Rights Act."

156. Respondent's December 29, 2008, letter to the ACAB advised (BXN-98 at 2) that he had filed a motion to intervene in the Graham Lawsuit to assert his fee claim (BXN-24 at 7, for $242,832.34), and had "given NOTICE to the other courts of my intent to do so" (capitals in original). He therefore asked the ACAB to decline jurisdiction "per ACAB Rule 4(1)," and defer to the courts to resolve Nunnally's claims. *Id*. There is no indication, however, that Respondent advised the ACAB when, only seven days after his letter, Judge Combs Greene on January 5, 2009, denied his motion to intervene in the Graham Lawsuit (BXN-25 at 1). Furthermore, given the language of ACAB Rule 4(1),[85] Respondent's request to defer the ACAB arbitration was tenuous at best.

157. By letter dated February 1, 2009 (BXN-100), Nunnally answered Respondent's December 29, 2008, letter to the ACAB, advising, *inter alia*, that contrary to Respondent's representations to the ACAB, she had signed only one retainer agreement with Respondent, and that Respondent had fabricated the other retainer agreements he submitted to the ACAB. BXN-100 at 1-3; Tr. 365:10-17 (Nunnally). The Hearing Committee has found to be credible Nunnally's testimony concerning Respondent's "fabrication" of the additional "retainer agreements" that he submitted to

[85] At the time Respondent submitted his December 29, 2008, letter to the ACAB, Section 4(1) of the ACAB's Fee Arbitration Service Rules of Procedure provided (emphasis added):

> 4. Coordination with other dispute resolving agencies: The ACAB *may* decide not to arbitrate a dispute over legal fees if the case involves something normally handled by a court or another agency. The ACAB *may* decide that proceeding with the arbitration could interfere with or prejudice some aspect of the matter when handled elsewhere, or it may decide not to arbitrate the dispute for other good reason.
>
> > (1) *If there is a pending lawsuit in a court about a fee dispute and the client files a petition involving the same fee dispute with the ACAB* or the lawyer files such a petition accompanied by a valid agreement with the client to arbitrate fee disputes, *the ACAB will normally retain jurisdiction and proceed to adjudicate the fee dispute* unless the petition is voluntarily dismissed. On a showing of good cause why the dispute should be handled by a court (e.g. the matter is before the Bankruptcy Court) the ACAB will stay or dismiss a pending petition.

Bar Counsel (*see* ¶ 139, *supra*), and therefore finds that the "retainer agreements" with Nunnally – other than the original one she signed on September 12, 2005 (BXN-7) – which Respondent submitted to the ACAB (BXN-98 at 3-8) were also knowingly false and fictitious.

158. On February 27, 2009, the ACAB advised Respondent and Nunnally by letter of the identity of the arbitrators selected to hear the ACAB case, enclosed resumes of the panel members, and provided the parties with 10 days within which to object to any of the designated arbitrators. BXN-116 at 3. By letter dated March 13, 2009 (BXN-102), sent via certified mail/return receipt requested, the ACAB advised Respondent and Lescht (who was then acting as Nunnally's counsel in the ACAB arbitration (Tr. 368:8-13 (Nunnally)) that the arbitration hearing would be held on May 5, 2009, and advised the parties that the ACAB's rules require any written materials to be presented to the arbitrators must be filed with the ACAB and served on the opposing parties "at least 10 (ten) days before the hearing" (BXN-102 at 2; emphasis in original). The ACAB's March 13, 2009, letter again clearly identified the individuals who were designated to serve as arbitrators (*id.*). Respondent raised no objection to the composition of the arbitration panel. Tr. 369:7-9 (Nunnally).

159. By letter dated May 4, 2009 (BXN-104 at 1), Respondent advised the ACAB that his counterclaim for $97,755.56 previously filed with the ACAB was being "updated," and he delivered to the ACAB a set of "bills" similar to those he later submitted to Bar Counsel on August 10, 2009 (BXN-94; *see* ¶ 146, *supra*). Because Respondent's exhibits were submitted on the evening before the arbitration hearing, an issue arose at the hearing as to whether those documents could be considered by the

arbitrators, or whether a continuance was needed, which was resolved by Respondent's withdrawing the exhibits and electing to proceed with "bills" already submitted to the ACAB by Respondent and Nunnally. Tr. 512:4-513:3 (Nunnally); 769:17-770:10 (Lescht). *See*, "bill" submitted by Respondent (BXN-98 at 9) in the amount of $243,589.84, and "bill" submitted by Nunnally (BXN-96 at 6) showing a total due of $229,663.14.

160. On May 5, 2009, the arbitrators in ACAB case no. 2008-09/036 issued their "Decision & Award" (BXN-107 at 2), directing Respondent to re-pay Nunnally the sum of $11,000 by 5:00 P.M. on June 5, 2009. By letter dated May 11, 2009, the ACAB sent copies of the arbitrators' Decision & Award to Respondent and Nunnally, advising them that the award was final, binding, and enforceable in court (BXN-107at 1).

161. Respondent has never paid any of the $11,000 awarded to Nunnally in the ACAB arbitration. Tr. 513:19-20; 515:16-516:6; 518:5-22 (Nunnally).

(9) The "Confirmation Litigation"[86]

162. After the June 5, 2009, payment date for the $11,000 specified in the ACAB arbitration award had passed (BXN-107 at 2), on June 11, 2009, Nunnally filed a *pro se* Complaint (BXN-159) in Superior Court against Respondent, designated as Superior Court civil action no. 2009 CA 4233 (BXN-158 at 1), to confirm the arbitration award as a judgment of the court.[87]

[86] The proceedings described in this Subsection II(A)(9) consist of Nunnally's successful suit in Superior Court to enforce the ACAB arbitration award, and the ensuing appeal which affirmed the Superior Court's judgment. That suit and the ensuing appeal are hereinafter collectively referred to as the "Confirmation Litigation."

[87] The court granted Nunnally leave to proceed *in forma pauperis*. BXN-158 at 3 (docket entry for 06/11/2009).

163. On June 24, 2009, the Superior Court entered an Order giving Respondent until July 24, 2009, to file a response to Nunnally's Complaint for confirmation of the ACAB arbitration award. BXN-160.

164. On July 31, 2009, Respondent filed a "Motion to Dismiss The Complaint." BXN-161.[88] The memorandum Respondent submitted in support of his motion admitted that the ACAB award "discharged Nunnally from having to pay [Respondent's] legal fees of $221,558" (BXN-161 at 6 at ¶ 11), but Respondent's motion and memorandum contained a number of knowingly false statements of fact to the court, as well as several procedural problems:

a. Respondent knowingly and falsely stated to the court that certain unnamed agents of the District of Columbia had offered Nunnally a comprehensive settlement requiring her to file a Bar Complaint against Respondent. BXN-161 at 6 at ¶¶ 7 and 9. However, there was no such offer or settlement. *See* ¶¶ 58; 61; 142, *supra*.

b. Respondent stated that he had already filed a suit against Nunnally in Superior Court seeking "de novo review" of the ACAB arbitration award, but knowingly and falsely stated to the court that Nunnally had failed to answer his suit. BXN-161 at 7 at ¶ 13. Respondent failed to inform the court that on June 19, 2009 – well prior to the date of Respondent's motion – Nunnally had filed a "Motion to Quash Service and Dismiss Complaint" in that suit (BXN-112). *See* ¶ 223, *infra*.[89]

[88] Respondent attempted to file a motion on July 24, 2009, which was rejected by the Superior Court Clerk's Office because he failed to tender the required $20 filing fee for his motion. BXN-161 at 3.

[89] As noted in ¶ 235, *infra*, the court sustained Nunnally's motion to quash service of process.

c. For the reasons set forth in ¶¶ 144-52, *supra*, Respondent's claim (BXN-161 at 5-6 at ¶ 6) that as of November 28, 2008, Nunnally owed him $221,558 was a knowingly false statement of fact to the court.

d. Contrary to the language of Respondent's Certificate of Service at the end of the Motion to Dismiss (BXN-161 at 11), Respondent did not serve Nunnally with his motion. Tr. 517:2-8; 565:21-566-2; 572:11-22; 666:17-667:2 (Nunnally).

e. Respondent's motion placed in the public record direct quotations of privileged attorney-client communications with Nunnally. BXN-161 at 5 at ¶ 5.

165. The memorandum submitted by Respondent in support of his motion to dismiss Nunnally's Complaint also argued that the ACAB arbitration award violated his rights to equal protection and due process (BXN-161 at 6-7 at ¶ 12); that he had a "charging lien" (BXN-161 at 8-10), even though the ACAB arbitration award ordering him to refund $11,000 to Nunnally eliminated any legal or factual foundation for claiming a lien; and that under the theory of "first in time, first in right," because he had filed his suit against Nunnally[90] before she filed suit to confirm the ACAB arbitration award, his suit had priority and any relief sought by Nunnally had to be pursued in the context of the case Respondent had filed (BXN-161 at 10-11).

166. By Order dated August 3, 2009, Judge Hamilton of the Superior Court confirmed the ACAB arbitration award, and entered judgment in favor of Nunnally for $11,000 plus post-judgment interest. BXN-162.

167. In a separate Order, also dated August 3, 2009, Judge Hamilton denied Respondent's "Motion to Dismiss The Complaint." BXN-163.

[90] *See* Section II(A)(11), *infra*.

168. More than 18 months[91] after Judge Hamilton's order confirming the ACAB arbitration award, on February 17, 2011, Respondent filed in the Confirmation Litigation a "Motion to Vacate the Order Confirming the ACAB Award, and to Restore the Case to the Active Docket for a Decision on the Merits." BXN-164. The rationale Respondent advanced for this belated action was that Nunnally allegedly had "procured the confirmation by fraud on the court[.]" BXN-164 at 1. Respondent's motion failed to inform the court that there was then pending before the Court of Appeals a motion by Nunnally (BXN-144) for summary affirmance of a ruling by Superior Court Judge Josey-Herring (BXN-137) dismissing Respondent's separate lawsuit challenging the ACAB arbitration award. (On February 28, 2011 – only 9 days after Respondent filed his Motion to Vacate in the Confirmation Litigation – the Court of Appeals granted Nunnally's motion for summary affirmance (BXN-147), a fact that Respondent also did not bring to the attention of the court.)

169. Respondent did not timely serve Nunnally with a copy of his "Motion to Vacate" (BXN-164), and belatedly provided her with only portions of that filing. Tr. 669:12-21; 670:7-13 (Nunnally).[92]

170. On February 28, 2011, Nunnally (*pro se*) filed an "Emergency Motion for Protective Order or In the Alternative Motion to Strike." BXN-166. Nunnally stated that "[Respondent] filed the Motion and its attachments for the sole purpose of intimidating,

[91] *See* BXN-158 at 2 (Superior Court docket in the Confirmation Litigation showing no substantive entries between August 4, 2009, and February 17, 2011).

[92] In the pleading discussed in the next paragraph, Nunnally detailed Respondent's many other failures to serve her with copies of his court filings. BXN-166 at 9.

harassing,[93] and following through on [his] threat to harm"[94] her (BXN-166 at 17). The memorandum Nunnally submitted in support of her motion noted first that Respondent's "Motion to Vacate" was untimely. BXN-166 at 3. Nunnally's memorandum also noted Respondent's consistent habit of not serving her with his pleadings, and not complying with the requirements of Sup. Ct. Civ. R. 12-I concerning consultation with the opposing party before filing a motion. BXN-166 at 9. The memorandum further pointed out (BXN-166 at 17) that Judge Josey-Herring of the Superior Court had already twice denied Respondent the relief he was now seeking for a third time in the Confirmation Litigation through his belated "Motion to Vacate"[95] – facts that Respondent's "Motion to Vacate" concealed from the court. Most importantly, Nunnally's memorandum detailed the personal medical records and the many documents subject to the attorney-client privilege that Respondent had publicly filed with his belated "Motion to Vacate" in the Confirmation Litigation (BXN-166 at 13-15; Tr. 670:7-13 (Nunnally)), and advised the court that Respondent had made similar public disclosures of this confidential

[93] Nunnally brought to the court's attention an Order issued on December 6, 2004, by Judge Williams of the United States District Court for the District of Maryland (BXN-166 at 46-48) in which Respondent was sanctioned in the amount of $3,000 for being a "vexatious and serial [litigant]." Judge Williams expressed the hope that the sanction "will be sufficient to deter [Respondent] from future frivolous filings" (BXN-166 at 47). The federal court's finding that Respondent was a "serial" litigant has a substantial foundation. S*ee* cases collected in BXN-167 at n.12 and BXN-172 at 2 at nn.1 and 2. The District Court's judgment was affirmed by the United States Court of Appeals for the Fourth Circuit (BXN-131 at 34-35).

[94] *See* ¶¶ 50-51, *supra*.

[95] In his own lawsuit against Nunnally, on August 13, 2009, Respondent filed an initial "Motion to Vacate" (BXN-119) which was dismissed on December 18, 2009, for failure to prosecute (BXN-108 at 4; docket entry for 12/18/2009). Respondent was later able to file a second motion to vacate the ACAB arbitration award on July 30, 2010 (BXN-130), which was again denied by Order dated October 21, 2010 (BXN-136). In ruling on Respondent's second motion to vacate confirmation of the ACAB arbitration award, Judge Josey-Herring wrote, "Plaintiff's remedy to contest the confirmation of the ACAB award was to either file an appeal in the D.C. Court of Appeals or file a Motion to Vacate before Judge Hamilton." Judge Josey-Herring then denied Respondent's motion to vacate because Respondent had neither appealed Judge Hamilton's August 3, 2009, Order confirming the ACAB arbitration award within the 30 days permitted by D.C. Ct. App. R. 4(a)(1), nor filed a motion to vacate that Order within the 1-year period provided for in D.C. Super. Ct. R. 60(b). BXN-136 at 2.

information in his prior suit against Nunnally, resulting in a protective order (BXN-135) being issued in that case on September 14, 2010.[96]

171. On February 28, 2011, Nunnally also filed a separate Opposition to Respondent's belated "Motion to Vacate" in the Confirmation Litigation. BXN-167.

172. On April 29, 2011, Judge Iscoe of the Superior Court denied Respondent's motion to vacate the ACAB arbitration award. BXN-168. Judge Iscoe ruled:

a. "[T]he ACAB did not in any way deviate from" its rules and regulations. BXN-168 at 4.

b. As a matter of public policy, D.C. Bar Rule XIII requiring binding arbitration (*see* n.16, *supra*) took precedence over any contrary language in Respondent's retainer agreement with Nunnally concerning non-binding arbitration. *Id*. at 5.

c. Judge Hamilton had jurisdiction to enter the August 3, 2009, Order confirming the ACAB arbitration award. *Id*.

d. Respondent had "failed to submit even a scintilla of evidence substantiating his claim" that Nunnally had obtained confirmation of the ACAB arbitration through fraud. *Id*.

173. Respondent's "Motion to Vacate" (BXN-164) accusing Nunnally of "fraud on the court" (BXN-164 at 1) – without producing "even a scintilla of evidence substantiating his claim" as found by Judge Iscoe[97] – lacked any basis in law and fact, and was therefore frivolous. Respondent's motion was also vexatious, dilatory, and harassing because it sought substantive relief that he had already been denied. *See* ¶ 168, *supra*, and ¶ 248, *infra*.

[96] Filed on September 15, 2010.

[97] And affirmed by the Court of Appeals; *see* ¶ 189(c), *infra*.

174. Also on April 29, 2011, Judge Iscoe entered a second Order, granting Nunnally's request for a protective order. BXN-169. The court stated that Respondent's motion to vacate Judge Hamilton's ruling "included a number of documents as evidence of communications between himself and [Nunnally]" (BXN-169 at 1), that many of the attached documents were "wholly irrelevant to the parties dispute over attorney fees" (*id*. at 2-3), and that they disclosed "very sensitive medical[98] and personal information that is not at all germane to this matter" (*id*. at 3). The court concluded (*id*.):

> Submission of these documents without redaction is a clear violation of Rule 1.6(e)(5) of the D.C. Rules of Professional Conduct. * * * All of the exhibits that the Court deems to be in violation of attorney-client privilege shall be stricken from the record.

Judge Iscoe further expressly barred Respondent (*id.*):

> . . . from submitting any further evidence that is (1) not germane to the instant fee dispute and/or (2) in violation of attorney-client privilege as provided in Rule 1.6(e)(5) of the D.C. Rules of Professional Conduct (i.e. containing information about [Nunnally's] emotional, mental or medical condition that has not been properly redacted).

175. The public filing of Nunnally's medical information in Respondent's Motion to Vacate, which Judge Iscoe found was "not at all germane to [the] matter" – and long after Judge Combs Greene had reminded Respondent of his duty to protect such information from public disclosure (BXN-23 at 18) – had no substantial purpose other than to embarrass Nunnally.

176. On May 12, 2011, Respondent filed a Notice of Appeal from the Orders of Judge Iscoe described in ¶¶ 173-74. BXN-170. The appeal was designated by the Court of Appeals as appeal no. 11-CV-0690. BXN-174.

---

[98] As noted in ¶ 46, *supra*, on October 2, 2008, Judge Combs Greene had already admonished Respondent in the Graham Lawsuit (BXN-23 at 18) about the need to take proper action to safeguard Nunnally's medical information from public disclosure.

177. Respondent's Notice of Appeal represented to the Court that he had "timely appealed the order entered by Judge Hamilton" (BXN-170 at 1 at ¶ 2), and in support of that representation Respondent attached as "Exhibit 3" (BXN-170 at 6-7) a purported notice of appeal from Judge Hamilton's August 3, 2009, Order, with a certificate of service dated "August 14, 2009." The Superior Court docket in the Confirmation Litigation, however, shows that no such a filing was made by Respondent (BXN-158 at 2); "Exhibit 3" bears no markings indicating it was filed in court; and both Judge Iscoe (BXN-169 at 1) as well as Judge Josey-Herring (BXN-136 at 2) explicitly found that Respondent had not made such a filing. Respondent's statement to the Court that he had "timely appealed the order entered by Judge Hamilton," and Respondent's "Exhibit 3" (BXN-170 at 6-7) attached to the Notice of Appeal, were therefore knowingly false statements of fact to the Court.[99]

178. Also on May 12, 2011, Respondent submitted to the Superior Court in the Confirmation Litigation a motion (BXN-171) seeking reconsideration of the protective order entered by Judge Iscoe on April 29 2011 (BXN-173). *See* ¶ 174, *supra*.[100] The rationale of Respondent's request for reconsideration was that Nunnally's February 28,

[99] Additional support for this finding of fact is present in Respondent's motion to vacate the ACAB arbitration award that he filed on July 30, 2010, in litigation before Judge Josey-Herring. BXN-130. In his motion Respondent argued that Judge Hamilton's confirmation Order should be vacated because, "There is no indication on the docket that this judgment was mailed to [Respondent] . . . and [Respondent] proffers that he did not receive a copy from the Clerk of the Court via the United States Mail." BXN-130 at 12 at ¶ 25. It strains credulity to entertain the notion that Respondent did not receive a copy of Judge Hamilton's August 3, 2009, Order, but nevertheless "timely appealed" that Order and served his notice of appeal on "August 14, 2009." It likewise strains credulity that Respondent would not have argued to Judge Josey-Herring that he had already filed a notice of appeal from Judge Hamilton's Order if in fact Respondent had served such a document on "August 14, 2009." Furthermore, although Respondent later again contended to the Court of Appeals in the Confirmation Litigation that he "timely filed a Notice of Appeal" (BXN-181 at 8 at ¶¶ 19-20), the Court's Judgment affirming Judge Iscoe's Orders (BXN-182) gave no credence to Respondent's contention.

[100] Respondent's May 12, 2011, motion did not seek reconsideration of Judge Iscoe's other Order entered on April 29, 2011, denying Respondent's motion to vacate confirmation of the ACAB arbitration award.

2011, motion for a protective order (BXN-166) had not been properly filed. *See* BXN-171 at 5-6. In an Opposition filed on May 12, 2011 (BXN-170), Nunnally challenged the veracity of Respondent's motion for reconsideration by pointing out that, as in many other instances, Respondent had not served her with a copy of his motion for reconsideration. BXN-172 at 13; BXN-218 at 1-2 (e-mail dated September 13, 2010, from Nunnally to Respondent); Tr. 677:1-21; 678:7-679:2 (Nunnally).

179. By Order dated June 8, 2011 (BXN-173), Judge Iscoe denied Respondent's motion for reconsideration, ruling that Nunnally's "Emergency Motion for Protective Order or In the Alternative Motion to Strike" was properly filed on February 28, 2011.

180. On June 21, 2011, Nunnally (still acting *pro se*) filed with the Court of Appeals in the Confirmation Litigation a motion to dismiss Respondent's appeal, or in the alternative for summary affirmance. BXN-175. The Certificate of Service at the end of Nunnally's motion stated that it was served on Respondent by mail using U.S. Postal Service tracking no. "9101010521297388909843." BXN-175 at 27.

181. On July 25, 2011, Respondent filed in the Court of Appeals a "Motion to Strike Appellee's [*i.e.*, Nunnally's] Motion for Summary Affirmance or In the Alternative to Compel Appellee to Serve the Appellant" (BXN-176), representing to the Court that Nunnally failed to serve him with a copy of her June 21, 2011, motion to dismiss/motion for summary affirmance.[101] Respondent's motion stated that his address was "1629 K St., NW, Ste. 300, Washington, D.C." BXN-176 at 2.

[101] On August 9, 2011, perhaps relying on the facial veracity of Respondent's July 25, 2011, "Motion to Strike," the Court of Appeals entered an Order directing Nunnally to serve Respondent, pending which Nunnally's motion to dismiss/motion for summary affirmance would be held in abeyance. BXN-174 at 1 (docket entry for 08/09/2011).

182. On August 11, 2011, Nunnally filed with the Court of Appeals in the Confirmation Litigation an "Affidavit of Service of Process." BXN-177. Nunnally's Affidavit of Service of Process averred that, "On June 21, 2011, I mailed by US mail (receipt no. 9101010521297388909843) an envelope containing a copy of the Motion and Attachments to E. Scott Frison, Esq., 1629 K St NW, #300 Washington, DC." Nunnally's attached to her Affidavit of Service of Process as exhibits copies of the U.S. Postal Service documents for tracking no. 9101010521297388909843 (*see* ¶ 180, *supra*) demonstrating that on June 24, 2011, U.S. Postal Service tracking no. 9101010521297388909843 was delivered to Respondent's office address at "1629 K St NW STE 300, Washington DC." BXN-177 at 4-6.

183. The U.S. Postal Service tracking documents attached to Nunnally's Affidavit of Service of Process establish that the assertion in Respondent's July 25, 2011, "Motion to Strike Appellee's Motion for Summary Affirmance or In the Alternative to Compel Appellee to Serve the Appellant" (BXN-176) that Nunnally failed to serve him with a copy of her June 21, 2011, motion to dismiss/motion for summary affirmance was a knowingly false statement of fact to the Court. *See also* ¶ 184, *infra* (Order entered by the Court on October 21, 2011, finding that the issue of service of Nunnally's motion for summary affirmance was resolved). Furthermore, the U.S. Postal Service tracking documents establish that Respondent's "Motion to Strike Appellee's Motion for Summary Affirmance or In the Alternative to Compel Appellee to Serve the Appellant" (BXN-176) had no substantial purpose other than to delay the Court's consideration of Nunnally's motion to dismiss/motion for summary affirmance.

184. On September 7, 2011, Respondent lodged with the Court in the Confirmation Litigation a "Supplement to Motion to Strike" Nunnally's motion for summary affirmance. BXN-174 at 1 (docket entry for 09/07/2011). By per curiam Order dated October 21, 2011, in the Confirmation Litigation, the Court of Appeals rejected Respondent's September 7, 2011, lodged filing, on the ground that the issue of service of Nunnally's motion to dismiss/motion for summary affirmance was resolved, and directed Respondent to respond to Nunnally's motion to dismiss/motion for summary affirmance within 15 days from the date of the Court's Order. BXN-178.

185. Rather than following the Court's directive to respond substantively to Nunnally's motion to dismiss/motion for summary affirmance, on October 26, 2011, Respondent filed with the Court in the Confirmation Litigation a "Motion to Sanction the Appellee [Nunnally] for Abuse of Litigious [*sic*] Process and Fraud on the Court." BXN-179. The memorandum Respondent submitted in support of his "Motion to Sanction" alleged that the "Affidavit of Service" filed by Nunnally (BXN-177) was an "intentional misrepresentation." BXN-179 at 4.

186. On November 2, 2011, Nunnally filed an Opposition (BXN-180) to Respondent's "Motion to Sanction." *Inter alia*, Nunnally's Opposition contended that Respondent's "Motion to Sanction" was non-credible. In support of that contention, Nunnally noted (BXN-180 at 7 at ¶ 17) that while Respondent claimed to have given her e-mail notice of intention to file his sanction motion on October 25, 2011 (BXN-179 at 1 – "Certificate of Consent"), his actual e-mail was sent one day later on October 26, 2011 (BXN-180 at 20), and that while Respondent claimed to have served Nunnally with his

sanction motion on October 26, 2011 (BXN-179 at 9), the envelope she received from Respondent was postmarked two days later October 28, 2011 (BXN-180 at 23).[102]

187. The "Motion to Sanction the Appellee for Abuse of Litigious [*sic*] Process and Fraud on the Court" (BXN-179) that Respondent filed with the Court had no substantial purpose other than to delay Respondent's having to file a substantive response to Nunnally's motion to dismiss/motion for summary affirmance in the Confirmation Litigation, inasmuch as Respondent's motion was summarily rejected by the Court. BXN-182 at 1.[103]

188. On November 14, 2011, Respondent filed with the Court in the Confirmation Litigation a "Motion to File Opposition Out To [*sic*] Time" (BXN-181),[104] and lodged along with his motion an Opposition to Nunnally's motion to dismiss/motion for summary affirmance. Respondent's Opposition contained three knowingly false statements of fact to the Court, and had several substantive problems:

a. Despite Judge Iscoe's finding that Respondent had "failed to submit even a scintilla of evidence substantiating his claim" of fraud (BXN-168 at 5), Respondent's lodged Opposition once again – without any factual foundation – knowingly and falsely accused Nunnally of fraud in having the ACAB arbitration award confirmed. BXN-181 at 8-10. *See* ¶ 189(c), *infra*.

---

[102] At the same time as he filed his "Motion to Sanction the Appellee for Abuse of Litigious Process and Fraud on the Court" (BXN-179) in the Confirmation Litigation, Respondent filed with the Court a similarly captioned motion for sanctions in a different appeal. *See* BXN-180 at 7-8 at ¶ 17; BXN-180 at 22-25 (duplicate – but slightly different – certificates of service and mailing envelopes from Respondent); and BXN-180 at 20 (e-mail from Respondent referring to "two (2) court of appeals cases pending").

[103] On February 28, 2011, the Court of Appeals had already granted (BXN-147) a similar motion by Nunnally for summary affirmance, upholding Judge Hamilton's judgment confirming the ACAB arbitration award.

[104] Respondent's motion asserted that the delay in his filing an Opposition to Nunnally's motion to dismiss/motion for summary affirmance was due to his medical condition. BXN-181 at 1, 4.

b. Respondent's lodged Opposition asserted that the ACAB lacked jurisdiction over Nunnally's demand for arbitration because the statute of limitations on her claim for a refund against Respondent had run (BXN-181 at 10-11) – a frivolous argument lacking any basis in law and fact because Nunnally filed her arbitration claim for ACAB arbitration on or about December 2, 2008 (BXN-95), within days after discharging Respondent on November 28, 2008 (BXN-86 at 8).

c. Respondent's lodged Opposition – ignoring Judge Iscoe's protective order expressly barring him from "submitting any further evidence that is . . . in violation of attorney-client privilege as provided in Rue 1.6(e)(5) of the D.C. Rules of Professional Conduct" (BXN-169 at 3) – once again placed in a public document exhibits and quotations containing privileged attorney-client communications. BXN-181 at 6.

d. Respondent once again knowingly and falsely stated to the Court (*see* ¶ 164(a), *supra*) that Nunnally had entered into some kind of lucrative settlement with unnamed agents of the District of Columbia. BXN-181 at 7 at n.4.

e. Respondent once again knowingly and falsely stated to the Court (BXN-181 at 6 at ¶ 3) that he was owed $221,558 for "fees incurred" during the period "from September 12, 2005 to November 28, 2008." *See* ¶¶ 53; 164(c), *supra*.

189. In a Judgment dated December 2, 2011,[105] that contained only one substantive paragraph (BXN-182 at 1), the Court of Appeals rejected all of Respondent's

[105] The Specification in the Nunnally Case ends its description of the Confirmation Litigation with Respondent's motion and lodged Opposition, as described in the preceding paragraph. BXN-2 at 30 at ¶ 142. *See* n.40, *supra*, regarding the relevance of events occurring after November, 2011, and their consideration as aggravating circumstances in the Hearing Committee's sanction recommendation.

contentions and granted Nunnally's motion for summary affirmance, holding:[106]

a. Because Respondent's February 17, 2011, motion to vacate Judge Hamilton's Order of August 3, 2009, confirming the ACAB arbitration award was not filed within the one-year period provided by Super Ct. Civ. R. 60(b), Judge Iscoe did not err in denying Respondent's motion to vacate.

b. Judge Iscoe did not err in finding that the ACAB had acted properly under its own rules.

c. Respondent had failed "to substantiate that [Nunnally] committed fraud."

d. Judge Iscoe did not err in entering a protective order (BXN-169) pursuant to Rule 1.6(e)(5) of the D.C. Rules of Professional Conduct to seal documents that contained personal information of Nunnally unrelated to Respondent's underlying claim.

190. Respondent's Opposition submitted to the Court in response to Nunnally's motion to dismiss/motion for summary affirmance, in which he once again accused Nunnally of fraud in having the ACAB arbitration award confirmed (BXN-181 at 8-10) – while failing, as the Court found (BXN-182 at 1) – "to substantiate that [Nunnally] committed fraud," lacked any basis in law and fact, and was therefore frivolous.

191. On January 5, 2012, Respondent lodged with the Court in the Confirmation Litigation a motion for extension of time to request a rehearing or rehearing en banc (BXN-183 at 12-19), and on January 27, 2012, Respondent lodged additional pleadings in support of that request (BXN-174 at 2; docket entries for 01/05/2012 and 01/27/2012).

[106] Procedurally, the Judgment granted Respondent's motion (BXN-181) to late-file an opposition to Nunnally's motion to dismiss/motion for summary judgment, and denied his motion (BXN-179) to sanction Nunnally. BXN-182 at 1.

On January 31, 2012, the Court granted Respondent's motion for extension of time and accepted his pleadings for filing (*id*.; docket entries for 01/31/2012).

192. Respondent's memorandum in support of his motion for rehearing/rehearing en banc argued first (BXN-183 at 15-17) that his retainer agreement with Nunnally took precedence over D.C. Bar Rule XIII, citing *Bolton v. Katz,* 954 A.2d 953 (D.C. 2008), a case Respondent had already argued to the Court (BXN-181 at 11) in his Opposition to Nunnally's motion to dismiss/motion for summary affirmance. Respondent asserted next that the actions of Judge Hamilton and the ACAB were procedurally defective (BXN-183 at 17-19), arguments which Respondent had previously presented in his Opposition to Nunnally's motion to dismiss/motion for summary affirmance (BXN-181 at 7-8).

193. On March 16, 2012, the Court of Appeals denied Respondent's motion for a rehearing/rehearing en banc; neither the merits panel nor any other judge of the Court found further consideration of the Confirmation Litigation to be warranted. BXN-184.

194. Because Respondent's motion for rehearing raised only questions he had presented or could have presented in his Opposition (BXN-181 at 5-12) to Nunnally's motion for summary affirmance in the Confirmation Litigation, Respondent's motion for rehearing/rehearing en banc had no substantial purpose other than to attempt to delay the finality of the Court's granting Nunnally's motion for summary affirmance.

(10) <u>The Bankruptcy Proceeding</u>

195. On September 29, 2009, approximately 9-1/2 months after discharging Respondent as her attorney,[107] Nunnally filed in the United States Bankruptcy Court for the District of Maryland a bankruptcy petition under Chapter 7 of the federal bankruptcy

[107] November 28, 2008; *see* BXN-86 at 8.

laws, designated as case no. 09-28276 (hereinafter referred to as the "Bankruptcy Proceeding"). BXN-185 at 1; BXN-186.

196. Nunnally's bankruptcy petition showed her sole source of income as monthly MPD retirement pay[108] (BXN-186 at 31); assets consisting solely of personal property valued at $15,265, $11,000 of which was the ACAB arbitration award against Respondent (BXN-186 at 19-22); no creditors with secured or priority claims (BXN-186 at 23-24); and miscellaneous debts of $331,641.04 (BXN-186 at 25-28), including $225,000 listed as a claim by Respondent that Nunnally disputed (BXN-186 at 27). Nunnally listed Respondent as a creditor in order to ensure that she would receive the protection of a bankruptcy discharge from any claims Respondent might make against her. Tr. 591:11-17; 592:10-17 (Nunnally).

197. On October 27, 2009, Respondent filed an initial Proof of Claim in the Bankruptcy Proceeding, falsely stating to the bankruptcy court that Nunnally owed him $221,558 as a purportedly secured claim based on a "charging lien," with security consisting of a "Settlement/Pension" of $750,000. BXN-187.[109] Respondent's proof of claim was a knowingly false statement because attached to the Proof of Claim was an affidavit by Respondent with an "Exhibit 3" (BXN-187 at 37) constituting a fabricated *fourth* version of his "bill" for "Dec-08," this time in the amount of $221,558.[110] While the time entries on this fourth version of the "bill" are the same as the $242,832.34

[108] *See* ¶¶ 61 and 77, *supra*.

[109] Respondent's Proof of Claim also averred that he had represented Nunnally "[f]rom September 12, 2005 to December 1, 2008" at an hourly charge of $250. BXN-187 at 2 at ¶ 2.

[110] One prior version of this "bill" provided to Bar Counsel as BXN-94 at 43 was for $115,384.61; another version that Respondent filed in court as BXN-24 at 7 in support of his motion to intervene in the Graham Lawsuit was for $242,832.34; and the third version, provided to the ACAB by Respondent with his letter dated December 29, 2008 (BXN-98 at 9), was for $243,589.84.

version filed in court as part of Respondent's December 8, 2008, motion to intervene in the Graham Lawsuit (BXN-24 at 7), the fourth/bankruptcy court version does not have the listing for "Total Number of Cases and Charges" that is in the version Respondent filed with his motion to intervene. Furthermore, while the "Total Monthly Bill" amount at the end of Respondent's fourth/bankruptcy court version of his "bill" for "Dec-08" (BXN-187 at 37) is "$3,048.00," the "Total Monthly Bill" in the version filed with Respondent's motion to intervene in the Graham Lawsuit (BXN-24 at 7) was "$2,848.00."[111] Also attached to Respondent's affidavit as "Exhibit 1" was a fabricated re-creation of his original retainer agreement with Nunnally (BXN-187 at 4), which he had previously used in a lawsuit against Nunnally; *see* ¶¶ 218 and 238, *infra*.

198. In addition to filing in the Bankruptcy Proceeding a fabricated fourth version of his "bill" to Nunnally for "Dec-08," Respondent's affidavit made the following false statements of fact to the bankruptcy court:

a. Nunnally was indebted to him for hourly fees. Nunnally credibly testified to the Hearing Committee – and Respondent represented to the Court of Appeals – that Respondent's work was basically done on a contingent fee basis. *See* ¶¶ 14-15, *supra*.

b. Nunnally owned real property (BXN-187 at 3 at ¶ 6). Nunnally's homeownership had ended. *See* n.21, *supra*.

c. Before being served with process on October 5, 2009, in the litigation discussed in Section II(A)(11), *infra*, Nunnally had spent "weeks of avoiding service of process." The docket in that case establishes that Respondent did not even obtain an

[111] Additional variations among the versions of Respondent's "bills" for "Dec-08" are discussed in ¶¶ 149-50, *supra*.

alias summons for service of process until October 2, 2009 (BXN-108 at 5). *See* discussion in ¶ 238 at n.136, *infra*.

199. On November 5, 2009, Respondent filed in the Bankruptcy Proceeding a "Motion to Lift Automatic Stay and to Establish Equitable Servitude to Preclude Imposition of Future Automatic Stay" (BXN-188), asking the bankruptcy court to allow him to pursue legal remedies against Nunnally in Superior Court case no. 2009 CA 003769 (*Frison v. Nunnally*, the litigation discussed in Section II(A)(11), *infra)*, then pending before Judge Josey-Herring. BXN-188 at 11.

200. On December 14, 2009, a hearing was held before the bankruptcy court on Respondent's Motion to Life Automatic Stay (the hearing transcript is provided as BXN-189). During the hearing, Respondent twice informed the bankruptcy judge that a hearing on dispositive motions in his lawsuit against Nunnally was scheduled before Judge Josey-Herring on December 18, 2009. BXN-189 at 13 and 28.

201. In response to Respondent's Motion to Life Automatic Stay, on December 15, 2009, an Order was entered in the Bankruptcy Proceeding stating, "the automatic stay is lifted to permit the prosecution to judgment of the civil action (Case no. 0003769-09) in the Superior Court of the District of Columbia," but barring Respondent from taking action to collect on any judgment he might obtain in that case. BXN-190 at 2.

202. On January 6, 2010, the bankruptcy court entered an Order granting a Discharge to Nunnally, pursuant to 11 U.S.C. § 727 of the Bankruptcy Code. BXN-191. The bankruptcy estate, however, was kept open because the Graham Lawsuit and the

Federal Lawsuit might yet result in assets being brought into the bankruptcy estate to pay creditors with bona fide claims.[112] Tr. 593:6-594:5; 598:14-20 (Nunnally).

203. On February 2, 2010, Respondent filed in the Bankruptcy Proceeding four additional Proofs of Claim totaling $45,300, as purportedly secured claims based on "perfected liens." [113] Respondent failed to inform the bankruptcy court that as of the date of those filings, on December 18, 2009, Judge Josey-Herring had dismissed his lawsuit against Nunnally, Superior Court Civil Action No. 03769-09, for want of prosecution.[114] *See* ¶ 240, *infra*.

204. The four additional proofs of claim submitted to the bankruptcy court by Respondent as discussed in the preceding paragraph constituted knowingly false statements of fact. When added to the $221,558 proof of claim that Respondent initially filed in the Bankruptcy Proceeding (*see* ¶ 197, *supra*), Respondent's four additional proofs of claim brought the total he was seeking to $266,858, an amount he had never before claimed in his filings with Bar Counsel, the ACAB, or any court. Furthermore, unlike his initial proof of claim which was supported by a photocopy of a "bill," none of the additional proofs of claim filed by Respondent (BXN-192 through BXN-195) was

[112] As noted in ¶ 212, *infra*, all of Respondent's claims in the Bankruptcy Proceeding were disallowed.

[113] The first additional Proof of Claim, for $8,800, alleged it was a "Perfected Lien" with security of $150,000 consisting of "Retirement Pay & Worker's Compensation/Nunnally v. Lanier". BXN-192. The second Proof of Claim, for $9,500, alleged it was a "Perfected Lien" with security of $150,000 consisting of "Retirement Pay & Worker's Compensation/Saunders v. Nunnally v. Saunders" [*sic*]. BXN-193. The third Proof of Claim, for $12,000, alleged it was a "Perfected Lien" with security of $150,000 consisting of "Retirement Pay & Worker's Compensation/Nunnally v. Firefighters & Police Retirement Board". BXN-194. The fourth Proof of Claim (BXN-195), for $15,000, alleged it was a "Perfected Lien" with security of $150,000 consisting of "Retirement Pay & Worker's Compensation/Nunnally v. DCMPD (MPA)"; however, at the end of the MPA Case, on June 18, 2009, Respondent filed a claim for legal fees in Superior Court stating that he was only owed approximately $12,000 for his work on that case (BXN-65), not $15,000.

[114] Respondent took no action to attempt to revive his lawsuit against Nunnally until June 3, 2010, when he filed a "Motion to Reinstate the Case to the Active Docket." BXN-108 at 4 (docket entry for 06/03/2010).

supported by a bill, and nowhere in the record of this matter are there "bills" from Respondent to Nunnally matching the amounts asserted in those additional proofs of claim. Tr. 603:17-605:1 (Nunnally). *See also* attached Exhibit A (compilation of all bills to Nunnally submitted by Respondent to Bar Counsel and to the ACAB).

205. In view of the paucity of support for the four additional proofs of claim Respondent filed on February 2, 2010, in the Bankruptcy Proceeding, the four additional proofs of claim – in additional to being false statements of fact – also had no basis in law and fact that was not frivolous. They were, as Nunnally succinctly described them, "harassment." Tr. 603:21 (Nunnally).

206. On February 1, 2012, Nunnally (through counsel) filed in the Bankruptcy Proceeding an Objection to all five proofs of claim Respondent had filed in the Bankruptcy Proceeding, on the ground that the claims were not supported by fact or law. BXN-196 at 1 at ¶ 2. The Objection stated (BXN-196 at 1 at ¶¶ 3-4) that the dispute between Respondent and Nunnally concerning Respondent's legal fees had been resolved by an $11,000 judgment in favor of Nunnally (*i.e.*, the August 3, 2009, order of Judge Hamilton confirming the ACAB arbitration award (BXN-163)), and that the Court of Appeals had affirmed the $11,000 judgment (BXN-182).

207. On February 13, 2012, Respondent filed in the Bankruptcy Proceeding an Opposition to Nunnally's Objection to his proofs of claim. Respondent's Opposition once again knowingly and falsely stated to the bankruptcy court that Nunnally had terminated him as her attorney in "an ex parte deal" (BXN-197 at 1),[115] and once again placed in the public record direct references to and quotations from privileged attorney-client communications with Nunnally (BXN-197 at 2-5; Tr. 680:16-681:5 Nunnally)).

[115] *See* ¶¶ 58 and 142, *supra*.

208. On February 21, 2012, Nunnally (through counsel) filed in the Bankruptcy Proceeding a "Motion to Strike and/or Seal Response to Objection to Claims, Including Exhibits, and Request for Sanctions." BXN-198. Nunnally's motion asserted that Respondent's Opposition (BXN-197) discussed in the preceding paragraph contained information protected by the attorney-client privilege which had no bearing on Respondent's proofs of claim, and that the purpose of the Opposition was to cause Nunnally additional financial hardship and embarrassment. BXN-198 at 1 at ¶¶ 3-4. The bankruptcy court scheduled a hearing on Nunnally's motion for March 19, 2012 (BXN-185 at 2; docket entry for 02/22/2012).

209. On February 29, 2012, Respondent filed in the Bankruptcy Proceeding a plenary Complaint instituting an independent adversary proceeding against Nunnally, seeking 'to validate and enforce an attorney's lien . . . and to set aside the discharge under Chapter 7[.]" BXN-203 at 1. In his Complaint instituting the adversary proceeding, Respondent once again quoted from and attached documents protected by Nunnally's attorney-client privilege (BXN-203 at 3-4 and 11-14; Tr. 683:7-21 (Nunnally)), and once again accused Nunnally of engaging in fraudulent conduct (BXN-203 at 6).[116]

210. Facing Nunnally's Objection filed in the Bankruptcy Proceeding on February 1, 2012 (BXN-196) to all of Respondent's proofs of claim – based on Judge Josey-Herring's October 21, 2010, dismissal of Respondent's lawsuit against Nunnally in Superior Court Civil Action No. 2009 CA 003769 (BXN-137),[117] and the Court of Appeals' confirmation of the ACAB arbitration award (BXN-182) – and in view of the

[116] The adversary Complaint alleged that Nunnally's debt to Respondent for legal fees and interest had grown to $325,000.00 (BXN-203 at 15 at ¶ 37), and Respondent sought punitive damages ranging from $1,000,000.00 (*id*. at 16-17) to $3,000,000.00 (*id*. at 17-18).

[117] *I.e.*, *Frison v. Nunnally*, discussed in Section II(A)(11), *infra*.

reiterated disclosures of privileged communications in the adversary Complaint which Respondent filed on February 29, 2012, that filing had no substantial purpose other than to embarrass, delay, and burden Nunnally.

211. On March 6, 2012, Nunnally (through counsel) filed a "Motion to Dismiss Adversary Proceeding and Defendant's Request for Sanctions." BXN-204. Nunnally's motion pointed out (BXN-204 at 1 at ¶ 2) that the deadline for filing adversary complaints in the Bankruptcy Proceeding was January 4, 2010 (*i.e.*, more than 2 years before Respondent's adversary Complaint), and that the exhibits attached to Respondent's adversary Complaint contained privileged communications, conduct for which Respondent had been reprimanded by numerous courts (BXN-204 at 1-2 at ¶¶ 4-5). *See* ¶¶ 46; 174; 189(d), *supra*; ¶¶ 247 and 257, *infra*.

212. On March 30, 2012, the bankruptcy court sustained Nunnally's objection to – and disallowed – all of Respondent's proofs of claim. BXN-200.

213. On April 10, 2012, the bankruptcy court granted Nunnally's Motion to Strike (BXN-198), and directed "Exhibits 2 through 29 and Exhibit 32" to Respondent's Opposition (BXN-197; *see* ¶ 207, *supra*) to be sealed by the court. BXN-201.[118]

214. On April 29, 2012, the bankruptcy court dismissed with prejudice the adversary Complaint filed by Respondent (BXN-203), and sanctioned Respondent in the amount of $450.00 for requiring Nunnally to file a response to the Complaint. BXN-205. As of the time of the hearing in this matter, Respondent had not complied with the bankruptcy court's sanction order. Tr. 684:18-20 (Nunnally).

[118] Prior to entry of the order granting Nunnally's "Motion to Strike and/or Seal Response to Objection to Claims, Including Exhibits, and Request for Sanctions" (BXN-198), the bankruptcy court held a hearing. BXN-185 at 2 (docket entry for 03/19/2012). Respondent did not attend the hearing. Tr. 681:6-19 (Nunnally).

215. Given that on December 2, 2011, the Court of Appeals (BXN-182) had already affirmed the ACAB's arbitration award denying Respondent's claims for legal fees and ordering Respondent to refund $11,000 to Nunnally, and in light of the bankruptcy court's dismissal Order and the sanction against Respondent described in the preceding paragraph, the adversary Complaint Respondent filed on February 29, 2012, against Nunnally in the Bankruptcy Proceeding to "validate and enforce an attorney's lien" had no basis in law and fact which was not frivolous.

(11) "Frison v. Nunnally"

216. On May 19, 2009, two weeks after the date of the ACAB arbitration award, Respondent (*pro se*) filed a pre-emptive[119] suit in Superior Court (BXN-109), designated as civil action no. 2009-CA-3769 (BXN-108 at 1; hereinafter, "*Frison v. Nunnally*"), attacking both the ACAB award and Nunnally personally. Respondent's Complaint in *Frison v. Nunnally* asserted (BXN-109 at 1) that the ACAB award was:

> (1) procured by fraud; (2) violated [Respondent's] right to contract guaranteed by the First Amendment;[120] (3) violated [Respondent's] right to due process and equal protection guaranteed by the Fifth Amendment;[121] (4) violated ACAB Rules and Procedures; and (5) violated District of Columbia Code § 16-4301 through 4319, et seq.[122]

---

[119] As noted in ¶ 162, *supra*, Nunnally's suit to confirm the ACAB arbitration awaited the June 5, 2009, payment date specified in the award.

[120] The First Amendment to the United States Constitution has nothing to do with freedom of contract; it prohibits Congress from making any law interfering with the practice of religion; abridging freedom of speech, or of the press; or interfering with the right to assemble and petition for redress of grievances. U.S. Const. art. I, § 10, states, "No State shall . . . pass any . . . Law impairing the Obligation of Contracts . . . ."

[121] Paragraph 25 of Respondent's Complaint falsely stated to the court that "the ACAB without explanation . . . struck [Respondent's] exhibits thereby DENYING [Respondent] equal protection and due process." BXN-109 at 6-7 (capitals in original). The true account of Respondent's belated submission of exhibits in the ACAB proceeding and how it was resolved at the ACAB hearing is detailed in ¶¶ 158-59, *supra*.

[122] The cited sections of the District of Columbia Code refer to the statutes governing arbitration in the District of Columbia prior to the adoption of the Revised Uniform Arbitration Act by the District of Columbia, D.C. Code §§ 16-4401 through 16-4430.

Counts III and IV of the Complaint (BXN-109 at 10-12) were a legal fee claim against Nunnally for $115,384.61, and Count VI ("Fraud") – alleging that Nunnally misrepresented that she would reimburse Respondent for two deposition transcripts – sought $1,067.01 plus punitive damages and costs. Respondent attached many exhibits to his Complaint, including Nunnally's medical records and documents protected by Nunnally's attorney-client privilege. Tr. 517:14-518:1; 551:3-19 (Nunnally).

217. *Inter alia*, Respondent's Complaint re-asserted (BXN-109 at 4 at ¶ 15) the knowingly false statement he made to Bar Counsel (*see* ¶ 142, *supra*) that an unidentified agent of the District of Columbia offered Nunnally a settlement conditioned on her discharging Respondent and filing an ethics complaint against him. Respondent also made the knowingly false statement (BXN-109 at 9 at ¶ 32) that he "was never provided the names or opportunity to strike, and did not know until the morning of the hearing who the arbitrators were." Exactly the opposite is true. *See* BXN-102 (discussed in ¶ 158, *supra*) and BXN-116 at 3.[123]

218. Respondent attached to his Complaint in *Frison v. Nunnally* as "Exhibit 5" (BXN-109 at 14) a knowingly altered and falsified re-creation of the original retainer agreement Nunnally had signed with him on September 12, 2005 (BXN-7).[124] The knowing character of Respondent's action is shown by the obvious changes in BXN-109 at 14, as compared to the actual retainer agreement (BXN-7). In the actual retainer agreement, Nunnally signed on the *second* signature line at the bottom of the page, and

[123] In a motion filed by Nunnally on July 5, 2009 in *Frison v. Nunnally*, she attached as "Exhibit A" a letter dated February 27, 2009, from the ACAB to Nunnally and Respondent providing them with a resume' for each of the proposed arbitrators and giving the parties 10 days to object to any member of the arbitration panel. *See* ¶ 227, *infra*.

[124] There was only one signed original of the retainer agreement, which Nunnally kept. *See* ¶ 10, *supra*.

just to the left of the signature only Nunnally's *last name* is used, whereas in Respondent's fabrication that he used as "Exhibit 5" to his Complaint (BXN-109 at 14), Nunnally's purported signature appears on the *first* signature line at the bottom of the page, and just to the left of that both Nunnally's *first and last names* have been inserted. Other differences are also apparent, such as the different handwritings used for inserting Nunnally's name on the second line of the retainer agreement form, and the variations in the forms of initials used in ¶ 1 of the retainer agreement. The copies of the September 12, 2005, retainer agreement that Respondent provided to Bar Counsel (BXN-88 at 23) and the ACAB (BXN-98 at 3) both conform to the actual retainer agreement (BXN-7); Respondent's falsified version of the original retainer agreement attached to his Complaint in *Frison v. Nunnally* as "Exhibit 5" (BXN-109 at 14) does not. *See* Tr. 553:13-555:16 (Nunnally).

219. On June 12, 2009, Respondent filed in *Frison v. Nunnally* a purported "Affidavit of Service of Process" (BXN-111 at 24), which was rejected for filing by the Superior Court clerk's office because Respondent failed to comply with the court's requirements for identifying in the Affidavit the name of the defendant who purportedly was served (BXN-115 at 9).

220. The docket in *Frison v. Nunnally* reflects (BXN-108 at 7) that on June 18, 2009, Respondent filed a "Motion for Default and Judgment or in the Alternative Summary Judgment" and a 20-page supporting memorandum. BXN-111. There were a number of substantive problems with Respondent's motion, and two knowingly false statements to the court:

a. Respondent's motion asserted (BXN-111 at 1) that "the defendant was served the complaint and summons on May 20, 2009," but attached as alleged evidence of such service (BXN-111 at 32) was the defective "Affidavit of Service of Process" that had been rejected by the Superior Court clerk's office (BXN-111 at 24; *see* ¶ 219, *supra*).

b. The premise of Respondent's claim for summary judgment was that his legal memorandum attacking the ACAB arbitration award "clearly establish[ed] by the preponderance of the evidence[125] that the plaintiff is entitled to judgment on each count as a matter of law" (BXN-111 at 23), a questionable hypothesis in light of the Superior Court's confirmation of the ACAB arbitration award on August 3, 2009 (*see* ¶ 166, *supra*).

c. Respondent knowingly and falsely stated to the court (BXN-111 at 12) that he was denied due process and equal protection in the ACAB arbitration because he was unable to use the exhibits he filed in that case.[126] That simply was not the case, and the actual facts relating to Respondent's belated filing of exhibits are set forth in ¶¶ 158-59, *supra*.

d. Respondent concluded his motion for judgment by asking for $115,384.61 in legal fees, and $346,153.83 in punitive damages (BXN-111 at 23). The claim that Respondent was owed $115,384.61 for legal fees was a knowingly false statement to the court for the reasons outlined in ¶¶ 147-52, *supra*. (Respondent offered

[125] "Preponderance of the evidence," of course, is not the legal standard for granting a motion for summary judgment. "To survive the summary judgment motion, 'the opposing party need only show that there is sufficient evidence supporting the claimed factual dispute to require a jury or judge to resolve the parties' differing versions of the truth at trial.'" *Nader v. de Toledano*, 408 A.2d 31, 42 (D.C. 1979) (en banc), citing *International Underwriters, Inc. v. Boyle*, 365 A.2d 779, 782 (D.C. 1976).

[126] Respondent's motion stated, "The ACAB DENIED the plaintiffs [*sic*] right to present evidence and documents in effect DENYING him equal protection and due process enjoyed by Ms. Nunnally and other white attorney are called [*sic*] before the ACAB." (Capitals in original.)

no explanation for why a punitive damages judgment for $346,153.83 was appropriate in the context of his motion.)

e. Respondent failed to serve Nunnally with a copy of his motion. Tr. 565:21-566:3 (Nunnally).

221. *See* Report Appendix.

222. On June 19, 2009, the day after Respondent filed his "Motion for Default and Judgment or in the Alternative Summary Judgment" in *Frison v. Nunnally* (BXN-111), Nunnally, acting *pro se*, filed a "Motion for Protective Order Regarding Privileged Disclosures and Documents Referenced in the Motion for Default Judgment or in the Alternative Summary Judgment," because Respondent had attached to his motion documents protected by Nunnally's attorney-client privilege. BXN-113 at 1; Tr. 558:14-19 (Nunnally).

223. Also on June 19, 2009, Nunnally filed in *Frison v. Nunnally* a "Motion to Quash Service and Dismiss Complaint" (BXN-112), because service of the Complaint in *Frison v. Nunnally* had been made on Lescht instead of Nunnally (Tr. 551:3-16 (Nunnally)), and was therefore not valid under Sup. Ct. Civ. R. 4. BXN-112 at 3.

224. On June 29, 2009, Respondent filed in *Frison v. Nunnally* an Opposition (BXN-114) to Nunnally's June 19, 2009, motion for a protective order, asserting that Nunnally's motion was filed in bad faith and did not comply with the requirement in Sup. Ct. Civ. R. 12-I(d) for clearly stating the grounds on which it is based. BXN-114 at 1. There were a number of substantive and procedural problems with Respondent's Opposition, and one knowingly false statement of fact:

a. Nunnally's Motion for Protective Order (BXN-113) did not violate Sup. Ct. Civ. R. 12-I(d). The motion was supported by an 8-page memorandum (BXN-113 at 3-10) citing relevant precedent and explaining why documents that Respondent filed in public were protected by Nunnally's attorney-client privilege.

b. Paragraph 8 of the Opposition asserted, "[Respondent] zealously represented Nunnally . . . amassing $221,558 in legal fees," and attached to the Opposition as "Exhibit 9" (BXN-114 at 10) was the fourth version[127] of his "bill" for "Dec-08," still captioned "Nunnally v. Phillip Graham and District of Columbia" and "Violation of Human Rights Act." Respondent's fee claim was a knowingly false statement to the court (*see* ¶¶ 147-52, *supra*); furthermore, the Opposition failed to explain the increase in Respondent's fee claim from the $115,384.61 sought in his Complaint to the $221,558 referred to in "Exhibit 9" to his Opposition. Tr. 560:20-561:3 (Nunnally).

c. Respondent failed to serve Nunnally with a copy of his Opposition. Tr. 559:22-560:9 (Nunnally).

d. The Opposition contained derogatory information about Nunnally (BXN-114 at 1 at ¶ 2), and attached privileged attorney-client communications with Nunnally (BXN-114 at 2-3 at ¶ 7).

e. Judge Josey-Herring in fact issued protective orders sought by Nunnally (BXN-135 and BXN-141), including specifically with respect to Respondent's Opposition ((BXN-114; *see* n.148, *infra*) .

225. Particularly in light of Judge Josey-Herring's protective orders (BXN-135 and BXN-141), the assertion in Respondent's Opposition to Nunnally's motion for a

[127] *See* ¶ 197 and n.110, *supra*.

protective order that Nunnally's motion was filed in bad faith and violated Sup. Ct. Civ. R. 12-I(d) lacked a basis in law or fact that was not frivolous, and Respondent's additional disclosure in his Opposition of attorney-client confidences had no substantial purpose other than to embarrass, delay, and burden Nunnally.

226. The docket in *Frison v. Nunnally* does not reflect that Respondent filed an opposition to Nunnally's "Motion to Quash Service and Dismiss Complaint" (BXN-112). *See* BXN-108 at 6-7. On July 1, 2009, however, Respondent filed a new "Affidavit of Service of Process" (BXN-115), asserting that "[s]ervice was perfected pursuant to Super. Ct. Civ. P. 4(*l*)(2),"[128] and that "[t]he pleading and other documents were served on Attorney Lechts [*sic*], attorney of record for the defendant per our discussion on via [*sic*] e-mail and telephonically on December 18, 2009" [*sic*; should have been typed as "2008"]. BXN-115 at 1. Attached to Respondent's new Affidavit in support of the foregoing assertions were two e-mails from Respondent to Lescht dated December 18, 2008. BXN-115 at 7. Lescht, however, had never agreed to accept service of process in the case (Tr. 771:18-772:1 (Lescht)); neither of the e-mails that Respondent attached to his new Affidavit sought or confirmed consent by Lescht to receive service of process; and Respondent did not provide with his new Affidavit any other document from Lescht demonstrating that Lescht consented to receive such service of process. Therefore, in addition to making knowingly false statements of fact to the court (*see* ¶ 235, *infra* (Order granting Nunnally's motion to quash service of process)), Respondent's new "Affidavit

[128] Sup. Ct. Civ. R. 4(*l*)(2) states, in pertinent part: ". . . if the return receipt does not purport to be signed by the party named in the summons, then [the return of service shall state] specific facts from which the Court can determine that the person who signed the receipt meets the appropriate qualifications for receipt of process set out in subdivisions (e) through (j) of this Rule."

of Service of Process" also failed to comply with the plain requirements of Sup. Ct. Civ. R. 4(*l*)(2).[129]

227. On July 6, 2009, Nunnally, still acting *pro se*, filed in *Frison v. Nunnally* a "Motion for Sanctions" against Respondent pursuant to Sup. Ct. Civ. R. 11(c). BXN-116. The memorandum Nunnally submitted in support of her motion argued that each of the five Counts in Respondent's Complaint was defective (BXN-116 at 5), and that Respondent had been given an opportunity to withdraw his Complaint but did not do so (BXN-116 at 1). *Inter alia*, and contravening the allegations in ¶ 32 of Respondent's Complaint (BXN-109 at 9), Nunnally filed with the court a copy of the ACAB letter to Nunnally and Respondent notifying them of the identity of the arbitrators and providing an opportunity to object to any arbitrator. *See* BXN-116 at 3.

228. The docket in *Frison v. Nunnally* reflects (BXN-108 at 6) that on August 2, 2009, Respondent filed a "Motion to Compel the Defendant to Provide the Clerk of the Court a Copy of All Filings and Postage to be Mailed by the Clerk of the Court to the Plaintiff." BXN-117. The memorandum Respondent submitted in support of his motion asserted that he had not been served with Nunnally's Motion for Sanctions (BXN-116), and Respondent wanted assurance that the clerk of the court would send him copies of any future filings by Nunnally. BXN-117 at 5. Respondent cited no rule or case authorizing the court to grant the relief requested in his motion.

229. The docket in *Frison v. Nunnally* reflects (BXN-108 at 6) that on August 7, 2009, Respondent filed a "Motion to Compel Monthly Installment on Lien" (BXN-118). There were many substantive or procedural problems with this motion, and one knowingly false statement of fact:

[129] *See* n.128, *supra*.

a. The motion failed to mention that on August 3, 2009, Judge Hamilton of the Superior Court had already confirmed the ACAB award which rejected Respondent's legal fee claims and directed him to re-pay $11,000 to Nunnally, thereby eliminating the basis of any claim for a lien. In effect, Respondent (*sub rosa*) was seeking to have Judge Josey-Herring overrule Judge Hamilton.

b. The motion asserted that Respondent had represented Nunnally in four different cases.[130] BXN-118 at 1. Although Respondent had previously asserted to Bar Counsel and to the ACAB that there were multiple retainer agreements with Nunnally, one for each case in which he represented her (*see* ¶¶ 139 and 154, *supra*), the only retainer agreement attached to Respondent's motion was another copy of Respondent's falsified re-creation of the actual September 12, 2005, retainer agreement with Nunnally.[131] BXN-118 at 12.

c. Also attached to the motion was Respondent's fourth version[132] of his "bill" for "Dec-08," claiming that the "Total Due" for representing Nunnally was $221,588.00. BXN-118 at 13. *See* ¶¶ 147-52, *supra*, for a discussion of the many reasons why this "bill" and the other "bills" Respondent filed in court were knowingly false statements of fact to the court. Furthermore, the 8 hours of time on BXN-118 at 13 are charged at a total of $3,000, *i.e.*, a billing rate of $375 per hour, which is contrary to

[130] "Nunnally v. Chief Cathy Lanier, Case No. 08-1484 (RWR)" (*i.e.*, the Federal Lawsuit); "Nunnally v. DCMPD, Case No. 04-CA 5963" (*i.e.*, the Graham Lawsuit); "Nunnally v. DCMPD, Case No. 07-CA-006295" (*i.e.*, the Superior Court portion of the MPA Case that began on September 14, 2007; *see* ¶ 100, *supra*); and "Nunnally v. DCMPD Firefighters and Police Retirement Board" (*i.e.*, the Retirement Case; *see* Section II(A)(3), *supra*).

[131] *See* ¶ 218, *supra*.

[132] *See* ¶ 197, *supra*.

the $250 hourly rate specified even in the falsified re-creation of Respondent's retainer agreement with Nunnally that he filed with his motion. BXN-118 at 12 at ¶ 1.[133]

d. Although both ¶ 16 of the Complaint in *Frison v. Nunnally* (BXN-109 at 5) and ¶ 3 of the memorandum supporting Respondent's motion (BXN-118 at 6) asserted that he had represented Nunnally in multiple matters, the lien motion failed to provide a rationale for the difference between the $115,384.61 legal fee claim in the Complaint, and the $221,588 sought in the lien motion.

e. Respondent failed to serve Nunnally with a copy of the motion. Tr. 565:18-566:6 (Nunnally).

f. Respondent's motion once again attached and explicitly referred to medical records of Nunnally as well as damaging and embarrassing documents protected by Nunnally's attorney-client privilege. Tr. 576:13-579:9 (Nunnally); BXN-118 at 6 at ¶ 2; BXN-118 at 7 at ¶¶ 6-7.

230. On August 13, 2009, Respondent filed in *Frison v. Nunnally* a "Motion to Vacate the ACAB Decision and Award" (BXN-119), needlessly duplicating the requests for relief in Counts I and II of the Complaint (BXN-109 at 9-10) and in Respondent's prior "Motion for Default and Judgment or in the Alternative Summary Judgment" (BXN-111 at 9-12). The memorandum Respondent filed in support of his motion knowingly continued to make the false statement to the court that the amount he was owed by Nunnally was $221,588 as set forth in the "fourth" version of his "bill" for "Dec-08" (*see* ¶ 197, *supra*). BXN-119 at 5 at ¶ 3; *id*. at 13. Respondent's

[133] In addition, the version of the "bill" for "Dec-08" Respondent filed with his motion for leave to intervene in the Graham Lawsuit (BXN-24 at 7) charged the 8 hours of time at $2,800, *i.e*., an asserted billing rate of $350 per hour, not the $375 hourly charge in BXN-118 at 13. Furthermore, as pointed out in ¶ 197 at n.109, *supra*, Respondent represented to the court in the Bankruptcy Proceeding that his billing rate was only $250 per hour.

memorandum, however, pointedly omitted the fact that on August 3, 2009, Judge Hamilton had already confirmed the legal validity of the ACAB arbitration award (*see* ¶ 166, *supra*). On August 21, 2009, Nunnally (still acting *pro se*) filed an opposition to Respondent's motion calling attention to Respondent's glaring omission. BXN-120 at 1.

231. On August 29, 2009, Respondent sent Lescht and Nunnally a detailed e-mail threatening suit against them. BXN-117A at 5-6. On September 2, 2009, Respondent sent Lescht another threatening e-mail, entitled "Notice of Intent to Sue," declaring his intention to sue Nunnally "and other parties alleging for four (4) counts of conspiracy to tortuously [*sic*] interfere with business interest, four (4) counts of tortuous [*sic*] interference with business interest, four (4) counts of conspiracy to breach contract, and four (4) counts of breach of contract," further stating, "I write you because your firm was retained to represent Ms. Nunnally's interest." BXN-121 at 9-10. On September 3, 2009, Respondent sent Steinmetz a threatening e-mail, also entitled "Notice of Intent to Sue," stating that Respondent intended to include Steinmetz and Lescht – as "co-conspirators in a scheme hatched between she [Nunnally] and the District of Columbia to avoid legal fees owed to me" – in a suit he intended to file on September 21, 2009, and stating further that Nunnally's hiring other legal counsel "will not cause me to forebear seeking full compensation of fees due and joining whomever in the civil action to be filed any and all necessary parties." BXN-121 at 8. Both Lescht and Steinmetz were very upset by Respondent's threats. Tr. 638:10-13 (Nunnally); 776:10-15 and 777:8-14 (Lescht).

232. Respondent's harassing conduct also went beyond threats to attorneys with whom Nunnally had worked, and included threatening and harassing telephone calls and e-mails to Nunnally (Tr. 637:14-16; 638:14-16 (Nunnally)), and making baseless

accusations to colleagues, to the MPD Internal Affairs department, to the United States Department of Justice, and to others that Nunnally was engaged in criminal conduct (Tr. 638:17-640:9; 640:20-641:18 (Nunnally)). Nunnally asked officials in Montgomery County (Maryland) what to do about Respondent's threats, and she was advised to place Respondent explicitly on notice of the harm his actions were causing her. Tr. 637:19-638:9 (Nunnally).

233. In light of Respondent's harassing conduct and the advice she received as described in the previous paragraph, on September 3, 2009, Nunnally sent Respondent an e-mail (BXN-121 at 16) and attached correspondence (BXN-121 at 14-15) demanding that Respondent "cease and desist" from his "ongoing attempts to harass, retaliate, intimidate, slander, liable [*sic*], [and] violate my rights" (BXN-121 at 16), and further stating (BXN-121 at 14):

> From December 1, 2008 through present, you . . . have begun and continued a pattern of retaliation, harassment, abuse, intimidation via the District of Columbia Courts, the Internet, District of Columbia government agencies and former counsel.

Respondent's reply e-mail to Nunnally later that day (BXN-121 at 16) included the following:

> As for you and your co-conspirators on the broader issues of conspiracy to breach, breach, [repetition of "breach" in the original] conspiracy to interfere with business interest, and tortuous [*sic*] interference with business interest, as I indicated to Mr. Lescht and Mr. Steinmetz, those issues will be litigated and decided in the U.S. District Court for the District of Columbia. Providing your clients[134] Notice of upcoming litigation is not harassment. It is NOTICE [capitals in original] which affords you the opportunity to discuss the issues and prepare a defense. If Mr. Lescht or Mr. Steinmetz have not informed you of this, maybe you consider [*sic*] retaining new counsel.

[134] *Sic*; should probably be "attorneys."

234. On September 4, 2009, Nunnally (*pro se*) filed in *Frison v. Nunnally* a "Motion for a Protective Order Regarding Continued Harassment and Abuse by [Respondent]," seeking the protection of the court from an "ongoing pervasive litany of harassment . . . by the [Respondent],"[135] and requesting a prompt hearing before the court on the motions then pending, including Nunnally's own motion for a protective order. BXN-121 at 1 and 5.

235. By Order filed September 9, 2009, in *Frison v. Nunnally* (BXN-122), Judge Josey-Herring of the Superior Court granted Nunnally's initial motion to quash service of process (BXN-112), finding that "Lescht is not Defendant's agent," and "[Respondent] has yet to properly effect service on the Defendant," citing Sup. Ct. Civ. R. 4(c). BXN-122 at 1. The Order gave Respondent until October 8, 2009, to effect proper service, (*id.*), and continued the date of the Initial Conference in the case until October 30, 2009 (*id.* at 1-2).

236. By Order filed September 17, 2009, in *Frison v. Nunnally* (*see* BXN 108 at 5; docket entry for 9/17/2009), Judge Josey-Herring denied Respondent's "Motion for Default and Judgment or in the Alternative Summary Judgment" (BXN-111; *see* ¶ 220, *supra*).

237. On October 22, 2009, Nunnally (*pro se*) filed a motion to dismiss Respondent's Complaint in *Frison v. Nunnally*. BXN-123.

238. On October 26, 2009, Respondent filed in *Frison v. Nunnally* a "Motion to Stay Action Awaiting Decision in Bankruptcy to Discharge Charging Lien." BXN-124.

[135] By this point, Respondent had already filed at least four motions in *Frison v. Nunnally*: a "Motion for Default and Judgment or in the Alternative Summary Judgment" (BXN-111); a "Motion to Compel the Defendant to Provide the Clerk of the Court a Copy of All Filings and Postage to be Mailed by the Clerk of the Court to the Plaintiff" (BXN-117); a "Motion to Compel Monthly Installment on Lien" (BXN-118); and a "Motion to Vacate the ACAB Decision and Award" (BXN-119).

Attached to Respondent's motion were: the same Affidavit (BXN-124 at 10-11) he filed the next day in support of his initial proof of claim in the Bankruptcy Proceeding (BXN-187 at 2-3), containing the same knowingly false statements of fact as discussed in ¶¶ 197-98, *supra*; the same falsified retainer agreement (BXN-124 at 12) attached as "Exhibit 5" (BXN 109 at 14) to the Complaint in *Frison v. Nunnally* (*see* ¶ 218, *supra*); and the fabricated fourth version of his "bill" for "Dec-08" (BXN-124 at 15) to Nunnally in the amount of $221,558 (*see* ¶¶ 197 and 224(b), *supra*). As was the case with Respondent's prior "Motion to Compel Monthly Installment of Lien" (BXN-118), Respondent' stay motion offered no explanation for the difference between the $115,384.61 legal fee claimed in his Complaint, and the increased fee claim of $221,558 in the motion to stay. Respondent's Motion to Stay also knowingly and falsely stated to the court (BXN-124 at 6 at ¶ 9) that Nunnally had been avoiding service of process.[136]

239. The docket in *Frison v. Nunnally* indicates that on November 2, 2009, after filing his "Motion to Stay Action Awaiting Decision in Bankruptcy to Discharge Charging Lien" (BXN-124), Respondent nevertheless filed two additional substantive motions,[137] and that on November 6, 2009, the court held a Scheduling Conference at

[136] Sup. Ct. Civ. R. 4(m) requires a summons to be served within 60 days, and it expires if it is not served within that time period. *Medlantic Health Care Group, Inc. v. Cunningham*, 755 A.2d 1032, 1033 at n.2 (D.C. 2000). By the time Judge Josey-Herring issued her Order on September 9, 2009, quashing service of process (BXN-122), the summons Respondent had obtained when he filed his Complaint in *Frison v. Nunnally* on May 19, 2009, was much more than 60 days old, and therefore it was no longer valid. However, the docket in *Frison v. Nunnally* (BXN-108 at 5) indicates it was not until October 2, 2009 (a Friday) that Respondent first obtained an alias summons, and on October 6, 2009, an "Affidavit of Service of Summons and Complaint" was filed stating that Nunnally was served the following Monday evening (October 5, 2009; BXN-124 at 20). Nunnally credibly testified she had been out of town over the intervening weekend, and that she had legitimately been out of her house at least part of the day on October 5, 2009. Tr. 582:13-583:11 (Nunnally).

[137] One motion was entitled "Motion to Strike All Filings Prior to Service of Process or in the Alternative to Stay All Proceedings Pending Resolution of the Bankruptcy," and the other was entitled "Motion to Strike Defendant's Motion to Dismiss."

which Respondent did not appear, in light of which the court scheduled a Status Hearing for December 18, 2009. BXN-108 at 5; Tr. 585:17-587:12; 597:15-598:4 (Nunnally).

240. The docket in *Frison v. Nunnally* further indicates (BXN-108 at 4) that on December 18, 2009, only Nunnally appeared at the Status Hearing, and the court thereupon granted Nunnally's oral motion to dismiss *Frison v. Nunnally* for want of prosecution. Tr. 587:14-588:7 (Nunnally).

241. On June 3, 2010, approximately 5-1/2 months after the dismissal in *Frison v. Nunnally* for want of prosecution, Respondent filed a "Motion to Reinstate the Case to the Active Docket" (BXN-125), arguing that he did not know about the December 18, 2009, Status Hearing.[138]

242. *See* Report Appendix.

243. By Order filed June 30, 2010 (BXN-128) the court granted Respondent's Motion to Reinstate.

244. On July 30, 2010, Nunnally filed a motion to dismiss *Frison v. Nunnally* (BXN-129), renewing the motion to dismiss she had filed (BXN-123) before the case was dismissed for want of prosecution.[139]

245. Also on July 30, 2010, Respondent filed a motion to vacate the ACAB arbitration award (BXN-130), renewing the motion to vacate he had filed (BXN-119) before *Frison v. Nunnally* was dismissed for want of prosecution. Respondent's motion once again disclosed and discussed on the public record conversations and documents

[138] Respondent's representations to the bankruptcy court on December 14, 2009, indicate otherwise. BXN-189 at 13 and 28. *See* ¶ 200, *supra*.

[139] In her testimony, Nunnally described the reasons for the re-filings described in this paragraph and the succeeding paragraph, *i.e.*, after *Frison v. Nunnally* was reinstated to the active docket, Nunnally filed a motion for leave to respond to motions she had not answered due to the bankruptcy stay affecting the case. Respondent opposed the motion, and the court ruled that the December 18, 2009 dismissal voided all pending motions. Tr. 611:22-612:12 (Nunnally). *See* BXN-108 at 3 (docket entries for 07/27/2010).

protected by Nunnally's attorney-client privilege. BXN-130 at 7-9. The memorandum Respondent submitted in support of his motion argued that: the ACAB lacked jurisdiction (BXN-130 at 13-14); the ACAB denied Respondent due process and equal protection because it assertedly violated its own rules (BXN-130 at 14-18);[140] the ACAB arbitration – which was authorized by D.C. Bar Rule XIII[141] – violated the terms of his retainer agreement with Nunnally (BXN-130 at 18);[142] Judge Hamilton as the Judge in Chambers lacked jurisdiction to confirm the ACAB arbitration award (BXN-130 at 20-21);[143] and Nunnally lacked standing to seek confirmation of the ACAB arbitration award by the Judge in Chambers because Respondent had already filed his Complaint in *Frison v. Nunnally* (BXN-130 at 21).

246. On August 2, 2010, Nunnally filed in *Frison v. Nunnally* a second motion for a protective order (BXN-131), listing 15 different pleadings submitted by Respondent in which he had publicly disclosed information protected by the attorney-client privilege (BXN-131 at 4-5).

247. On September 14, 2010,[144] Judge Josey-Herring signed a protective order in *Frison v. Nunnally* against any disclosures by Respondent of matters not directly placed at issue by Nunnally in the case. BXN-135.

---

[140] The Court's summary affirmance in the Confirmation Litigation held otherwise. BXN-182 at 1.

[141] *See* n.16, *supra*.

[142] Respondent's argument does not mention D.C. Bar Rule XIII, but that argument is nevertheless the thrust of Respondent's position. As Judge Iscoe held in the Confirmation Litigation, however, as a matter of public policy D.C. Bar Rule XIII takes precedence over any contrary language in the retainer agreement between Respondent and Nunnally. BXN-168 at 5.

[143] In the Confirmation Litigation, Judge Iscoe held to the contrary. BXN-168 at 5.

[144] Order stamped as being filed on September 15, 2010.

248. On October 21, 2010, Judge Josey-Herring entered an Order (BXN-136) in *Frison v. Nunnally* denying Respondent's motion to vacate the ACAB arbitration award, on the grounds that Judge Hamilton's judgment confirming the ACAB arbitration award was a final order, and that Respondent had neither filed a timely appeal from that order within 30 days as provided by D.C. Ct. App. R. 4(a)(1), nor sought relief from that judgment within the 1-year period provided by D.C. Super. Ct. R. 60(b). BXN-136 at 2.

249. Also on October 21, 2010, Judge Josey-Herring entered an Order (BXN-137) in *Frison v. Nunnally* granting Nunnally's motion to dismiss the case (BXN-129), in light of the court's ruling denying Respondent's motion to vacate the ACAB award.

250. On October 29, 2010, Respondent filed his first Notice of Appeal in *Frison v. Nunnally*. BXN-138.

251. On November 10, 2010, Nunnally filed a motion for summary affirmance (BXN-144) with the Court of Appeals in the appellate proceedings regarding *Frison v. Nunnally* (designated by the Court as case no. 10-CV-1363; *see* BXN-143).

252. On November 12, 2010, Nunnally filed in *Frison v. Nunnally* a "Motion to Redact the Record or in the Alternative Sealing Parts of the Record in Accordance with the Court's Issuance of a Protective Order" (BXN-108 at 2 docket entry for 11/12/2010). On November 28, 2010, Respondent filed an Opposition to that motion (BXN-108 at 2 docket entry for 11/28/2010). On December 14, 2010, Judge Josey-Herring denied Nunnally's motion to redact, and directed her to file that motion with the Court of Appeals. BXN-145 at 24-25.

253. On December 20, 2010, Nunnally filed with the Court of Appeals in the appellate proceedings regarding *Frison v. Nunnally* a "Motion . . . to Redact the Record

or in the Alternative Sealing Parts of the Record in Accordance With the Court's Issuance of a Protective Order." BXN-145. On January 18, 2011, Respondent filed with the Court a motion to late-file an Opposition to Nunnally's motion seeking to redact the record (BXN-146 at 1), and lodged with the Court an Opposition that once again placed in the public record direction quotations from and documents embodying privileged attorney-client communications between Nunnally and Respondent (BXN-146 at 7-10).

254. On February 28, 2011, Respondent appears to have filed a substantive opposition to Nunnally's motion for summary affirmance (BXN-143 (docket entry for 02/28/2001)), but on the same day the Court entered a 1-page Judgment granting Nunnally's motion for summary affirmance, holding that "The trial court could not vacate Judge Hamilton's order confirming the arbitration award and entering judgment in [the Confirmation Litigation] as it was law of the case." BXN-147. Although the Court at first denied Nunnally's motion to redact or seal the record as moot (*id*.), on reconsideration the Court entered a further Order on March 22, 2011, permitting Nunnally to "re-file the motion to redact or seal the record in the trial court." BXN-148.

255. Pursuant to the Court of Appeals' March 22, 2011, Order (BXN-148), on March 25, 2011, Nunnally re-filed with the Superior Court in *Frison v. Nunnally* her "Motion to Redact the Record or in the Alternative Sealing Parts of the Record. . . ." BXN-139.

256. On March 25, 2011, Respondent filed an Opposition to Nunnally's motion to redact. BXN-140. Respondent included in his Opposition an irrelevant argument section entitled "Putative Criminal Conduct," in which he stated (BXN-140 at 4-5):

> Nunnally is also aware that her conduct is under review by the Bankruptcy Court and the IRS. The Bankruptcy Clerk recently questioned the Trustee

> about Nunnally's case. * * * The Bankruptcy Trustee responded the "Trustee is investigating and monitoring pending lawsuits in DC Superior Court . . . [t]herefore,[145] the case will remain an open asset case until the Trustee has completed her administration.

Respondent failed to inform the court that the "review" he referred to was instigated by Respondent's own surreptitious actions taken to harm and harass Nunnally. Tr. 651:6-652:4; 656:16-657:20; 658:12-660:10 (Nunnally).[146] Furthermore, there was nothing nefarious about the bankruptcy estate's being kept open due to the existence of assets that might be brought into the estate through litigation (*see* ¶ 202, *supra*), and the bankruptcy clerk's inquiry was routine. Tr. 653:2-15 (Nunnally). Respondent's accusation that Nunnally had engaged "putative criminal conduct" lacked any basis in law and fact that was not frivolous, and had no substantial purpose other than to embarrass Nunnally.

257. On June 8, 2011,[147] Judge Josey-Herring entered an Order (BXN-141) in *Frison v. Nunnally* granting Nunnally's motion to redact, stating (BXN-141 at 3):

> The Court agrees with [Nunnally] that many of the exhibits submitted . . . contain information unrelated to [Respondent's] arguments, and, even in cases where the contents of the exhibits are relevant, [Respondent] did not redact personal and health-related information that is clearly irrelevant to the instant matter and highly prejudicial to [Nunnally]. This submission is a clear violation of Rule 1.6(e)(5), and [Nunnally] is entitled to have the offending exhibits stricken from the record.

Accordingly, the court ordered (BXN-141 at 3-4) many of the major pleadings Respondent filed in *Frison v. Nunnally* to be placed under seal, including his

[145] Square brackets in original.

[146] Respondent wrote to the Trustee in Nunnally's Bankruptcy Proceeding accusing Nunnally of committing bankruptcy fraud (BXN-199), and wrote to the IRS accusing her of not disclosing income, an accusation which the IRS investigated. Tr. 651:16-652:15 (Nunnally). In addition, Respondent wrote to the United States Department of Justice accusing Nunnally of criminal activity. Tr. 641:1-8 (Nunnally); 725:14-726:22 (Gresham).

[147] Stamped as filed on June 9, 2011 (BXN-141 at 1).

Complaint.[148]

258. In light of Judge Josey-Herring's protective orders in *Frison v. Nunnally* signed on September 14, 2010 (BXN-135) (stamped as filed on September 15, 2010) and June 8, 2011 (BXN-141, sealing multiple filings by Respondent in *Frison v. Nunnally*, beginning with his Complaint), and in light of Judge Josey-Herring's October 21, 2010, Order (BXN-137) dismissing *Frison v. Nunnally* due to Respondent's failure to take a timely appeal from Judge Hamilton's August 3, 2009, confirmation Order within the 30 days allowed by D.C. Ct. App. R. 4(a)(1), and further in light of the Court of Appeals' summary affirmance (BXN-147) of Judge Josey-Herring's dismissal of the Complaint in *Frison v. Nunnally*, all of Respondent's pleadings in *Frison v. Nunnally* filed after September 5, 2009 (*see* BXN-108 at 2-5) had no substantial purpose other than to embarrass, delay, and burden Nunnally.

259. Although Judge Josey-Herring's second protective order (BXN-141) stated, "the instant matter is a closed case that has now been fully litigated on appeal" (BXN-141 at 3), on June 10, 2011, Respondent filed a purported second "Notice of Appeal" (BXN-142), once again seeking to place the *Frison v. Nunnally* litigation before the Court of

[148] These documents included: (1) Respondent's "Memorandum in Opposition to [Nunnally's] Motion to Dismiss" (docketed August 1, 2010; BXN-108 at 3); (2) Respondent's "Motion to Vacate the ACAB Award and the Judgment Confirming the Award" (BXN-130); (3) [Respondent's] "Opposition to [Nunnally's] Motion to Reconsider Order Reinstating Case to Active Docket, Motion for Leave to File Opposition to and for Reply to Plaintiffs Motion to Strike all Pleadings, and Motion for Leave to File Opposition to Plaintiff's Motion to Strike or in Alternative Reply to Defendant [*sic*] Motion to Dismiss" (docketed July 20, 2010; BXN-108 at 3); (4) Respondent's "Motion to Reinstate the Case to the Active Docket" (BXN-125); (5) Respondent's "Motion to Vacate the ACAB Decision and Award" (BXN-119); (6) Respondent's "Opposition to [Nunnally's] Motion for Protective Order Regarding Privileged Disclosures and Documents Referenced in the Motion for Default or in the Alternative Motion for Summary Judgment" (BXN-114); and (7) Respondent's Complaint (BXN-109).

Appeals. The purported Notice of Appeal stated only, "NOW COMES Plaintiff, E. Scott Frison, Jr., Esquire, with a NOTICE OF APPEAL of the captioned case."[149]

260. On June 21, 2011, Nunnally filed a Motion for Summary Affirmance (BXN-150) in Respondent's attempted second appeal in *Frison v. Nunnally* (designated by the Court as case no. 11-CV-0732 (BXN-149)).

261. On July 25, 2011, Respondent filed in his purported second appeal in *Frison v. Nunnally* a "Motion to Strike [Nunnally's] Motion for Summary Affirmance or in the Alternative to Compel [Nunnally] to Serve the Appellant [*i.e.*, Respondent]." BXN-151. Respondent's motion alleged that Nunnally had not served him with her Motion for Summary Affirmance. *Id*.

262. On August 11, 2011, Nunnally filed with the Court an "Affidavit of Service of Process" (BXN-152) similar to the one she had filed in the Confirmation Litigation (*see* ¶ 182, *supra*), because at the same time as she filed and served her motion for summary affirmance in Respondent's purported second appeal in *Frison v. Nunnally* – June 21, 2011 – Nunnally also filed and served on Respondent a motion for summary affirmance in the Confirmation Litigation (BXN-175). *See* ¶¶ 180 and 186 at n.102, *supra*.

263. For the reasons set forth in ¶¶ 180-83, *supra*, the assertion in Respondent's July 25, 2011, "Motion to Strike" (BXN-151) that Nunnally failed to serve him with a copy of her motion for summary affirmance was a knowingly false statement of fact to the Court, and had no substantial purpose other than to delay the Court's consideration of Nunnally's motion for summary affirmance in Respondent's purported second appeal in the *Frison v. Nunnally* litigation.

[149] Capitals in original.

264. As was the case in the Confirmation Litigation, on October 21, 2011, the Court of Appeals entered a per curiam Order (BXN-153) declaring that the issue of service of Nunnally's motion for summary affirmance was resolved, and directed Respondent: (1) to show cause within 15 days why his second appeal in *Frison v. Nunnally* should not be dismissed due to his failure to designate in his purported second Notice of Appeal (BXN-142) the Order being appealed; and (2) also within 15 days, to file a response to Nunnally's motion for summary affirmance.

265. Again as was the case of the Confirmation Litigation (*see* ¶ 184-85, *supra*), Respondent ignored the directives in the Court's October 21, 2011, Order discussed in the preceding paragraph, and instead on October 26, 2011, he filed with the Court (as he did in the Confirmation Litigation; BXN-179) a "Motion to Sanction the Appellee [Nunnally] for Abuse of Litigious [*sic*] Process and Fraud on the Court." BXN-154. More than two years after Judge Hamilton had confirmed the ACAB arbitration award denying Respondent's fee claims and ordering a refund of $11,000, and notwithstanding the Court's February 28, 2011, Judgment holding that Judge Hamilton's confirmation of the ACAB arbitration award was the law of the case (BXN-147), Respondent's sanction motion still made the knowingly false statement of fact to the Court that Nunnally owed him legal fees in the amount of $243,589.84 (BXN-154 at 8), and attached to his sanction motion was a copy of version no. 3 of the four versions of Respondent's "bill" for "Dec-08," *i.e.*, the version he provided to the ACAB along with his letter dated December 29, 2008 (BXN-98 at 9). *See* n.110, *supra*. In his appeal in the Confirmation Litigation, however, Respondent told the Court that Nunnally owed him $221,588 for the period from September 12, 2005, through November 28, 2008 (BXN-181 at 6 at ¶ 3), not

$243,589.84. *See* ¶ 188(e), *supra*. In light of the foregoing facts, Respondent's filing of his "bill" for $243,589.43 in his purported second appeal in *Frison v. Nunnally* also constituted a knowing offer of false evidence to the Court.

266. On December 2, 2011, the Court of Appeals entered an Order dismissing Respondent's purported second appeal in *Frison v. Nunnally* because he failed to identify in his "Notice of Appeal" the trial court order from which the appeal was taken. BXN-157.

(12) The "Moore Lawsuit"

267. On April 18, 2011, Respondent (*pro se*) filed a lawsuit (BXN-207) in Superior Court against four defendants: an MPD Lieutenant named Vanessa Moore ("Moore");[150] MPD Chief Lanier; the District of Columbia; and Nunnally. The case was designated as civil action no. 2011 CA 2953 (BXN-206 at 1, hereinafter referred to as the "Moore Lawsuit").

268. Respondent's Complaint in the Moore Lawsuit alleged that Nunnally encouraged other MPD employees represented by Respondent, including Lt. Moore, to terminate Respondent as their attorney (BXN-207 at 5-6 at ¶ 16), and that Moore and Chief Lanier conspired with Nunnally to accomplish that end (BXN-207 at 2, 8-9). The Moore Lawsuit (BXN-207 at 5 at ¶¶ 14-15) once again made the knowingly false statement to the court that Nunnally had entered into some type of omnibus settlement with the District of Columbia that required her to terminate him as her attorney (*see* ¶¶ 58 and 142, *supra*), and added the allegation that Nunnally's alleged agreement with the District of Columbia also included an undertaking by her to interfere with Respondent's

[150] The caption of the Complaint in that action misspells Lieutenant Moore's first name as "Venessa." BXN-207 at 1.

attorney-client relationships with other MPD employees. *Id*. at ¶ 15. The Complaint further identified seven different MPD employees (including Moore) who had discharged Respondent as their attorney. *Id*. at ¶ 16.

269. On May 10, 2011, Nunnally filed a "Motion to Dismiss" in the Moore Lawsuit. BXN-208.

270. On May 23, 2011, the District of Columbia filed in the Moore Lawsuit a "Motion to Seal Portions of Plaintiff's Complaint" (BXN-209), asserting that ¶¶ 10, 33, and 34 of the Complaint, as well as numerous exhibits to the Complaint, contained privileged and confidential attorney-client communications.[151] Respondent's Complaint in the Moore Lawsuit also contained matters protected by Nunnally's attorney-client privilege. Tr. 685:21-686:6 (Nunnally); BXN-207 at 5 at n.3 (referring to exhibits attached to Respondent's Complaint in the Moore Lawsuit).

271. On May 27, 2011, Respondent filed in the Moore Lawsuit a "Motion to Seize and Examine Nunnally's Computer and Emails." BXN-206 at 3 (docket entry for 05/27/2011).

272. On May 27, 2011, Nunnally sent Respondent an e-mail (BXN-210 at 17) advising him that his "Motion to Seize and Examine Nunnally's Computer and Emails" – in violation of protective orders issued by Judge Iscoe and Judge Josey-Herring (*see* ¶¶

[151] On May 9, 2011, before filing the "Motion to Seal Portions of Plaintiff's Complaint" (BXN-209), OAG counsel sent Respondent an e-mail letter asking him to re-file his Complaint without including any attorney-client communications, and stating that Respondent's failure to do so would be brought to the attention of Bar Counsel. BXN-209 at 8. That evening, Respondent sent OAG counsel a reply e-mail (BXN-209 at 10) declining to alter his Complaint, asserting the OAG counsel's request was itself unethical, and further asserting that "the complicity if not orchestration by agents of your office of that conspiracy rises to the level of tortuous [sic] interference with my business interest and is so egregious as to warrant criminal charges as would any RICO enterprise." Respondent's e-mail then threatened to submit his charges to the Criminal Division of the Justice Department, and to the House Committee on Oversight and Government Reform.

174 and 247, *supra*) – contained privileged attorney-client and medical information, and asked him to re-file or redact his motion to eliminate such information.

273. On May 29, 2011, Nunnally filed in the Moore Lawsuit an "Emergency Motion for Protective Order and/or in the Alternative Motion to Strike" (BXN-210), referring (BXN-210 at 5 at ¶¶ 3 and 5) to the protective orders previously entered by Judge Josey-Herring (BXN-135) and by Judge Iscoe (BXN-169).

274. On May 31, 2011, Judge John Ramsey Johnson of the Superior Court entered an Order in the Moore Lawsuit scheduling a status hearing for June 9, 2011. BXN-206 at 3 (docket entry for 05/31/211).

275. At the status hearing on June 9, 2011, Judge Johnson made oral rulings in the Moore Lawsuit on various matters then pending (*see* BXN-206 at 2 (docket entry for 06/09/2011)), including granting Nunnally's "Emergency Motion for Protective Order" (BXN-210). In light of the prior protective orders issued by Judge Josey-Herring (BXN-135) and by Judge Iscoe (BXN-169), and in light of Judge Johnson's granting Nunnally's Emergency Motion for Protective Order, Respondent's including privileged and confidential information relating to Nunnally in his publicly-filed Complaint in the Moore Lawsuit and in his "Motion to Seize and Examine Nunnally's Computer and Emails" had no substantial purpose other than to embarrass and burden Nunnally.[152]

276. On June 10, 2011, Nunnally filed a Praecipe in the Moore Lawsuit (BXN-211) in response an inquiry from Judge Johnson about the status of her pending Court of

[152] At the June 9, 2011, status hearing, Judge Johnson also granted the District of Columbia's motion (BXN-209) to seal portions of the Complaint; stayed the case against Nunnally pending resolution of relevant Court of Appeals proceedings; and stayed the case generally, apparently in response to Respondent's representations to the court that both Moore and Nunnally were then involved in bankruptcy court proceedings. Tr. 688:9-16 (Nunnally). In Moore's bankruptcy proceeding, Respondent once again filed documents containing confidential information relating to Nunnally. Tr. 694:21-695:1 (Nunnally).

Appeals proceedings involving Respondent, and filed with her Praecipe a copy of the Court's February 28, 2011, Judgment (BXN-147), granting Nunnally's motion for summary affirmance in Respondent's first appeal of *Frison v. Nunnally*.

277. On June 11, 2011, Respondent filed a Praecipe in the Moore Lawsuit (BXN-212), asserting Nunnally's Praecipe filed the previous day was a bad faith filing, because Judge Josey-Herring "had on June 8, 2011,[153] entered an Order that put at issue '[Nunnally's] Motion to Redact the Record or in the Alternative Sealing Parts of the Record. . . .'"[154] However, inasmuch as Judge Josey-Herring's second protective order (BXN-141) dated June 8, 2011, explicitly deemed *Frison v. Nunnally* to be "fully litigated on appeal," Respondent's accusation that Nunnally had made a bad faith filing regarding the status of proceedings in the Court of Appeals lacked any basis in law and fact that was not frivolous.

278. At an additional status hearing in the Moore Lawsuit on March 16, 2012, Judge Johnson continued the stay in the case, noting, however (BXN-206 at 1; docket entry for 03/16/2012):

> The Court hereby strikes [Respondent's] Praecipe updating the status of bankruptcy matter and any attachments thereto, and instructs the Clerk's Office to reject the Plaintiff's pleading from being entered onto this case docket.

(13) Other Actions Against Nunnally

279. On February 6, 2012, Respondent filed against Nunnally in the District Court of Maryland for Prince George's County a "Petition for Peace Order," Case No. SP 2509-12, falsely alleging:

---

[153] BXN-141.

[154] Respondent filed his purported second Notice of Appeals in *Frison v. Nunnally* (BXN-142) on June 10, 2011.

> Ms. Nunnally was my client from SEP 2005 to NOV 2008. During the period of representation Ms. Nunnally offered sex for service, which I rejected. She sent me e-mails wherein she fantasized about being married to me and sent me pornography over the internet. I rejected her overtures and she now threatens me and my family.

BXN-213 at 4.[155] (Also on February 6, 2012, Lisa Frison, Respondent's spouse, filed a separate but similarly-worded Petition for Peace Order, Case No. SP 2510-12. BXN-213 at 11.) Respondent left blank in his "Petition for Peace Order" all of Paragraph 2, which requires the petitioner to list any outstanding litigation with the opposing party, and as of February 6, 2012, Respondent's claims against Nunnally in the Moore Lawsuit were still pending. *See* ¶ 278, *supra*, and ¶ 275 at n.153.

280. On February 9, 2012, the Prince George's County District Court entered *ex parte*[156] "Temporary Peace Orders" with respect to the petitions filed by Respondent and his spouse, which were served publicly on Nunnally at her residence. Tr. 692:12-15 (Nunnally). Paragraph A(1) of the "Temporary Peace Orders," however, failed to specify any predicate acts by Nunnally from which the court could conclude that a "peace order" was warranted. BXN-213 at 2 and 9. A further hearing was scheduled for February 16, 2012. *Id*.

[155] Tr. 693:6-9 (Nunnally). At this point in the proceeding, the Hearing Committee Chair once again called for a recess because the cumulative weight of Nunnally's recounting her experiences with Respondent caused Nunnally to lose her composure. *See* n.48, *supra*. Tr. 693:15-18.

[156] Nunnally learned of Respondent's Petition for Peace Order through her daily electronic checking of court dockets for filings by Respondent against her. Tr. 692:8-9 (Nunnally). *See* ¶ 51, *supra*.

281. Nunnally was forced to hire legal counsel to defend herself at the court hearing on February 16, 2012, relating to the "peace orders,"[157] at which the court dismissed the *ex parte* "Temporary Peace Orders," finding that no predicate acts had been committed by Nunnally in the prior 30 days. Nunnally's description of the dismissal hearing illustrates Respondent's vindictive conduct (Tr. 692:19-693:5 (Nunnally)):

> A. . . . at this hearing for which the judge said you have absolutely no probable cause, and dismissed this, to which [Respondent] replied he would simply file again. And he walked across the hallway and attempted to do so.
> Q. Do you know if he was permitted to file again?
> A. He was not able to produce probable cause on that day.

282. In light of the court's dismissal of the *ex parte* "Temporary Peace Orders" one week after they were granted due to the lack of a factual predicate, the outlandish allegations against Nunnally contained in the Petitions for Peace Order quoted in ¶ 279 *supra*, and Respondent's failure to comply with the requirement in Paragraph 2 of his Petition for Peace Order (BXN-213 at 4) to identify any outstanding litigation with the opposing party (*see* ¶ 279, *supra*), Respondent's Petition for Peace Order[158] lacked any basis in law and fact which was not frivolous, and had no substantial purpose other than to embarrass and burden Nunnally.

283. On March 8, 2012, in a 48-page "Verified Complaint" filed as a public document in the Court of Appeals, Respondent brought a purported "Original Action" against Bar Counsel, Steinmetz, Lescht, and an attorney in Lescht's law firm, alleging numerous injuries stemming from the institution of the present disciplinary matter, and

[157] Tr. 689:18-690:4; 692:18-19 (Nunnally). The February 16, 2012, Orders dismissing the "Temporary Peace Orders" entered by the court state that Nunnally was represented by counsel at the hearing. BXN-213 at 7 and 14.

[158] The Hearing Committee questions whether the Petition for Peace Order brought by Respondent's spouse was her independent act, but her conduct is not the subject of the instant matter.

the facts discussed in the Specification and in Bar Counsel's exhibits in the Nunnally Case. BXN-214. The "Verified Complaint" alleged that the Court had original jurisdiction to consider his claims pursuant to *Sitcov v. District of Columbia Bar*, 885 A.2d 289 (D.C. 2005). BXN-214 at 3.

284. In his "Verified Complaint" in the Court of Appeals Respondent once again publicly quoted from and attached as exhibits documents embodying confidential information relating to Nunnally, and matters protected by Nunnally's attorney-client privilege. BXN-214 at 5-6 at ¶¶ 24-25; *id*. at 9-10 at ¶¶ 37-42; *id*. at 11-14 at ¶¶ 47-75; *id*. at 21 at ¶ 107. Furthermore, in ¶ 59 of his March 8, 2012, Verified Complaint (BXN-214 at 12) Respondent repeated the outlandish allegation he placed in his Petition for Peace Order – which had been dismissed on February 16, 2012, due to the lack of a factual predicate – that Nunnally had e-mailed pornographic material to him. *See* ¶¶ 279 and 281, *supra*.

285. The day after Respondent filed his "Verified Complaint," by letter dated March 9, 2012 (BXN-215) the Clerk's Office of the Court, citing *Sitcov*, *supra*, 885 A.2d at 294-95,[159] advised Respondent that his "Verified Complaint" could not be accepted for filing because it was not:

> seeking review of any action by the Superior Court for the District of Columbia … [or] seeking review of an action by a District of Columbia agency … [or] seeking a writ of mandamus or prohibition directed to a Superior Court Judge or a District of Columbia officer … [or] complaining about the denial of an application for admission to the Bar ...

[159] In *Sitcov*, an attorney directly challenged in the Court of Appeals his administrative suspension from the Bar because of non-payment of his annual Bar dues, alleging he had no other avenue of appeal. The Court accepted that argument, stating, 885 A.2d at 295, "Our jurisdiction to review the actions of the Bar in this case is somewhat analogous to our authority to consider challenges to decisions of the Committee on Admissions . . . ." With respect to the disciplinary matters central to Respondent's "Verified Complaint," however, there is an established avenue to seek review by the Court of Appeals via D.C. Bar Rule XI, § 9(h).

> [or] action brought by the District of Columbia Court of Appeals Committee on Unauthorized Practice of Law.

286. The Court's immediate rejection of Respondent's Verified Complaint, and the rationale for the Court's action quoted in the preceding paragraph, establish that the Verified Complaint lacked a basis in law and fact that was not frivolous. Furthermore, Respondent's scandalous allegations about Nunnally, and his quotations from and his attaching as exhibits to his Verified Complaint documents embodying client secrets of Nunnally in ¶¶ 24(h), 25, 57, 59, and 64 of the Verified Complaint, had no substantial purpose other than to embarrass and burden Nunnally.

(14) Prior Disciplinary Action

287. On July 22, 2008, Bar Counsel issued Respondent an informal admonition letter. BXN-222. The matter there in question involved Respondent's suing a former client and Respondent's successor counsel in 2006 because of an ethical complaint against Respondent by the client and successor counsel.[160] Respondent refused to withdraw his suit after being informed by Bar Counsel of the immunity afforded to ethical complaints by D.C. Bar Rule XI, § 19(a), and the client's successor counsel then moved to dismiss the suit. Respondent opposed the motion, and asked for sanctions against the client and successor counsel. The suit was dismissed based on the § 19(a) privilege, and Respondent filed a motion for reconsideration, which the court denied. Respondent then filed an amended complaint against the client and successor counsel,[161]

[160] The claims asserted in Respondent's suit included defamation, libel, interference with prospective business advantage, interference with contractual relations, conspiracies to breach Respondent's retainer agreements, and breach of Respondent's retainer agreements. BXN-222 at 2.

[161] The claims Respondent asserted in the amended complaint included conspiracy to tortiously interfere with Respondent's retainer agreements, and breach of an agreement to pay Respondent for representing the client on appeal. BXN-222 at 1.

which Respondent failed to pursue, resulting in a second dismissal. Bar Counsel based its informal admonition letter on Rule 3.1(a) (bringing a proceeding or asserting an issue therein that was frivolous), and Rule 8.4(d) (engaging in conduct that seriously interferes with the administration of justice). BXN-222 at 1-2. Bar Counsel decided to issue only an informal admonition because of a number of factors, including Respondent's lack of a prior disciplinary record, his cooperation in Bar Counsel's investigation, his expression of remorse, and his relatively recent admission to the District of Columbia Bar. BXN-222 at 3.

B. Findings of Fact Relating to the Davis Case

288. Respondent was admitted to practice as a member of the Bar of the Court of Appeals on July 8, 2002, Bar Registration No. 478092. BXD-1.

289. Respondent was personally served with the Specification of Charges (BXD-2) and a Petition Instituting Formal Disciplinary Proceedings in the Davis Case on December 14, 2011. BXD-3 at 2.

290. On September 23, 2004, Respondent entered his appearance as co-counsel for the plaintiffs in Superior Court Civil Action No. 2003 CA 2602 (the "Davis Lawsuit"). BXD-4 at 1 and 6. A principal defendant in the Davis Lawsuit was the Second Northwest Cooperative Homes Association ("Second Northwest"), which was represented by Rocco P. Porreco, Esq. *Id*. at 1; Tr. 102:12-19 (Porreco).[162]

291. The theory of the Davis Lawsuit was that Victoria Davis, a minor, had been injured by an electrical charge when she touched a lamppost pole for which Second Northwest was responsible, and that Second Northwest had been on notice of this type of problem due to a prior similar incident. BXD-5 at 2-3 at ¶¶ 3-5; Tr. 103:2-11 (Porreco).

[162] The other principal defendant in the Davis Lawsuit was Northeast Electric Co.

292. Although Respondent entered the Davis Lawsuit as plaintiffs' co-counsel, he assumed primary responsibility for the conduct of the case and plaintiffs' prior attorney continued only in a minor role. Tr. 103:22-104:19 (Porreco); BXD-6 at 1 at ¶ "B."

293. Proceedings in a Superior Court civil trial are governed by a pretrial order entered by the court, based on a joint pre-trial statement submitted by the parties specifying principally their claims/defenses, witnesses, and evidence; once the parameters of the trial are set by the pretrial order, the court requires the parties to adhere to those parameters. Tr. 108:9-109:6 (Porreco); BXD-7 at 1 at n.1.

294. Mr. Porreco testified credibly that on January 31, 2008, Respondent e-mailed to opposing counsel in the Davis Lawsuit a draft of Respondent's "Proposed Joint Pretrial Statement." Tr. 109:7-110:11 (Porreco); BXD-5 at 1. Respondent's proposed joint pretrial statement listed only three witnesses, all of them being proposed experts,[163] but nowhere in Respondent's proposed joint pretrial statement did Respondent identify any fact (*i.e.*, non-expert) witnesses. BXD-5 at 6. Respondent's Proposed Joint Pretrial Statement had no signatures at the end, either electronic or manual. BXD-5 at 7.

295. All material portions of the "Proposed Joint Pretrial Statement" Respondent e-mailed to defense counsel on January 31, 2008 (BXD-5 at 2-7) were included in the Joint Pretrial Statement (BXD-6) submitted to the Superior Court. Tr. 110:6-11 (Porreco). For example:

a. The 7 "Requested Stipulations" in Respondent's Proposed Joint Pretrial Statement (BXD-5 at 4-5) are quoted in Part G of the Joint Pretrial Statement submitted to the court (BXD-6 at 4-5);

[163] There are five entries under the heading "Expert Witnesses" (item no. "3" is repeated, but there is no item no. "4"). Two of the entries do not identify any witnesses at all, but instead purport to reserve the right to call additional medical and technical experts as witnesses, including for purposes of rebuttal.

b. The "Damages Claimed by Plaintiff" ($3,224,725) in Respondent's Proposed Joint Pretrial Statement (BXD-5 at 5) is quoted in Part H of the Joint Pretrial Statement submitted to the court (BXD-6 at 6).

c. The "Expert Witnesses" listed in Respondent's Proposed Joint Pretrial Statement (BXD-5 at 6) (Dr. Mimbalett Avril; Dr. Marylyn Corder; and Mr. Ronnie Waters) are all identified by name in Part K of the Joint Pretrial Statement submitted to the court (BXD-6 at 6).

d. The 9 "Exhibits" for the plaintiffs listed in Respondent's Proposed Joint Pretrial Statement (BXD-5 at 5-6) are all listed in Part L of the Joint Pretrial Statement submitted to the court (BXD-6 at 8).

296. On February 1, 2008, a Joint Pretrial Statement – including the input from Respondent's Proposed Joint Pretrial Statement cited in the preceding paragraph – was electronically filed with the Superior Court. BXD-6 at 1. Under the Superior Court's procedures, electronic signatures were identified at the end of the document with the designation "/s/"; there were no manual signatures. BXD-6 at 14-16; Tr. 110:12-111:17 (Porreco).

297. In addition to the expert witnesses (and the only witnesses) designated in Respondent' Proposed Joint Pretrial Statement (BXD-5 at 6), the Joint Pretrial Statement filed with the Superior Court listed the plaintiffs as fact witnesses (BXD-6 at 6 at ¶ K(a)-(b)), but no other fact witnesses for the plaintiffs were identified either in Respondent's Proposed Joint Pretrial Statement (BXD-5 at 6) or in the Joint Pretrial Statement filed with the court (BXD-6 at 6).

298. A pretrial conference was held with counsel for the parties on February 7, 2008. Tr. 111:18-22 (Porreco). At the pretrial conference Respondent did not seek to amend or make any corrections to the Joint Pretrial Statement previously filed with the court. Tr. 113:12-18 (Porreco).

299. A Pretrial Order was entered by the Superior Court on February 7, 2008 (docketed February 8, 2008). BXD-7 at 1. Paragraph 1 of the Pretrial Order scheduled trial to begin on May 5, 2008 (a Monday). *Id.* Paragraph 2 of the Pretrial Order incorporated the parties' Joint Pretrial Statement except as otherwise noted in the Pretrial Order (*id.*), but no provision of the Pretrial Order indicated any addition to Respondent's designation of witnesses for the plaintiffs. Specifically, ¶ 10 of the Pretrial Order stated, "The witnesses are as listed in the Joint Pretrial Statement. No party may offer at trial any witness . . . not disclosed at pretrial except for purposes of impeachment, i.e., the witness . . . relates solely to the credibility of another witness or party." *Id.* at 4. Respondent signed at the end of the Pretrial Order to signify that he received a copy of it following the close of the pretrial conference. *Id.* at 7.

300. Regardless of the fact that neither the Joint Pretrial Statement nor the Pretrial Order permitted Respondent to call any representatives of the defendants as witnesses during plaintiffs' case-in-chief, at 11:40 A.M on Friday, May 2, 2008, Respondent sent defendants' counsel (including Mr. Porecco) an e-mail stating, "Although your clients must provide an agent to testify, please find subpoenas affirming the same." BXD-8 at 1. A "Certification of Subpoena Service" sent by Respondent with that e-mail states, "Plaintiffs . . . by way of counsel . . . assert that the corporated [*sic*] defendants were served subpoena's [*sic*] for their agents to testify at the scheduled trial in the matter." *Id.*

at 2; Tr. 114:5-115:4 (Porreco).

301. The trial transcript of the Davis Lawsuit is provided as BXD-9. At the beginning of the trial Mr. Porreco raised an objection with the court regarding Respondent's purporting to serve him with a trial subpoena for a representative of his client, Second Northwest, and Respondent's not having named any such witness in the Joint Pretrial Statement filed with the court. BXD-9 at 12-13; Tr. 115:5-19 (Porreco). In reply, Respondent knowingly and falsely stated to the court, ". . . we filed a plaintiff [sic] witness list . . . but we identified the president of Second Northwest Cooperative Homes Association as one of the witnesses that we would – – you know, wanted identified here." BXD-9 at 14. The following colloquy ensued (*id*. at 15-16):

> THE COURT: Did you name them in your joint pretrial statement? Were they named in the joint pretrial statement? No?
> MR. FRISON: Well, we'll see, Your Honor.
> THE COURT: I'm looking at it.
> MR. PORRECO: No, they weren't.
> MR. FRISON: Well, then, Your Honor – –
> THE COURT: Then you're precluded from calling them
> MR. FRISON: All right, Your Honor.
> THE COURT: That objection is sustained.

Respondent, however, reiterated his attempt to call a representative of Second Northwest during plaintiffs' case-in-chief, with the same unavailing result. *Id*. at 207-08.

302. On the first day of trial in the Davis Lawsuit, Respondent called three witnesses, Plaintiffs Tenedia Davis and Victoria Davis, and a doctor. BXD-9 at 2.[164] On the second day of trial, after some brief additional discussion concerning damages (*id*. at 243-58), co-Defendant Northeast Electric Co. moved for judgment as a matter of law (*id*. at 258-60), which the court granted due to a lack of evidence relating to that co-defendant

[164] Line 3 of this page of the trial transcript erroneously identifies plaintiffs' three witnesses as being called "On behalf of the Government."

(*id*. at 262). Co-Defendant Second Northwest then also moved for judgment as a matter of law (*id*. at 262-63), which the court granted due to a lack of evidence establishing Second Northwest's responsibility for the electric lamppost pole which allegedly caused the injury in question (*id*. at 268-69).

303. On June 2, 2008, Respondent filed with the Court a Notice of Appeal from the trial court's judgments in the Davis Lawsuit. BXD-10.

304. On January 16, 2009, Respondent filed with the Court a brief in support of his appeal in the Davis Lawsuit. Respondent presented four formal assignments of error (BXD-12 at 2), the first assignment of error (relating to evidentiary rulings by the trial court) being subdivided into 13 different "issues," each "issue" designated by a Roman numeral from "I" through "XIII." BXD-12 at 11-19. The second formal assignment of error was, "Whether the court denying the plaintiff's [*sic*] request to call defendant to the stand was an abuse of discretion and or [sic] reversible error?" BXD-12 at 2. The third formal assignment of error was, "Whether dismissal of the complaint was an abuse of discretion and or [*sic*] error?" *Id*. The fourth formal assignment of error was, "Whether Judge Combs-Greene [*sic*; *see* n.22, *supra*][165] should have recused?" *Id.* In support of the third assignment of error, Respondent asserted in his brief to the Court, "The issue of liability . . . was admitted by the defendants. Therefore the only issue before the court and to be decided was the issue of damages." BXD-12 at 7 at ¶ 9; *see also* BXD-17 at 3 (oral argument pp. 6-7).

305. On the same day as Respondent filed his appellate brief in the Davis Lawsuit, Respondent also filed with the Court "Appellant's Extract in Support of Brief," providing to the Court those portions of the trial court record that Respondent deemed

[165] Judge Combs Greene was the trial judge in the Davis Case.

material to the appeal. BXD-13 at 1-2.

306. The last document in "Appellant's Extract in Support of Brief" (Extract pages 000260-000265) was entitled, "Proposed Joint Pretrial Statement." BXD-13 at 2 and 255-60. Paragraph 8 of the Statement of Facts in Respondent's brief to the Court states, "The proposed Joint Pretrial Statement submitted to the defendants is at Appellant [*sic*] Extract 00260-00265." BXD-12 at 7 at ¶8.

307. The "Proposed Joint Pretrial Statement" Respondent submitted to the Court (BXD-13 at 255-61) differs materially from the actual "Proposed Joint Pretrial Statement" Respondent e-mailed to defense counsel in the Davis Lawsuit (BXD-5). The "Proposed Joint Pretrial Statement" Respondent submitted to the Court in his "Appellant's Extract in Support of Brief" contains an entirely new category of witnesses entitled "FACT WITNESSES," among whom are listed "2. Agent designated by Second Northwest Cooperatives Homes Association" and "3. Agent designated by Northeast Electric Company."[166] BXD-13 at 259. The actual "Proposed Joint Pretrial Statement" Respondent e-mailed to defense counsel identified *no* witnesses other than three proposed experts. BXD-5 at 6.

308. In addition to the differences discussed in the preceding paragraph, the "Proposed Joint Pretrial Statement" Respondent filed with the Court differs from the similarly-captioned document he e-mailed to opposing counsel in that page 4 of the e-mailed version ends with a reference to a paragraph "7" (BXD-5 at 5), whereas page 4 of the version Respondent filed with the Court ends with a reference to a paragraph "6"

[166] Respondent's designation of "FACT WITNESSES" in "Appellant's Extract in Support of Brief" (BXD-13 at 259) has two paragraphs numbered "3." The first "no. 3" states, "Agent designated by Northeast Electric Company"; the second "no. 3" states, "Emergency personnel responding to 911 call on April 3, 2000."

(BXD-13 at 258). Furthermore, in the "Expert Witness" designation on page 5 of the e-mailed version (BXD-5 at 6) the paragraphs are numbered incorrectly (there are two paragraphs numbered "3"); in the version Respondent filed with the Court, the Expert Witness designation is correctly numbered from "1" to "5" (BXD-13 at 259).

309. The changes described in the two preceding paragraphs establish that the altered version of the "Proposed Joint Pretrial Statement" Respondent filed with the Court, which appears to bear his manual signature at the end (BXD-13 at 260), was knowingly falsified by Respondent and filed with the intent to create a spurious issue on appeal, and was knowingly offered by Respondent as false evidence to the Court.

310. Mr. Porreco testified credibly that the document presented in "Appellant's Extract in Support of Brief" at pages 000260-000265 entitled "Proposed Joint Pretrial Statement" was not the document Respondent had previously e-mailed to him as plaintiffs' Proposed Joint Pretrial Statement in the Davis Lawsuit. Tr. 121:13-123:1; 127:13-17 (Porreco).

311. Respondent's submission of the "Proposed Joint Pretrial Statement" in his "Appellant's Extract in Support of Brief" (BXD-13 at 255-61) containing a new category of witnesses entitled "FACT WITNESSES" (BXD-13 at 259) constituted a knowingly false statement of fact to the Court by Respondent, because the document he filed with the Court was materially different from the Proposed Joint Pretrial Statement that Respondent had e-mailed to opposing counsel on January 31, 2008 (BXD-5).

312. Respondent's brief to the Court supporting his contention that the trial court erred in denying plaintiffs' "request to call defendant to the stand" stated:

> Appellants [sic] counsel informed the defendants that each would be required to provide a corporate representative at trial. * * * Mr. Porreco

> [counsel for Second Northwest] admitted that he and Mr. Franklin [counsel for co-Defendant Northeast Electric Co.] were properly served subpoenas for their client to produce a corporate witness to testify at trial.

BXD-12 at 20. Respondent's brief then argued that the trial judge erred in agreeing that legal counsel for the defendants were not authorized to accept service of subpoenas for their clients. BXD-12 at 21.

313. Respondent's argument in his brief to the Court, quoted in the preceding paragraph, stating that "Mr. Porreco admitted that he and Mr. Franklin were properly served subpoenas for their client to produce a corporate witness to testify at trial[,]" was a knowingly false statement of fact to the Court. Contrary to Respondent's misrepresentation, Mr. Porreco objected to the propriety of such service as a preliminary matter at the outset of the trial in the Davis Lawsuit, an objection which the trial court sustained. BXD-9 at 12-16; Tr. 124:7-16 (Porecco).

314. On December 10, 2009, a panel of the Court comprised of Judges Reid, Glickman, and Kramer (BXD-18 at 1) heard oral argument in Respondent's appeal of the Davis Lawsuit (transcript provided as BXD-17). During oral argument, the Court raised with Respondent the issue of whether he had called any representatives of the defendants as witnesses during plaintiffs' case-in-chief, and Respondent stated he had been denied the opportunity to do so. BXD-17 at 5 (oral argument pages 15-17). The following colloquy ensued (BXD-17 at 5-6 (oral argument pages 17-18)):

> THE COURT: Had you listed them as witnesses in your pretrial statement?
> MR. FRISON: *We listed them as witnesses*, we provided also subpoenas because we were concerned about whether they would show or not. So we provided subpoenas to counsel of record. We contacted counsel of record, *asked* them would they accept subpoenas for their corporate witnesses or corporate representatives. You know I argue they said yes. They argued later on they said no. We submitted the subpoenas to counsel. The

> individuals showed up and then counsel argued before the judge well, the witnesses were not personally served and that counsel did not have the authority to accept service or to accept the subpoena for those witnesses. Therefore, they sat in the courtroom and we were not able to call them. [Emphasis added.]

315. Respondent's statement to the Court quoted above contains two knowingly false statements of fact. First and foremost, representatives of the corporate defendants were *not* "listed . . . as witnesses" to testify as part of plaintiffs' case-in-chief in the Davis Lawsuit, either in Respondent's Proposed Joint Pretrial Statement e-mailed to opposing counsel (BXD-5 at 6), or in the actual Joint Pretrial Statement filed with the trial court (BXD-6 at 6-7; BXD-7 at 4 at ¶10). Second, Respondent did not "ask" defense counsel if they would accept subpoenas for their corporate clients; he purported to *tell* defense counsel that representatives of their clients were subpoenaed. BXD-8 at 1-2.

316. The subject of whether "Appellant's Extract in Support of Brief" filed by Respondent with the Court accurately represented the proceedings during the Davis Lawsuit was raised again when Mr. Franklin (legal counsel for co-Defendant Northeast Electric Co.) told the Court, ". . . what appellant has in the extract at 260 is actually different than what he e-mailed to Mr. Porreco . . . . So . . . not only is it inappropriately attached here because it wasn't part of the record, but it's different than what he had actually given us." BXD-17 at 8 (oral argument pages 26-27).

317. During Respondent's rebuttal in oral argument, the issue raised by Mr. Franklin was the subject of the following colloquy between the Court and Respondent (BXD-17 at 8-9 (oral argument pages 29-30)) (emphasis added):

> THE COURT: I'd like you to explain to me what this document that begins on page 260 of the appellant's extract and [*sic*] support of brief is doing in there?
> MR. FRISON: I'm sorry.
> THE COURT: What is it in there for?
> MR. FRISON: *Well, it is in there to identify what was actually filed or what we had agreed upon*, what the issues were.
> THE COURT: Is that a document that was part of the record below?
> MR. FRISON: It should've been. In fact, I thought I filed – –
> THE COURT: Was it?
> MR. FRISON: Well, Your Honor, at this point in time, I think it was. I talked to counsel about it – –
> THE COURT: Was it sent to counsel?
> MR. FRISON: *Yes, it was sent to counsel*.

318. Respondent's statements to the Court quoted in the preceding paragraph that "it is in there to identify what was actually filed" and "it was sent to counsel" were additional knowingly false statements of fact to the Court, reiterative of those Respondent had previously made as discussed above in ¶¶ 311 and 313-15. *See* also ¶ 333, *infra* (referral letter from Judge Kramer to Bar Counsel stating that Respondent "was aware that the reason he was not allowed to question these witnesses was because they were not listed in the actual joint pretrial statement" and Respondent "deliberately misrepresented these facts to the panel").

319. In a per curiam Memorandum Opinion and Judgment dated January 6, 2010, the Court affirmed the trial court in all respects. BXD-18. With respect to Respondent's first assignment of error relating to evidentiary rulings by the trial court, which was subdivided into issues "I" through "XIII" (BXD-12 at 11-19), the Court held (BXD-18 at 2-3):

> Appellants argue that the trial court made sixteen errors which warrant reversal. The majority of appellants' assertions, however, are not properly before this court because appellants failed to provide sufficient argument or indicate a basis in the record to support their allegations.

* * *

> We decline to address eight of the sixteen errors alleged because the issues have not been adequately briefed.

* * *

> Here, the majority of appellants' claims are raised in one to four sentence conclusory statements which contain little or no argument. We specifically decline to address the alleged errors in the trial court's rulings on motions in limine with respect to issues I, II, III, IV, VI, and IX, because the appellants failed to provide us with either the motions, oppositions, or transcripts necessary for review. We also decline to address issues V and VIII because appellants failed to provide cogent arguments with any legitimate legal basis. [Footnotes omitted.]

320. With respect to Respondent's second assignment of error, "Whether the court denying the plaintiff's [*sic*] request to call defendant to the stand was an abuse of discretion and or [sic] reversible error?" (BXD-12 at 2), the Court held (BXD-18 at 5):

> Appellants contend that it was reversible error for the trial court to preclude them from calling Christine Leake, the corporate representative for Second Northwest and a defense witness, as a plaintiff's witness. The record reveals that appellants did not include Ms. Leake in their final Rule 26 (b) filing, and that Ms. Leake was not included as a plaintiff's witness in the joint pretrial statement. The Pretrial Order states in paragraph 10:
>
> > The witnesses are as listed in the Joint Pretrial Statement. No party may offer at trial any witness or exhibit not disclosed at pretrial.
>
> The trial court thus did not err in precluding Christine Leake from testifying as a plaintiff's witness.

The Court further observed, "Appellants' argument on the proper service of a subpoena is inapposite because whether or not Ms. Leake was properly subpoenaed is not at issue." *Id*. at n.8.

321. With respect to Respondent's fourth assignment of error, "Whether Judge Combs-Greene [*sic*] should have recused?" (BXD-12 at 2), the Court held (BXD-18 at 5-6):

> Because this issue is raised for the first time on appeal, we review for plain error only. * * * Because appellant articulates no specific example of hostility, much less impermissible bias, and cites only an irrelevant canon of the American Bar Association Code of Judicial Conduct, we find no reason to question the impartiality of the trial judge and we certainly do not find plain error. [Footnotes omitted.]

See also Tr. 124:17-125:12 (Porecco) (issue of recusal was not raised at trial).

322. With respect to Respondent's third assignment of error, "Whether dismissal of the complaint was an abuse of discretion and or [*sic*] error?" (BXD-12 at 2), the Court stated (BXD-18 at 6 at n.11):

> Notably, despite titling the relevant section of the brief, "Whether the dismissal of the complaint was an abuse of discretion and or reversible error?," appellants fail to even mention defendant Second Northwest. Because appellants declined to make any argument as to why dismissal of the case against Second Northwest was inappropriate, we decline to address the issue.

333. On March 18, 2010, Judge Kramer of the Court of Appeals, acting for herself and Judge Glickman, sent a referral letter to Bar Counsel (BXD-19) regarding statements by Respondent during oral argument in the appeal of the Davis Lawsuit, in which Respondent "claimed that the trial court erred in refusing to allow him to call two particular witnesses." BXD-19 at 1. The letter stated (*id*.):

> More troubling is the fact that Mr. Frison filed with his appellate brief a proposed joint pretrial statement that had the witnesses properly listed. We became concerned that one of the attorneys was not being truthful with the court. For that reason, we compared Attorney Frison's oral statements and the document that he filed with the court with the actual pretrial statement which was filed in the Superior Court. *We determined that the joint pretrial statement filed by Attorney Frison with this court misrepresented what had been filed with the Superior Court. Nonetheless, Frison continued to defend his position in oral argument.* A review of the trial transcript, however, shows that *he was aware that the reason he was not allowed to question these witnesses was because they were not listed in the actual joint pretrial statement. Thus, it became clear that he had deliberately misrepresented these facts to the panel.* [Emphasis added.]

334. By letter dated April 7, 2010 (BXD-20), Bar Counsel sent Respondent an inquiry letter stating (BXD-20 at 1):

> . . . it has come to Bar Counsel's attention that on December 10, 2009, you appeared as counsel for the appellant in *Davis v. Northwest Cooperative Homes Association* . . . and during your argument you made representations to the District of Columbia Court of Appeals ("Court") that you knew or should have known were false.

Bar Counsel's letter to Respondent drew his attention particularly to the following:

> Notably, when you filed the appellate brief you included a proposed joint pretrial statement that you contended properly listed the witnesses.

335. By letter dated April 18, 2010 (received by Bar Counsel on April 21, 2010) (BXD-21), Respondent replied to Bar Counsel's inquiry. That reply contained the following statements (BXD-21 at 2-3):

> 8. I filed in the Appellant's brief a copy of the document provided Mr. Porecco and Mr. Franklin which was to be included in the Joint Pretrial Statement . . . .
>
> * * *
>
> 9. The Proposed Joint Pretrial Statement filed by me was the document provided Mr. Porreco and Mr. Franklin . . . .

336. Respondent's statements to Bar Counsel quoted in the preceding paragraph were knowingly false statements of fact because "the document provided to Mr. Porreco and Mr. Franklin" (BXD-5) was materially different from the document Respondent filed with the Court in "Appellant's Extract in Support of Brief" at pages 000260-000265 (BXD-13 at 255-260), as discussed above in ¶¶ 307-09.

337. Neither Respondent's reply to Bar Counsel's inquiry, nor any of the six exhibits attached to that reply, indicates that Respondent took any action to correct for the Court either the state of the record on appeal, or Respondent's knowingly false statements

of fact to the Court during oral argument that were the subject of Bar Counsel's inquiry. BXD-21. To the contrary, Respondent's reply concluded, "I did nothing improper or that would warrant the allegations submitted by Bar Counsel" (BXD-21 at 4). Mr. Porreco, who served as appellate counsel for Second Northwest as well as trial counsel (BXD-15 at 23), testified that so far as he was aware, Respondent made no submissions to the Court to modify or correct any of Respondent's statements during oral argument. Tr. 127:18-22 (Porreco).

III. CONCLUSIONS OF LAW[167]

This Part III presents the conclusions of the Hearing Committee on the Rule violations alleged against Respondent. Part IV of the Report and Recommendation discusses the Hearing Committee's proposed sanction.

Each section of this Part III first cites a Rule violation alleged in the Specifications in the Nunnally Case and/or the Davis Case; then the text of the Rule allegedly violated; then the Hearing Committee's basic conclusion with respect to that allegation; and then a summary of the applicable legal standard. Finally, each section

[167] For the benefit of readers, the following is an outline of this Part III:

Section No.	Rule	Pages
A	1.1 (competent representation)	147-150
B	1.3(b)(1) (intentional failure to seek client's objectives)	150-152
C	1.3(b)(2) (intentional prejudice to client)	153-155
D	1.4 ((keeping client reasonably informed)	155-158
E	1.6 (revealing client confidences and secrets)	158-161
F	1.16 (returning client property; withdrawal after termination)	161-163
G	3.1 (frivolous litigation with no basis in law and fact)	163-169
H	3.2(a) (delaying proceedings to harass/injure other persons)	169-172
I	3.3(a)(1) (knowingly false statements to a tribunal)	172-174
J	3.3(a)(4) (knowingly offering false evidence)	174-176
K	3.4(b) (falsifying evidence)	176-177
L	3.4(c) (knowing disobedience of rules of tribunal)	178-179
M	4.4(a) (actions taken to embarrass/delay/burden third parties)	179-180
N	8.1 (knowing false statements in a disciplinary investigation)	180-182
O	8.4(c) (dishonest conduct)	182-184
P	8.4(d) (conduct interfering with the administration of justice)	184-186

identifies the Hearing Committee's findings of fact supporting the Hearing Committee's conclusion. Paragraph references in this Part III to the findings of fact in Part II of this Report and Recommendation are designated with the prefix "FF ¶."

> A. Respondent violated Rule 1.1(a) and/or Rule 1.1(b) in that Respondent failed to provide competent representation to his client and/or failed to serve his client with the skill and care commensurate with that generally afforded clients by other lawyers in similar matters.
>
> 1. Rule 1.1(a) and (b): "(a) A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness, and preparation reasonably necessary for the representation. (b) A lawyer shall serve a client with skill and care commensurate with that generally afforded to clients by other lawyers in similar matters."

2. The Hearing Committee concludes that Respondent violated both Rule 1.1(a) and Rule 1.1(b).

3. Applicable Standard

With respect to Rule 1.1(a), Comment [5] to Rule 1.1 states that competent legal representation "includes adequate preparation, and continuing attention to the needs of the representation to assure that there is no neglect of such needs."

With respect to Rule 1.1(b), the Hearing Committee notes that Bar Counsel did not introduce expert testimony to establish the standard of "skill and care . . . generally afforded to clients by other lawyers in similar matters[,]" or to demonstrate that Respondent violated that standard of care. It is not required in all cases, however, for Bar Counsel to "produce evidence of practices of other attorneys in order to establish a Rule 1.1(b) violation." *In re Schlemmer*, Bar Docket Nos. 444-99 & 66-00 at 13 (BPR Dec. 27, 2002), *aff'd*, 840 A.2d 657 (D.C. 2004) (attorney failed to file an immigration appeal after client paid initial fee for the appeal). A Hearing Committee may find a violation of Rule 1.1(b) even absent such evidence, when an attorney's "conduct is so

obviously lacking that expert testimony showing what other lawyers generally would do is unnecessary." *In re Nwadike*, Bar Docket No. 371-00 at 28 (BPR July 30, 2004), *aff'd*, 905 A.2d 221 (D.C. 2006). (*inter alia*, at the time of the deadline for a plaintiff's attorney to file a 26(b)(4) statement and by the close of discovery, the attorney not only failed to fulfill the attorney's court ordered discovery obligations regarding essential expert opinion, but also had not yet even obtained an opinion and was unaware of whether or not the attorney had proof to sustain the plaintiff's claim).

4. Relevant Findings of Fact

There is clear and convincing evidence in the record that Respondent failed to provide competent representation to Nunnally in the Graham Lawsuit, in the Retirement Case, in the MPA Case, and in the Federal Lawsuit, thereby violating Rule 1.1(a).

In the Graham Lawsuit, Respondent failed to represent Nunnally's interests in the *de bene esse* deposition of Mary P. Noonan, a crucial witness. FF ¶¶ 29; 39; 57. He also failed to file with the Mayor of the District of Columbia as required by D.C. Code § 12-309 a timely and complete supplemental notification of damages suffered by Nunnally; this in turn gave OAG counsel the opportunity to file a motion *in limine* to bar proof of such damages at trial, a motion that the trial court granted because Respondent failed to file an opposition to the motion. FF ¶¶ 41 and 43-44. It was also incompetent for Respondent not to have filed under seal medical records relating to Nunnally, or to have discussed with Nunnally in advance the fact that he was not filing the records under seal and the means by which such information could have been protected from public disclosure. FF ¶ 46.

In the Retirement Case, Respondent failed to obtain the testimony of any

witnesses favorable to Nunnally, either at the initial hearing before the Retirement Board on February 14, 2008, or at the continuation of the Retirement Board proceedings on July 31, 2008. FF ¶¶ 75 and 84. Respondent also failed to request an award of interim retirement benefits for Nunnally due to his lack of understanding concerning the basis on which such awards are allowed, and even though Nunnally directed Respondent to make such a request. FF ¶¶ 76-77. Last, Respondent failed to provide the Retirement Board with additional medical records pertaining to Nunnally that the Retirement Board had requested (and reminded Respondent in writing he was to provide), and which Respondent had advised the Retirement Board he would provide. FF ¶¶ 85-86.

In the MPA Case, Respondent failed to inform the court in his opening brief of the actual date on which Nunnally submitted her initial Form PD 42 – despite the fact that Nunnally had advised him of the actual filing date and the error she had made in dating the form (FF ¶ 93) – and actually misstated the filing date, thereby providing OAG counsel with an opportunity to argue the Nunnally had filed the form later than she actually did, an error that remained a point of confusion throughout the Superior Court's consideration Nunnally's appeal from the adverse administrative action in the MPA Case. FF ¶¶ 102-03; 108; 116. This error – and the confusion it caused – were compounded by Respondent's filing with the court a fabricated version Nunnally's actual Form PD 42 that clearly was not the one Nunnally had submitted, and later manually corrected. FF ¶¶ 93-94 and 103.

In the Federal Lawsuit, Respondent sued the incorrect defendants, and even after the court had ruled that claims for relief in the case could not properly be asserted against the United States House of Representatives and United States Senate, Respondent

continued to allege similar claims for relief in his amended complaint. FF ¶¶ 131-33.

There is also clear and convincing evidence in Graham Lawsuit that at several key points, Respondent's conduct in representing Nunnally was "so obviously lacking" (*In re Nwadike*, *supra*, at 28) that the Hearing Committee concludes – even in the absence of expert testimony – Respondent violated Rule 1.1(b). Respondent failed to represent Nunnally's interests in the *de bene esse* deposition of Mary P. Noonan, a crucial witness, despite the fact that he knew her testimony would be adverse to Nunnally. FF ¶¶ 29; 39; 57. Respondent also failed to meet the basic statutory requirement of D.C. Code § 12-309 to file with the Mayor of the District of Columbia a timely and specific updated notice of the actions on which Nunnally predicated her claims for damages occurring after the initial § 12-309 notice filed by Sanders in 2004. FF ¶ 41. In addition, when OAG counsel filed a pre-trial motion *in limine* to limit the claims for damages that Nunnally could attempt to prove at trial due to Respondent's failure to file a proper supplemental § 12-309 notice, Respondent failed to file an opposition to the motion, which the court then granted as unopposed. FF ¶¶ 43 and 44.

> B. Respondent violated Rule 1.3(b)(1) in that Respondent intentionally failed to seek the lawful objectives of his client through reasonably available means permitted by law and the ethical rules.
>
> 1. Rule 1.3(b)(1): "(b) A lawyer shall not intentionally: (1) Fail to seek the lawful objectives of a client through reasonably available means permitted by law and the disciplinary rules."

2. The Hearing Committee concludes that Respondent violated Rule 1.3(b)(1).

3. Applicable Standard

Neglect has been defined as including a conscious disregard of the responsibilities

an attorney owes to a client. *In re Reback*, 487 A.2d 235, 238 (D.C. 1985), *adopted in relevant part*, 513 A.2d 226 (D.C. 1986) (en banc).

Intentional neglect is proved "when a lawyer's inaction coexists with an awareness of his obligations to his client." *In re Ukwu*, 926 A.2d 1106, 1116 (D.C. 2007) (Board Report appended). Intent can also be established if the attorney is "demonstrably aware" of the neglect. *In re Reback*, *supra*, 487 A.2d at 240; *In re Robertson*, 612 A.2d 1236, 1250 (D.C. 1992) (appending Board Report) (attorney who failed to file annual tax returns for a client "knowingly created a grave risk" and must have understood that prejudice or damage "was substantially certain to follow from his conduct").

4. Relevant Findings of Fact

There is clear and convincing evidence in the Nunnally Case that there were a number of key instances in which Respondent was fully aware of what was needed or what his client wanted, but in which he failed to take appropriate action.

In the Graham Lawsuit, Respondent was fully aware that Mary P. Noonan could be a very damaging witness to Nunnally: he had filed pleadings indicating the bases on which her credibility was subject to serious challenge, and Nunnally had provided Respondent with a binder of documents to use in doing so. Nevertheless, Respondent failed to attend the *de bene esse* deposition of Ms. Noonan – because he was busy having a pizza with his daughter – and allowed the deposition to go forward in his absence without anything being placed in the record that would challenge or contradict Ms. Noonan's testimony. FF ¶¶ 39 and 57. Another instance of intentional neglect occurred when OAG counsel prior to the pretrial in the case filed a motion *in limine* to bar any evidence at trial of harassment or retaliatory acts occurring after July 16, 2004. Failure to

respond to the motion created a grave risk to Nunnally that it would be granted as unopposed, yet Respondent failed to file an opposition to the motion, and it was in fact granted as unopposed. FF ¶¶ 41-44.

In the initial hearing of the Retirement Case on February 14, 2008, Respondent knew when Nunnally directed to him to request an award of interim retirement benefits that Nunnally was badly in need of at least interim relief to provide her with funds, and that she also needed a prompt final resolution of the case; Respondent in fact had already requested expedited consideration of the case. FF ¶¶ 66-67; 70; 76-77; 95. However, Respondent ignored Nunnally's directions to request an award of interim retirement benefits, and after testimony highly favorable to Nunnally had been provided by MPD's own expert witness at the initial hearing on February 14, 2008, Respondent – without consulting Nunnally – agreed to suspend the hearing. FF ¶¶ 75-76. Subsequently, without Nunnally's knowledge or consent, Respondent submitted a series of deceitful requests for continuances that caused the continued hearing to be substantially delayed, and also attenuated the impact of the highly favorable testimony from the District's own witness. FF ¶¶ 78-80 and 82-85. In addition, Respondent knew from the proceedings at the resumed Retirement Board hearing on July 31, 2008, that the Retirement Board lacked important documentation in the record, and he knew from the Retirement Board's July 31, 2008, letter to him that it needed additional medical information pertaining to Nunnally, but Respondent left those needs unfulfilled. FF ¶¶ 84-86. These inactions by Respondent created a grave risk of harm to Nunnally's interests in the Retirement Case, which in fact ended with an award to Nunnally of the minimum possible amount of retirement benefits. FF ¶ 91.

C. Respondent violated Rule 1.3(b)(2) in that Respondent intentionally prejudiced or damaged his client during the course of the professional relationship.

1. Rule 1.3(b)(2): "(b) A lawyer shall not intentionally: * * * (2) Prejudice or damage a client during the course of the professional relationship.

2. The Hearing Committee concludes that Respondent violated Rule 1.3(b)(2).

3. Applicable Standard

The discussion of "intent" in Section III(B), above, is fully applicable here. While the finding of a Rule 1.3(b) violation in *In re Ukwu*, *supra*, was premised in part on the attorney's similar misconduct with respect to multiple clients, the Nunnally Case involves repeated instances of neglect within one client representation that encompassed several different cases, and in determining whether Rule 1.3(b) has been violated a Hearing Committee may consider an "entire mosaic." *In re Ukwu*, *supra*, 926 A.2d at 1117. *See also In re Owusu*, 886 A.2d 536, 538 (D.C. 2005) (immigration attorney filed application for adjustment of status in the wrong place, resulting in rejection of the application; failed to appear at a key interview with immigration officials; and failed to keep in contact with his client); *In re Mance*, 869 A.2d 339, 341 (D.C. 2005) (attorney's failure to protect his client's appeal rights ripened into an intentional violation of Rule 1.3 after the attorney was on notice that the appeal was not timely and the attorney did nothing to address the problem); *In re Robertson*, *supra*, 612 A.2d at 1250 (attorney's failure to file timely claim for tax refund was sufficient to establish that the attorney intended to cause damage when attorney understood that such damage would occur if the attorney did not act, even if it was not the attorney's purpose or motive to cause damage

or prejudice to his client); and *In re Joyner*, 670 A.2d 1367, 1368 (D.C. 1996) (intentional prejudice or damage to client found when attorney's inaction caused client to miss statutory deadline for filing a claim against the District of Columbia).

4. Relevant Findings of Fact

There is clear and convincing evidence in the record that Respondent intentionally prejudiced the interests of Nunnally while he was representing her.

Respondent's actions in the Graham Lawsuit described in Section III(B), above, not only were intentional, but also were prejudicial. The opposing party's use of the Noonan deposition at trial in the Graham Lawsuit harmed Nunnally. FF ¶ 57. Respondent's failure to oppose, and the subsequent granting of, OAG's motion *in limine* to limit the proof that Nunnally could adduce at trial also harmed Nunnally. FF ¶ 41-44. Respondent's initiating discussion for and agreeing to a trial continuance at the end of the hearing involving Ms. Laliotis without first consulting Nunnally harmed her by further delaying a resolution of the case, and was done in callous[168] disregard of her interests. FF ¶¶ 47-48. The antagonistic relationship that Respondent created with OAG counsel was clearly intentional – Respondent filed repeated motions for sanctions even after being admonished about that practice – and harmed Nunnally if for no other reason than it alienated one OAG attorney who could have been a helpful witness. FF ¶¶ 21-24. Respondent's attacks on Judge Combs Greene were also intentional – again, Respondent made repeated filings attacking her integrity – and harmed Nunnally by substantially delaying resolution of the Graham Lawsuit, and by increasing Nunnally's expenses in that litigation. FF ¶¶ 14 (obligation to pay expenses); 28; 30-38; 40; 45; 55.

[168] FF ¶ 48 at n.31: "And he just told me to take a couple of Xanax and call him later."

Respondent's actions in the Retirement Case described in Section III(B), above, were also intentionally prejudicial to Nunnally. His failure to request an award of interim retirement benefits as directed by Nunnally deprived her of a much-needed source of income. FF ¶ 66-67; 76-77; 95. His delays of the case after the initial hearing on February 14, 2008, harmed Nunnally by postponing the resolution of the case, and by attenuating the force of the highly favorable testimony of MPD's own expert witness. FF ¶¶ 76-82 and 84-85. Respondent's failure to provide additional medical information after the conclusion of the Retirement Board hearings on July 31, 2008, also prejudiced Nunnally by depriving the Retirement Board of information it needed and wanted, and the result of the Retirement Case was a minimal award to Nunnally. FF ¶¶ 84-85 and 91.

> D. Respondent violated Rule 1.4(a) and/or Rule 1.4(b) in that Respondent failed to keep his client reasonably informed about the status of her matters and promptly comply with reasonable requests for information and/or failed to explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.
>
> 1. Rule 1.4(a) and (b): "(a) A lawyer shall keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information. (b) A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation."

2. The Hearing Committee concludes that Respondent violated Rule 1.4(a) and 1.4(b).

3. Applicable Standard

With respect to Rule 1.4(a), "The guiding principle for evaluating conduct under [Rule 1.4(a)] is whether the lawyer fulfilled the client's 'reasonable . . . expectations for information.'" *In re Schoeneman*, 777 A.2d 259, 264 (D.C. 2001) (citations omitted). "To meet that expectation, a lawyer not only must respond to client inquiries but also

must initiate communications to provide information when needed." *In re Hallmark*, 831 A.2d 366, 374 (D.C. 2003). Comment [5] to Rule 1.4 states, "A lawyer may not withhold information to serve the lawyer's own interest or convenience."

With respect to Rule 1.4(b), Comment [2] to Rule 1.4 imposes an affirmative duty to "initiate and maintain the consultative and decision-making process" even in the absence of requests for information from a client, and states that a lawyer "must be particularly careful to ensure that decisions of the client are made only after the client has been informed of all relevant considerations." Comment [1] requires the client to be provided with "sufficient information to participate intelligently in decisions concerning the objectives of the representation and the means by which they are to be pursued . . . ."

4. Relevant Findings of Fact

There is clear and convincing evidence in the record that Respondent failed to keep Nunnally reasonably informed about the status of the various legal matters in which Respondent represented her, and failed to explain ongoing events so that she could make informed decisions about them.

Respondent failed to provide Nunnally with monthly statements of account, as required by his retainer agreement with her. FF ¶ 15.

In the Graham Lawsuit, Respondent failed to consult with Nunnally before he filed a repetitious motion on December 17, 2007, seeking sanctions against OAG counsel pursuant to Sup. Ct. Civ. Rule 37(a). FF ¶ 23. Respondent failed to advise Nunnally that on August 27, 2008, OAG counsel had filed a motion *in limine* that would preclude her from presenting a substantial portion of her case at trial, a preclusion stemming from Respondent's own failure to file a proper notice under D.C. Code § 12-309. FF ¶¶ 41-42.

At the end of the hearing regarding Ms. Laliotis' testimony, Respondent failed to consult with Nunnally concerning his intention to request a trial continuance. FF ¶ 47. Also, while the Graham Lawsuit was still pending, Respondent failed to inform Nunnally of an investigation in October, 2007, by MPD's Internal Affairs Bureau of her EEO and workplace retaliation claims, or to make her available for an interview was requested in connection with that investigation. FF ¶ 128. Respondent further failed to consult with Nunnally about ways and means of protecting her medical information from disclosure before he filed such documents as public records. FF ¶ 46.

In the MPA Case, Respondent failed to provide Nunnally with copies of the briefs he filed in Superior Court, thereby keeping Nunnally in the dark about his error concerning the initial filing date of Nunnally's Form "PD 42." FF ¶ 104. After the Superior Court hearing in that case on October 24, 2008, Respondent failed to provide Nunnally with a coherent explanation of why the court could still have any question about what the actual filing date of the "PD 42" was. FF ¶ 110. On October 30, 2008, and without first consulting Nunnally, Respondent made a further filing in the MPA Case, entitled "Motion to Show Cause Why Lt. Nunnally Has Not Been Retired Per General Order 100.11." FF ¶ 112.

In the Retirement Case, Respondent failed to keep Nunnally informed about the Retirement Board's initial scheduling correspondence and hearing in January, 2008 (FF ¶¶ 70-71 and 73), as well as the continuances he requested after the initial hearing on February 14, 2008 (FF ¶¶ 78-81). Respondent also failed to consult with Nunnally about the decision to continue the initial February 14, 2008, hearing after very favorable testimony had just been provided by MPD's own expert witness (FF ¶ 76), nor did

Respondent consult with Nunnally about the decision to waive a quorum in connection with the resumption of the Retirement Board's hearing in July, 2008, and the effects of that decision on the composition of the Board which heard her case (FF ¶¶ 82-83). He further failed to provide Nunnally with a copy of the Retirement Board's letter of July 31, 2008, requesting additional information about her case (FF ¶ 86). Last, Respondent failed to consult with Nunnally about his August 28, 2008, letter to the Retirement Board, threatening to sue the Board while it was still considering her case. FF ¶¶ 87-88.

In the Sanders Lawsuit, Respondent failed to inform Nunnally about his not being admitted to practice law in Virginia, and his consequent inability to represent her as he had initially told her he would. FF ¶¶ 123-24.

In the Federal Lawsuit, Respondent failed to provide Nunnally with a copy of the actual Complaint he filed with the court. FF ¶ 130.

> E. Respondent violated Rule 1.6(a) and/or Rule 1.6(e)(5) in that Respondent knowingly revealed confidences and/or secrets of his client and/or used and revealed client confidences and/or secrets without any precautions or safeguards in order to establish or collect a fee.
>
> 1. Rule 1.6(a)(1), (2), and (3): "(a) Except when permitted under paragraph (c), (d), or (e),[169] a lawyer shall not knowingly:
>
> (1) reveal a confidence or secret of the lawyer's client;
> (2) use a confidence or secret of the lawyer's client to the disadvantage of the client;
> (3) use a confidence or secret of the lawyer's client for the

[169] Rule 1.6(c) allows an attorney to reveal confidences and secrets to the extent reasonably necessary to prevent a criminal act or to prevent the bribery or intimidation of witnesses, jurors, court officials, or other persons involved in proceedings before a tribunal. Rule 1.6(c) therefore has no bearing on this case. Rule 1.6(d) allows an attorney to reveal confidences and secrets – "to the extent reasonably necessary" – "[w]hen a client has used or is using a lawyer's services to further a crime or fraud, * * * (1) to prevent the client from committing the crime or fraud, if it is reasonably certain to result in substantial injury to the financial interests or property of another; or (2) to prevent, mitigate or rectify substantial injury to the financial interests or property of another that is reasonably certain to result or has resulted from the client's commission of the crime or fraud." Although Respondent alleged in various pleadings that Nunnally had acted fraudulently, no court to which such allegations were presented gave them the slightest credence. FF ¶¶ 168; 172(d); 188(a); 189(c); 216; 248. Therefore, Rule 1.6(d) is not further discussed in this Report and Recommendation.

advantage of the lawyer or of a third person."

Rule 1.6(e)(5): "(e) A lawyer may use or reveal client confidences or secrets: * * *

(5) to the minimum extent necessary in an action instituted by the lawyer to establish or collect the lawyer's fee."

2. The Hearing Committee concludes that Respondent violated Rule 1.6(a) and Rule 1.6(e)(5).

3. Applicable Standard

Rule 1.6(b) defines "confidence" as "information protected by the attorney-client privilege." The term "secret" is broader, including "other information gained in the professional relationship that the client has requested be held inviolate, or the disclosure of which would be embarrassing, or would be likely to be detrimental, to the client."

The Court has held that even in a routine case where an attorney moves to withdraw as counsel because of nonpayment, but publicly alleges that the client was in arrears, failed to cooperate, missed appointments, did not provide information necessary to the case, and made misrepresentations to the attorney, the attorney was clearly disclosing "secrets" of the client in violation of Rule 1.6. *In re Gonzalez*, 773 A.2d 1026, 1027 (D.C. 2001).[170] The Court stressed that a "secret" within the meaning of Rule 1.6(a) includes information gained in the professional relationship "the disclosure of which would be embarrassing or would be likely to be detrimental to the client." 773 A.2d at 1029 & n.4 (citation omitted). The Court also emphasized the importance, even in the case of a justifiable withdrawal, of the attorney's "*endeavoring to minimize the possibility of harm*." 773 A.2d at 1032 (emphasis by the Court) (citation omitted).

[170] The Court in *Gonzalez* did not reach the issue of whether the disclosed information also constituted "confidences," because the violation of the prohibition in Rule 1.6(a) against revealing "secrets" was so plain. *Gonzalez, supra*, 773 A.2d at 1030.

Under Rule 1.6(e)(5), in the event of fee litigation between a lawyer and a client, a lawyer may reveal client confidences or secrets "to the minimum extent necessary." Comment [26] to Rule 1.6, dealing with attorneys' fee collection actions against a client, stresses that "[s]ubparagraph (e)(5) should be construed narrowly; it does not authorize broad, indiscriminate disclosure of secrets or confidences." Comment [26] continues:

> For example, in drafting the complaint in a fee collection suit, it would be necessary to reveal the "secrets" that the lawyer was retained by the client, that fees are due, and that the client has failed to pay those fees. *Further disclosure of the client's secrets and confidences would be impermissible at the complaint stage*. [Emphasis added.]

4. Relevant Findings of Fact

There is clear and convincing evidence in the record that Respondent knowingly violated Rule 1.6(a) and Rule 1.6(e)(5). The Hearing Committee discusses each of these provisions in turn.

With regard to Rule 1.6(a)(1), even after being admonished by Judge Combs Greene about the need to protect Nunnally's medical information from public disclosure (FF ¶ 46), Respondent repeatedly placed in the public record information that was harmful or embarrassing to Nunnally, or revealed medical or other confidential information learned by Respondent as Nunnally's attorney (FF ¶¶ 164(e); Report Appendix FF ¶ 221; 224(d); 229(f); Report Appendix FF ¶ 242; 245; 253). Respondent acted knowingly, and could not have been under any illusions as to the information that Nunnally regarded as "confidences" or "secrets," because Nunnally filed repeated motions seeking protective orders to prevent Respondent's disclosure of such information. FF ¶¶ 170; 222; 234; 246; 252-53; 255; 272-73. Furthermore, the allegations in *Frison v. Nunnally* went well beyond the minimal statements allowed. *See* Rule 1.6(e)(5), Comment [26]. FF ¶¶ 216-18.

Respondent's violations of Rule 1.6(a)(2) and (3) are reciprocals of each other in this case. By using confidences and secrets derived from the attorney-client relationship in his litigation against Nunnally, Respondent was both using that information to her disadvantage, and seeking to use that information to Respondent's own advantage in order to claim fees from Nunnally, in contravention of the ACAB arbitration award that denied his fee claims and ordered a refund of $11,000 to Nunnally.

With regard Rule 1.6(e)(5), the Hearing Committee is left in no doubt concerning the existence of clear and convincing evidence of Respondent's violations of the Rule, because there are repeated court holdings that he did so. FF ¶¶ 174; 189(d); 247; 257; 275.

> F. Respondent violated Rule 1.16(d) in that in connection with his termination of representation, Respondent failed to take timely steps to the extent reasonably practicable to protect his client's interests, including surrendering papers and property to which the client is entitled, withdrawing from all matters in which he was listed as her counsel, and refunding unearned fees.
>
> 1. Rule 1.16(d): "In connection with any termination of representation, a lawyer shall take timely steps to the extent reasonably practicable to protect a client's interests, such as giving reasonable notice to the client, allowing time for employment of other counsel, surrendering papers and property to which the client is entitled, and refunding any advance payment of fee or expense that has not been earned or incurred. The lawyer may retain papers relating to the client to the extent permitted by Rule 1.8(i)."
>
> 2. The Hearing Committee concludes that Respondent violated Rule 1.16(d).
>
> 3. Applicable Standard

"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) (quoting *Hallmark, supra*, 831 A.2d at 372). Furthermore, "'a client should not have to ask twice' for [her] file." *In re Thai*, 987 A.2d 428, 430 (D.C. 2009) (quoting *In re Landesberg*, 518 A.2d 96, 102 (D.C. 1986). Comment [9] to Rule 1.16 further states that even if a lawyer has been unfairly discharged (and no such finding has been made by the Hearing Committee), "a lawyer must take all reasonable steps to mitigate the consequences to the client."

Bar Counsel also argues (BC Br. at 87) that Respondent violated Rule 1.16(d) by failing to pay Nunnally the $11,000 refund ordered by ACAB arbitration award. In making this argument, Bar Counsel relies on the Board Report in *In re Carter*, Bar Docket No. 251-02, *et al.*, at 30-31 (BPR Aug. 5, 2009). In *Carter* the Board agreed with a Hearing Committee's conclusion that "compliance with Rule 1.16(d) demands that 'the lawyer . . . promptly distribute any undisputed amounts'" to the client, and that once the ACAB entered an award in the client's favor, those amounts were no longer in dispute. *Id.* at 30. Although the Court of Appeals did not explicitly address this Rule 1.16(d) analysis, the Court did affirm the Board's finding that the respondent attorney had violated Rule 1.16(d). *In re Carter*, 11 A.3d 1219, 1222-23 (D.C. 2011) (per curiam).

4. Relevant Findings of Fact

There is clear and convincing evidence in the record that Respondent violated Rule 1.16(d). Nunnally made it very clear to Respondent that she needed all of her case files promptly after he was discharged. FF ¶ 49(c). Respondent failed to do so. FF ¶¶ 52; 89-90; 104. Respondent likewise failed to withdraw promptly from representing Nunnally in the MPA Case. FF ¶¶ 113-14. Within days of discharging Respondent,

Nunnally also disputed his entitlement to fees she had paid him. FF ¶¶ 49 and 153. The Hearing Committee agrees with Bar Counsel's contention that Respondent's failure to comply with the ACAB arbitration award (FF ¶¶ 160-61) was an additional violation of Rule 1.16(d), particularly after Judge Hamilton's August 3, 2009, enforcement judgment had been confirmed by the Court of Appeals on February 28, 2011, in *Frison v. Nunnally* as the law of the case (FF ¶ 254).

> G. Respondent violated Rule 3.1 in that Respondent brought and defended proceedings and/or asserted and controverted issues therein when there was no basis in law and fact for doing so that was not frivolous.
>
> 1. Rule 3.1: "A lawyer shall not bring or defend a proceeding, or assert or controvert an issue therein, unless there is a basis in law and fact for doing so that is not frivolous, which includes a good faith argument for an extension, modification, or reversal of existing law."[171]
>
> 2. The Hearing Committee concludes that Respondent violated Rule 3.1.
>
> 3. Applicable Standard

Rule 1.0(j) defines the terms "reasonable" and "reasonably" as denoting "conduct of a reasonably prudent and competent lawyer," and that objective standard is applied in determining if a pleading or issue is "frivolous" for purposes of Rule 3.1. *In re Spikes*, 881 A.2d 1118, 1125 (D.C. 2005). The same objective standard applies to the "safe harbor" in Rule 3.1 for pleadings that include "a good-faith argument for an extension, modification, or reversal of existing law." *Id*. at 1125 (quoting Rule 3.1, cmt. [1]). Analogizing Rule 3.1 to Superior Court Rue 11, the Court stated in *Spikes* that in determining whether a pleading is frivolous "consideration should be given to the clarity or ambiguity of the law," and that a relevant factor is "the plausibility of the position

[171] The remainder of Rule 3.1, not quoted here, deals with the conduct of an attorney in a criminal proceeding, and is therefore irrelevant to the instant matter.

taken[.]" *Id*. (citations omitted). *Spikes* further noted the relevance of a disposition by summary affirmance without a published opinion. *Id*. at 1121.[172]

4. Relevant Findings of Fact

There is clear and convincing evidence in the record that Respondent brought or defended proceedings, or asserted or controverted one or more issues therein, without a basis in law and fact that was not frivolous.

a. In the Graham Lawsuit, Respondent filed a motion to recuse Judge Combs Greene, a related motion in the Court of Appeals for a writ of mandamus or prohibition, and a subsequent motion for reconsideration of the Court's denial of the writ. These pleadings lacked a basis in law and fact that was not frivolous because, as both the trial court and the Court of Appeals held, Respondent failed to support the pleadings with a certificate of good faith as required by Sup. Ct. Civ. R. 63-I and a showing of personal bias. FF ¶¶ 30-31; 35-36; 40; 45.

b. On December 8, 2008, Respondent filed a Motion to Intervene in the Graham Lawsuit, in order to assert a claim for legal fees against Nunnally. Respondent's motion lacked a basis in law and fact that was not frivolous, because by Order dated January 5, 2009 (filed January 6, 2009), Judge Combs Greene denied Respondent's motion, stating, "Petitioner [*i.e.*, Respondent] provides no legal basis under the Rules or case law for his Motion." FF ¶¶ 53-54. On June 19, 2008, Respondent filed a similar Motion to Intervene in the MPA Case (FF ¶ 115), and although Judge Hedge denied that motion as moot because the MPA Case was remanded for further administrative agency action by MPD (FF ¶¶ 116-17), the logic of Judge Combs Greene's ruling on Respondent's Motion to Intervene in the Graham Lawsuit applies equally to

[172] With respect to frivolous appeals, *see also Tupling v. Britton*, 411 A.2d 349, 352 (D.C. 1980).

Respondent's Motion to Intervene in the MPA Case.

c. On December 9, 2010, Respondent filed a brief in the Court of Appeals in the appeal of the Graham Lawsuit, and even though Respondent's notice of appeal as a purported intervenor did not mention anything about the ACAB arbitration award, and the ACAB award was never before Judge Combs Greene, a principal focus of Respondent's brief was an attack on the validity of that award. The assertion of that issue in Respondent's brief in the Graham Lawsuit appeal therefore lacked a basis in law and fact that was not frivolous. FF ¶¶ 53-54 and 60-61.

d. In his Complaint in *Frison v. Nunnally*, Respondent asserted Nunnally had procured the ACAB award by fraud; the ACAB award violated his constitutional rights to contract, to equal protection, and to due process; and the ACAB award was rendered in violation of its own rules. FF ¶ 216. Neither Judge Josey-Herring's ruling upholding the ACAB award in *Frison v. Nunnally* (FF ¶ 248), nor the Court of Appeals' summary affirmance of that ruling on February 28, 2011 (FF ¶ 254), gave these assertions the slightest credence. In the Confirmation Litigation, Respondent's assertions of fraud, constitutional violations, and alleged procedural violations by the ACAB were likewise rejected by Judges Hamilton and Iscoe. FF ¶¶ 165-68 and 172. In light of these rulings, Respondent's assertions in *Frison v. Nunnally* and in the Confirmation Litigation of fraud by Nunnally, constitutional violations, and failure by the ACAB to follow its rules lacked any basis in law and fact that was not frivolous.

e. On June 29, 2009, Respondent filed in *Frison v. Nunnally* an Opposition to a motion previously filed by Nunnally for a protective order, asserting *inter alia* that Nunnally's motion was filed in bad faith and did not comply with the requirement in Sup.

Ct. Civ. R. 12-I(d) for clearly stating the grounds on which it is based. Because Nunnally's motion for a protective order was supported by an 8-page memorandum citing relevant precedent and explaining why documents that Respondent filed in public were protected by Nunnally's attorney-client privilege, and because the presiding judge in *Frison v. Nunnally* issued protective orders as prayed by Nunnally, Respondent's Opposition lacked a basis in law or fact that was not frivolous. FF ¶¶ 225; 247; 257.

f. In *Frison v. Nunnally*, on October 29, 2010, Respondent filed a notice of appeal with respect to the ruling by Judge Josey-Herring on October 21, 2010, denying his motion to vacate the ACAB arbitration award, and Respondent filed subsequent pleadings with the Court of Appeals relating to that appeal. The appeal and Respondent's subsequent pleadings therein lacked a basis in law or fact that was not frivolous because, as the Court held on February 28, 2011, in summarily affirming Judge Josey-Herring's ruling, Judge Hamilton August 3, 2009, judgment confirming the ACAB arbitration award was the law of the case. FF ¶¶ 248; 250; 254.

g. On February 17, 2011, Respondent filed in the Confirmation Litigation a "Motion to Vacate the Order Confirming the ACAB Award, and to Restore the Case to the Active Docket for a Decision on the Merits," which alleged, *inter alia*, that Nunnally had obtained Judge Hamilton's confirmation of the ACAB award by fraud on the court. Respondent's motion was denied by Judge Iscoe on April 29, 2011, and inasmuch as Judge Iscoe ruled that Respondent failed to produce "even a scintilla of evidence substantiating his claim" that Nunnally had acted fraudulently, Respondent's assertion of that issue lacked a basis in law and fact that was not frivolous. FF ¶¶ 168 and 172-73.

h. On July 25, 2011, Respondent filed in his appeal of the Confirmation Litigation a motion to strike Nunnally's request for summary affirmance. On the same day Respondent filed a similar motion in his purported second appeal in *Frison v. Nunnally*. The basis of both motions to strike by Respondent was that Nunnally allegedly had not served him with her motions for summary affirmance. Both motions by Respondent lacked a basis in law or fact that was not frivolous because U.S. Postal Service tracking documents filed by Nunnally with the Court of Appeals established that Respondent had in fact been served with both of her motions for summary affirmance. FF ¶¶ 180-84 and 261-63.

i. On November 14, 2011, Respondent filed in his appeal in the Confirmation Litigation an opposition to Nunnally's motion for summary affirmance in that case, asserting that Nunnally had fraudulently procured Judge Hamilton's confirmation of the ACAB arbitration award. In light of the fact that Judge Iscoe had already ruled that Respondent failed to produce "even a scintilla of evidence substantiating his claim" that Nunnally acted fraudulently, Respondent's assertion to the Court lacked any basis in law and fact that was not frivolous. FF ¶¶ 188(a) and 190.

j. Also in Respondent's November 14, 2011, filing with the Court referred to in the preceding subparagraph, Respondent asserted that the ACAB lacked jurisdiction over Nunnally's demand for arbitration because the statute of limitations on her claim for a refund against Respondent had run. Respondent's assertion of that issue lacked a basis in law and fact that was not frivolous, because Nunnally filed her claim for ACAB arbitration on or about December 2, 2008, within days after she discharged Respondent on November 28, 2008. FF ¶¶ 188(b); 49; 153.

k. On March 25, 2011, Respondent filed in *Frison v. Nunnally* an opposition to a motion by Nunnally to redact certain confidential records that Respondent had included in a publicly-available pleading. Respondent's opposition accused Nunnally of "putative criminal conduct," a frivolous assertion that lacked a basis in law and fact. FF ¶ 256.

l. In the Federal Lawsuit, the claims Respondent asserted against the United States House of Representatives and the United States Senate lacked any basis in law and fact, as the court ruled, and were therefore frivolous. FF ¶¶ 131-33.

m. In the Bankruptcy Proceeding, the four additional proofs of claim Respondent filed on February 2, 2010, lacked any basis in law and fact that was not frivolous. FF ¶¶ 204-05.

n. In various proceedings and pleadings, as well as in a reply submitted in connection with Bar Counsel's investigation of his conduct, Respondent asserted that Nunnally had been offered or had accepted a settlement proposal by the District of Columbia to receive a large lump sum payment in return for her filing a ethical complaint or taking other action against Respondent. FF ¶¶ 61; 114(e); 164(a); 188(d); 207; 217; 268. Such assertions by Respondent lacked any basis in law and fact that was not frivolous. FF ¶¶ 58 and 142.

o. Respondent's June 11, 2011, Praecipe in the Moore Lawsuit, accusing Nunnally of having made a bad faith filing to inform the court of the status of pending proceedings between Respondent and Nunnally in the Court of Appeals, lacked any basis in law and fact that was not frivolous because Nunnally's filing accurately informed the court of the sole proceeding considered by the Court. FF ¶ 277.

p. Respondent's assertion in the Davis Case appeal that the trial judge should have recused herself (FF ¶ 304) lacked a basis in law and fact that was not frivolous: Respondent failed to raise that issue during trial, and the Court found that Respondent failed to cite "specific examples of hostility, much less impermissible bias[.]" FF ¶ 321.

q. Respondent's assertion in the Davis Case appeal that "[t]he issue of liability . . . was admitted by the defendants" and "the only issue before the court and to be decided was the issue of damages" (FF ¶ 304) lacked a basis in law and fact that was not frivolous, in light of the trial court's clear rulings to the contrary (FF ¶¶ 302) and the Court's ruling that Respondent failed to present any cogent argument in support of that assertion (FF ¶ 322).

H. Respondent violated Rule 3.2(a) in that Respondent delayed a proceeding when he knew or when it was obvious that such action would serve solely to harass or maliciously injure another.

1. Rule 3.2(a): "In representing a client, a lawyer shall not delay a proceeding when the lawyer knows or when it is obvious that such action would serve solely to harass or maliciously injure another."

2. The Hearing Committee concludes that Respondent violated Rule 3.2(a).

3. Applicable Standard

Regarding the application of Rule 3.2(a), Comment [1] to the Rule states, "The question is whether a competent lawyer acting in good-faith would regard the course of action as having some substantial purpose other than delay. Realizing financial or other benefit from otherwise improper delay in litigation is not a legitimate interest . . . ."

4. Relevant Findings of Fact

There is clear and convincing evidence in the Nunnally case that Respondent delayed proceedings when he knew, or it was obvious – and a competent lawyer acting in good faith would have concluded – that such action would serve solely to harass or injure Nunnally. Generally, Respondent misused the legal system to protract litigation in order to harass and maliciously injure Nunnally, ignoring protective orders and repeatedly disclosing in public court filings Nunnally's confidential and personal information,[173] and causing her extraordinary personal, financial, and emotional hardship. FF ¶¶ 50-51; Tr. 694-704. In addition to that general but very important consideration, the Hearing Committee also notes the following filings by Respondent that delayed the resolution of the litigation with Nunnally, and which had no obvious goal other than to harass or maliciously injure her:

---

[173] *E.g.*, Respondent's brief and appendix filed with the Court in the Graham Lawsuit appeal (BXN-36 at 7-10; FF ¶ 62); Respondent's July 31, 2009, "Motion to Dismiss The Complaint" filed in the Confirmation Litigation (BXN-161 at 5 at ¶ 5; FF ¶ 164(e)); Respondent's February 17, 2011, "Motion to Vacate" in the Confirmation Litigation (BXN-166 at 13-15; FF ¶¶ 168 and 170); Respondent's November 14, 2011, Opposition in the Confirmation Litigation (BXN-181 at 6; FF ¶ 188(c)) to Nunnally's motion to dismiss/motion for summary affirmance; Respondent's May 19, 2009, Complaint in *Frison v. Nunnally* (Tr. 517:14-518:1; 551:3-19 (Nunnally); FF ¶ 216); Respondent's June 18, 2009, "Motion for Default and Judgment or in the Alternative Summary Judgment" in *Frison v. Nunnally* (BXN-111 at 5-6 at ¶¶ 2 and 4; Report Appendix FF ¶ 221); Respondent's August 7, 2009, "Motion to Compel Monthly Installment on Lien" in *Frison v. Nunnally* (BXN-118 at 6 at ¶ 2; *id*. at 7 at ¶¶ 6-7; FF ¶ 229(f)); Respondent's filing on June 21, 2010, in *Frison v. Nunnally* a copy of the confidential Retirement Board order concerning Nunnally's medical condition (BXN-127; Report Appendix FF ¶ 242); Respondent's June 29, 2009, Opposition to Nunnally's motion for a protective order (BXN-114 at 1 at ¶ 2; *id*. at 2 at ¶ 7; FF ¶ 224(d)); Respondent's July 30, 2010, motion in *Frison v. Nunnally* to vacate the ACAB arbitration award (BXN-130 at 7-9; FF ¶ 245); Respondent's January 18, 2011, Opposition in the Court of Appeals to Nunnally's motion seeking to redact the record in the first appeal in *Frison v. Nunnally* (BXN-146 at 7-10; FF ¶ 253); Respondent's Complaint in the Moore Lawsuit (BXN-207 at 5 at n.3; FF ¶ 270); in Moore's bankruptcy proceeding, Respondent filed documents containing confidential information relating to Nunnally (Tr. 694:21-695:1 (Nunnally); FF ¶ 275 at n.153). *See also*, BXN-141 at 4 (second protective order entered by Judge Josey-Herring in *Frison v. Nunnally* sealing filings by Respondent); and Nunnally's August 2, 2010, reiterated motion for a protective order in *Frison v. Nunnally* listing 15 different pleadings submitted by Respondent in which he publicly disclosed information protected by Nunnally's attorney-client privilege (BXN-131 at 4-5; FF ¶ 246).

a. Respondent's February 17, 2011, motion in the Confirmation Litigation to vacate the ACAB arbitration award (BXN-164; FF ¶ 168), seeking relief for a third time that he had already been denied twice in *Frison v. Nunnally* (FF ¶¶ 240 and 248), and while Nunnally's motion for summary affirmance in *Frison v. Nunnally* was pending before the Court of Appeals (and which the Court granted on February 28, 2011, only nine days after the filing of Respondent's motion to vacate (FF ¶ 254)).

b. The "Motion to Strike Appellee's Motion for Summary Affirmance or In the Alternative to Compel Appellee to Serve the Appellant" that Respondent filed in the appeal of the Confirmation Litigation (BXN-176; FF ¶ 181) and in *Nunnally v. Frison* (BXN-151; FF ¶ 261 and 186 at n.102), which was rebutted by the U.S. Postal Service tracking documents that Nunnally filed with the Court (FF ¶¶ 180-83 and 262-63).

c. The "Motion to Sanction the Appellee for Abuse of Litigious [*sic*] Process and Fraud on the Court" (BXN-179; FF ¶¶ 185-87) that Respondent filed in the appeal of the Confirmation Litigation, and the similar motion Respondent filed in his purported second appeal in *Frison v. Nunnally* (BXN-154; FF ¶¶ 265-66), both of which ignored the Court's directive to Respondent to present promptly a substantive response to Nunnally's motions for summary affirmance.

d. Respondent's opposition (BXN-114; FF ¶¶ 224-25) to Nunnally's June 29, 2009, motion for a protective order in *Frison v. Nunnally*, asserting that her motion was filed in bad faith and did not comply with the requirement in Sup. Ct. Civ. R. 12-I(d), was an unfounded pleading which was both dilatory and expressly accusatory.

e. Respondent's prolongation of *Frison v. Nunnally* after September 5, 2009, in light of his failure to take a timely appeal from Judge Hamilton's August 3,

2009, ruling confirming the validity of the ACAB arbitration award in favor of Nunnally, forced her to engage in extensive and unnecessary litigation. FF ¶ 258. The Hearing Committee notes particularly that after *Frison v. Nunnally* was dismissed on December 18, 2009, for want of prosecution, Respondent waited 5-1/2 months before attempting to revive the case on June 3, 2010, but Judge Josey-Herring then promptly denied Respondent's motion to vacate the ACAB arbitration award and dismissed the case *because* Respondent had failed to take timely action to contest Judge Hamilton's August 3, 2009, ruling. FF ¶¶ 241 and 248.

f. The four additional proofs of claim that Respondent filed on February 2, 2010, in the Bankruptcy Proceeding, were – as Nunnally testified – pure harassment. FF ¶¶ 203-05.

I. Respondent violated Rule 3.3(a)(1) in that Respondent knowingly made false statements of fact to a tribunal and/or failed to correct such false statements.

1. Rule 3.3(a)(1): "(a) A lawyer shall not knowingly:

> (1) Make a false statement of fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer, unless correction would require disclosure of information that is prohibited by Rule 1.6."

2. The Hearing Committee concludes that Respondent violated Rule 3.3(a)(1).

3. Applicable Standard

As stated in Comment [2] to Rule 3.3, "An assertion purported to be made by the lawyer, as in an affidavit by the lawyer or in a statement in open court, may properly be made only when the lawyer knows the assertion is true or believes it to be true on the basis of a reasonably diligent inquiry." Rule 3.3(a)(1), however, does not apply only to

false affidavits and statements made in open court. "Documents are an attorney's stock in trade, and should be tendered and accepted at face value in the course of professional activity." *In re Schneider*, 553 A.2d 206, 209 (D.C. 1989). Thus, filing a false document with a court can also constitute a violation of Rule 3.3(a)(1). *In re Ukwu, supra*, 926 A. 2d at 1133 and 1140 (attorney attached to a motion to withdraw as counsel in a Board of Immigration Appeals proceeding copies of two letters he had purportedly – but in fact had not – sent to his client); *In re Wilson*, 953 A.2d 1052, 1054 (D.C. 2008) (per curiam) (court-appointed guardian filed falsified bank statements in support of her final accounting); *In re Uchendu,* 812 A.2d 933, 938-40 (D.C. 2002) (attorney filed purportedly notarized documents in court, but the affiant had not actually appeared before the attesting notary).

In addition, Rule 3.3(a)(1) applies only to *knowingly* false statements. Rule 1.0(f), defining the term "knowingly," makes it clear that "actual knowledge of the fact in question" is required, but "knowledge may be inferred from the circumstances."

4. Relevant Findings of Fact

There is clear and convincing evidence in the record that Respondent violated Rule 3.3(a)(1). The Hearing Committee's findings of fact identify explicitly when Respondent made false statements of fact to a tribunal, and why they were knowingly made. Rather than repeating those findings here, they will simply be cited: FF ¶¶ 53; 61; 78-80; 103; 106; 111; 114-15; 164; 177; 183; 188; 197-98; 204; 217; 220; 224(b); 226; 229(c); 230; 238; 263; 265; 268; 301; 311; 313; 315; 318. In addition, because the false statements of fact Respondent made to the Court in the Davis Case were expressly brought to his attention and he failed to take any corrective action, and the same is true

for Respondent's fabricated "PD 42" in the MPA Case, there is clear and convincing evidence that Respondent violated the provision of Rule 3.3(a)(1) that requires action to correct a false statement of material fact or law previously made to a tribunal. FF ¶¶ 337 and 110.

J. Respondent violated Rule 3.3(a)(4) in that Respondent knowingly offered evidence that he knew to be false.

1. Rule 3.3(a)(4): "(a) A lawyer shall not knowingly: * * *
(4) Offer evidence that the lawyer knows to be false, except as provided in paragraph (b).[174] A lawyer may refuse to offer evidence, other than the testimony of a defendant in a criminal matter, that the lawyer reasonably believes is false."

2. The Hearing Committee concludes that Respondent violated Rule 3.3(a)(4).

3. Applicable Standard

The preceding discussion of the term "knowingly" in Section III(I) regarding Rule 3.3(a)(1) also applies to Rule 3.3(a)(4).

Although Comment [7] to Rule 3.3 states that paragraph (a)(4) "prohibits a lawyer from offering evidence only if the lawyer if the lawyer knows it is false," neither Rule 3.3 nor Rule 1.0 defines the term "offer" or the term "evidence," and if construed narrowly Rule 3.3(a)(4) might be interpreted to apply only to trials before a tribunal. However, *In re Goffe*, 641 A.2d 458 (D.C. 1994) (per curiam) (applying DR 7-102(A)(4), the predecessor of Rule 3.3(a)(4)), makes it clear that for purposes of Rule 3.3(a)(4), an "offer" need not be made, nor "evidence" submitted, only to a tribunal during an actual trial. In *Goffe*, the respondent attorney was disbarred for conduct that included not only

[174] Rule 3.3(b) deals with situations where an attorney in a criminal case knows that a client intends to testify falsely. Rule 3.3(b) is therefore inapposite in the present matter.

knowing presentation of false documents as evidence in a trial before a tribunal, but also for tendering to the Internal Revenue Service in a tax investigation documents known to have been manufactured, 641 A.2d at 461, and for "fabricating" documents that he used to support his negotiations with another party and in connection with his testimony at a deposition. 641 A.2d at 462-63. The fact that the respondent attorney engaged in this conduct on his own behalf, rather than on behalf of a client, was deemed "irrelevant." 641 A.2d at 466.

4. Relevant Findings of Fact

There is clear and convincing evidence in the record that Respondent violated Rule 3.3(a)(4) by knowingly offering false and fabricated documents as evidence. These included:

a. Gresham's falsely notarized affidavit, which Respondent offered as evidence not once, but repeatedly. FF ¶¶ 25 and 35. The knowing character of Respondent's action is also emphasized by his repetition of the same misconduct in having a similar affidavit falsely notarized for George Crawford (FF ¶ 143), although the record does not clearly indicate that Respondent offered the Crawford document as evidence.

b. Respondent offered as evidence a falsified and fabricated "PD 42" form in the MPA Case. FF ¶¶ 103.

c. Also in the MPA Case, on June 18, 2009, Respondent filed a "Motion to Withdraw, Nunc Pro Tunc," and offered as false evidence of having previously taken action to withdraw a "Praecipe of Withdrawal as Counsel of Record" purportedly filed by Respondent in December of 2008. However, the court docket in the MPA Case does not

indicate the purported Praecipe was ever filed, nor had Respondent previously served the Praecipe on Nunnally. FF ¶ 114.

d. Respondent fabricated and offered as false evidence to Bar Counsel (FF ¶ 139) five additional retainer agreements purportedly signed by Nunnally; there was only one retainer agreement with Respondent signed by Nunnally, *i.e.*, the original one she signed on September 12, 2005. FF ¶¶ 10 and 13.

e. In addition to fabricating five additional retainer agreements purportedly signed by Nunnally, Respondent also offered as false evidence a fabricated version of Nunnally's *original* retainer agreement, which Respondent attached to his Complaint in *Frison v. Nunnally*; to his October 26, 2009, "Motion to Stay Action Awaiting Decision in Bankruptcy to Discharge Charging Lien" in *Frison v. Nunnally* (BXN-124 at 12); and to his first proof of claim in the Bankruptcy Proceeding (BXN-187 at 4). FF ¶¶ 197; 218; 229(b); 238.

f. There are many instances of Respondent's offering as evidence to various tribunals, as well as to Bar Counsel, false and fabricated "bills" to Nunnally. Respondent's "bills" were a mass of contradictions, and lacked all credibility. FF ¶¶ 15; 53; 106; 111; 115; 144-52; 197; 204; 220(d); 224(b); 229(c)-(d); 265.

g. Respondent also offered as false evidence to Bar Counsel a fabricated affidavit purportedly executed by Nunnally on September 24, 2007. FF ¶ 140.

> K. Respondent violated Rule 3.4(b) in that Respondent falsified evidence (Nunnally Case); and falsified evidence presented to the Court of Appeals and/or Bar Counsel (Davis Case).
>
> 1. Rule 3.4(b): "A lawyer shall not: * * * (b) Falsify evidence, counsel a witness to testify falsely, or offer an inducement to a witness that is prohibited by law."

2. The Hearing Committee concludes that Respondent violated Rule 3.4(b).

3. Applicable Standard

The discussion in Section III(J), above, of the terms "offer" and "evidence" under Rule 3.3(a)(4) applies equally to Rule 3.4(b). *See also In re Shariati*, 31 A.3d 81, 86 at n. 2 (D.C. 2011) (per curiam) (submission of false documents in connection with immigration applications); *In re White*, 11 A.3d 1226, 1266-67, 1272, and 1277 (D.C. 2011) (per curiam) (appending Hearing Committee Report) (false documents submitted in connection with an Office of Inspector General administrative investigation and in connection with hearings before the District of Columbia City Counsel); *In re Mayers*, Bar Docket No. 443-03 at 7-8 and 19 (BPR May 30, 2007), *aff'd*, 943 A.2d 1170 (D.C. 2008) (per curiam) (altered checks and false descriptions of payments made in motions filed in a child support proceeding).

4. Relevant Findings of Fact

There is clear and convincing evidence in the record that Respondent falsified evidence in violation of Rule 3.4(b), inasmuch as all of the documents described in Section III(J), above, were produced by him. Furthermore, in the Davis Case Respondent falsified a purported "Proposed Joint Pretrial Statement." FF ¶¶ 305-11. (The Hearing Committee notes that Bar Counsel charged Respondent's filing of the "Proposed Joint Pretrial Statement" solely as a violation of Rule 3.4(b) (BXD-2 at 8 at ¶ 26(d)), and therefore no conclusion is made concerning the possible violation of Rule 3.3(a)(4) entailed in Respondent's filing of that document with the Court.)

L. Respondent violated Rule 3.4(c) in that Respondent knowingly disobeyed an obligation under the rules of the tribunal.

1. Rule 3.4(c): "A lawyer shall not: * * * (c) Knowingly disobey an obligation under the rules of a tribunal except for an open refusal based on an assertion that no valid obligation exists."

2. The Hearing Committee concludes that Respondent violated Rule 3.4(c).

3. Applicable Standard

An attorney who seeks to invoke the "safe harbor" exception of Rule 3.4(c) for an "open refusal" should do so expressly. *Statewide Grievance Comm. v. Whitney*, 633 A.2d 296 (Conn. 1993) (declining to consider whether an "open refusal" exception applied when the attorney had not raised that exception to justify disobedience of orders requiring appearance at pretrial conferences).

4. Relevant Findings of Fact

There is clear and convincing evidence in the record that Respondent violated Rule 3.4(c). Furthermore, in none of the instances cited below did Respondent expressly seek to make use of the "open refusal" safe harbor of Rule 3.4(c).

a. There are many instances in which respondent flouted his obligation under court rules to serve Nunnally with pleadings that he filed. FF ¶¶ 115(a); 134; 164(d); 169; 170; 178; 220(e); 224(c); 229(e). Indeed, Respondent's conduct in this regard was so flagrant that Nunnally registered with court docket monitoring services so that she could be apprised of the actions Respondent was taking against her. FF ¶ 51.

b. On September 14, 2010, Judge Josey-Herring entered a protective order in *Frison v. Nunnally* against any disclosures by Respondent of matters not directly placed at issue by Nunnally. BXN-135; FF ¶ 247. Nevertheless, on January 18, 2011,

Respondent filed with the Court in the first appeal in *Frison v. Nunnally* a motion[175] to late-file an opposition to Nunnally's motion seeking to redact the record, and lodged with the Court an opposition that once again placed in the public record direct quotations from and documents embodying privileged attorney-client communications between Nunnally and Respondent (BXN-146 at 7-10). FF ¶ 253.

c. Respondent's "Affidavit of Service of Process" filed in *Frison v. Nunnally* on July 1, 2009, failed to comply with the plain requirements of Sup. Ct. Civ. R. 4(*l*)(2). FF ¶ 226 and 235.

d. Respondent's purported second appeal in *Frison v. Nunnally* was dismissed by the Court (BXN-157) because he failed to comply with D.C. App. R. 3, which requires a notice of appeal to designate specifically the order from which an appeal is taken, and he ignored the Order of the Court issued on October 21, 2011 (BXN-153) pointedly directing him to show cause why his appeal should not be dismissed due to his failure to comply with that rule. FF ¶¶ 259 and 264-66.

> M. Respondent violated Rule 4.4(a) in that Respondent, in representing himself, used means that had no substantial purpose other than to embarrass, delay, or burden a third person.
>
> 1. Rule 4.4(a): "In representing a client, a lawyer shall not use means that have no substantial purpose other than to embarrass, delay, or burden a third person, or knowingly use methods of obtaining evidence that violate the legal rights of such a person."

2. The Hearing Committee concludes that Respondent violated Rule 4.4(a).

3. Applicable Standard

Although the initial clause of Rule 4.4(a) states, "In representing a client," Rule

[175] BXN-146.

4.4(a) can be violated when the attorney acts *pro se* as the "client." *In re Pelkey*, 962 A.2d 268, 280 (D.C. 2008). Comment [1] to Rule 4.4 reiterates that a purpose of Rule 4.4 is to protect "the rights of third persons," and while the Comments to the Rule discuss various examples of conduct violating the Rule, Comment [1] also recognizes that "[i]t is impractical to catalogue all such rights."

4. Relevant Findings of Fact

There is clear and convincing evidence in the record that Respondent violated Rule 4.4(a) in court filings in litigation with Nunnally. Some of those filings have already been identified in Section III(H) (delaying proceedings to harass/injure other persons), and additional instances are identified in FF ¶¶ 175; 220;[176] 239; 241; 245; 259; 261; 271; 275; 277. Respondent's repeated public filings of confidential information concerning Nunnally, as discussed in Section III(E), are also violations of Rule 4.4(a). In addition, Respondent used means other than court filings that had no substantial purpose other than to embarrass, delay, or burden Nunnally or third persons, and in this category the Hearing Committee includes the harassment that Respondent directed at Nunnally, as well as the threats Respondent made against her and other attorneys who represented her. FF ¶¶ 50-51; 58 at n.39; 136; 231-34; 256.

> N. Respondent violated Rule 8.1 in that, in connection with a disciplinary matter, Respondent knowingly made false statements of fact and/or failed to disclose facts necessary to correct a misapprehension known by the lawyer to have arisen in the matter.
>
> 1. Rule 8.1: "An applicant for admission to the Bar, or a lawyer in connection with a Bar admission application or in connection with a disciplinary matter, shall not:

[176] Motion by Respondent in *Frison v. Nunnally* (BXN-111) denied by the court (FF ¶ 236) and subsequently ordered sealed (FF ¶ 257; BXN-141).

> "(a) Knowingly make a false statement of fact; or
>
> "(b) Fail to disclose a fact necessary to correct a misapprehension known by the lawyer or applicant to have arisen in the matter, or knowingly fail to respond reasonably to a lawful demand for information from an admissions or disciplinary authority, except that this Rule does not require disclosure of information otherwise protected by Rule 1.6."[177]

2. The Hearing Committee concludes that Respondent violated Rule 8.1(a). The Hearing Committee finds there is insufficient clear and convincing evidence that a misapprehension was known by Respondent to have arisen in the disciplinary matter in the Nunnally Case, and therefore concludes that Bar Counsel failed to prove a violation of Rule 8.1(b) in that case.

3. Applicable Standard

Comment [1] to Rule 8.1(a) states, ". . . it is a separate professional offense for a lawyer knowingly to make a misrepresentation or omission in connection with a disciplinary investigation of the lawyer's own conduct." Rule 1.0(f) defining the term "knowingly" makes it clear that "actual knowledge of the fact in question" is required, but "knowledge may be inferred from the circumstances."

4. Relevant Findings of Fact

There is clear and convincing evidence in the record that Respondent knowingly made false statements of fact to Bar Counsel in connection with the disciplinary matters involved in both the Nunnally Case and the Davis Case. FF ¶ 139 (submission of five falsified retainer agreements with Nunnally, and Respondent's statement to Bar Counsel concerning those documents); FF ¶ 140 (submission of a falsified affidavit purportedly signed and notarized by Nunnally in 2007, and Respondent's statement to Bar Counsel

[177] The Specification in the Nunnally Case (BXN-2 at 34 at ¶ 155(n)) alleges that Respondent violated both subsections of Rule 8.1. The Specification in the Davis Case (BXD-2 at 8 at ¶ 26(d)) alleges only that Respondent violated Rule 8.1(a).

concerning that document); FF ¶¶ 141 and 144-52 (submission to Bar Counsel of fabricated "bills" to Nunnally, and Respondent's statements to Bar Counsel concerning such "bills"); FF ¶ 142 (statement to Bar Counsel that Nunnally discharged Respondent and filed an ethical complaint against him as part of a purported settlement deal with the District of Columbia); FF ¶ 335-36 (statements to Bar Counsel concerning the Proposed Joint Pretrial Statement that Respondent purportedly sent to opposing counsel in the Davis Case). The circumstances underlying the Hearing Committee's conclusion that Respondent's actions were "knowing" are discussed in the findings of fact cited above.

> O. Respondent violated Rule 8.4(c), in that Respondent engaged in conduct involving dishonesty, fraud, deceit, or misrepresentation.
>
> 1. Rule 8.4(c): It is professional misconduct for a lawyer to: * * * (c) Engage in conduct involving dishonesty, fraud, deceit, or misrepresentation.
>
> 2. The Hearing Committee concludes that Respondent violated Rule 8.4(c).
>
> 3. Applicable Standard

As stated in *In re Ukwu*, *supra*, 926 A.2d at 1113, quoting from *In re Hager*, 812 A.2d 904, 916 (D.C. 2002):

> We have given a broad interpretation to Rule 8.4(c), as recapitulated in *In re Arneja*, 790 A.2d 552, 557 (D.C. 2002). ["Dishonesty] encompasses 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); *accord*, *Slattery*, *supra*, 767 A.2d at 213. *See In re Carlson*, 745 A.2d 257, 258 (D.C. 2000) (per curiam) (dishonesty may consist of failure to provide information where there is a duty do so); *In re Jones-Terrell*, 712 A.2d 496, 499-500 (D.C. 1998) (violation found despite "lack of evil or corrupt intent"); *In re Reback*, 487 A.2d 235, 239 (D.C. 1985) (per curiam), *vacated but adopted and incorporated in relevant part*, 513 A.2d 226 (D.C. 1986) (en banc) (dishonesty in filing a second complaint to replace one dismissed because of negligent inattention). "Dishonesty" is also the

> most general term in Rule 8.4(c), "encompassing fraudulent, deceitful, or misrepresentative behavior," *In re Wilkins*, 649 A.2d 557, 561 (D.C. 1994) (per curiam), but also applying to conduct not covered by the latter three terms, which describe "degrees or kinds of active deception or positive falsehood." *Shorter*, *supra*, 570 A.2d at 768. Indeed, it has been suggested that sufficiently reckless conduct is enough to sustain a violation of the rule. *Jones-Terrell*, *supra*, 712 A.2d at 499.

In re Pelkey, *supra*, 962 A.2d at 279, describes "[d]ishonesty [as] a lack of honesty, probity, integrity and straightforwardness,"[178] and "[d]eceit [as] the active suppression of facts by one bound to disclose them, or the giving of 'information or other facts which are likely to mislead for want of communication of that fact.'"[179] "Concealment or suppression of a material fact is as fraudulent as a positive direct misrepresentation." *In re Reback*, *supra*, 487 A.2d at 239-40 (citation omitted).

"If an attorney knowingly proffers altered documents in a context where the attorney knows or should know that action may be taken thereon, the attorney has engaged in conduct involving deceit[.]" *In re Schneider*, *supra*, 553 A.2d at 209. However, Rule 8.4(c) does not always require a respondent to act intentionally; it is sufficient if a respondent acts with reckless regard to the truth. *In re Ukwu*, *supra*, 926 A.2d at 1113-14. Furthermore, "dishonesty does not always depend on a finding of intent to defraud or deceive." *In re Romansky*, 825 A.2d 311, 315 (D.C. 2003) (citations omitted) . . . . "[W]hen Bar Counsel presents clear and convincing evidence that an action is obviously wrongful and intentionally done, the performing of the act itself is sufficient to show the requisite intent for a violation." *Id*.

---

[178] Citing *In re Slattery*, 767 A.2d 203, 213 (D.C. 2001) (a case where the attorney, despite his position of trust, took more than $10,000 from the bank account of a fraternal organization), in turn citing *In re Shorter*, 570 A.2d 760, 767-68 (D.C. 1990).

[179] Citing *In re Slattery*, *supra*, 767 A.2d at 213, in turn citing *In re Shorter*, *supra*, 570 A.2d at 767 at n.12.

4. Relevant Findings of Fact

There is clear and convincing evidence in the record that Respondent violated Rule 8.4(c) in many ways and over an extended period of time, in both the Nunnally Case as well as in the Davis Case, by acting dishonestly and deceitfully, by knowingly submitting false evidence and falsifying evidence, by making knowingly false statements of fact to tribunals and to Bar Counsel, by fabricating documents, and by misrepresenting and concealing facts. The findings of fact supporting these conclusions are specified in Sections III(I) (knowingly false statements to a tribunal), III(J) (knowingly offering false evidence), III(K) (falsifying evidence), and III(N) (knowing false statements in a disciplinary investigation), *supra*.

P. Respondent violated Rule 8.4(d), in that Respondent engaged in conduct that seriously interferes with the administration of justice.

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

2. The Hearing Committee concludes that Respondent violated Rule 8.4(d).

3. Applicable Standard

To establish a violation of Rule 8.4(d), Bar Counsel must demonstrate by clear and convincing evidence that: (i) Respondent's conduct was improper, *i.e.*, that Respondent either acted or failed to act when he should have; (ii) Respondent's conduct bore directly upon the judicial process with respect to an identifiable case or tribunal; and (iii) Respondent's conduct tainted the judicial process in more than a *de minimis* way, *i.e.*, it must have potentially had an impact upon the process to a serious and adverse degree. *In re Hopkins*, 677 A.2d 55, 60-61 (D.C. 1996). The prohibition of Rule 8.4(d)

applies not only to activities which may cause a tribunal to reach an incorrect decision, but also to conduct which taints the decision making process. *In re Keiler*, 380 A.2d 119, 125 (D.C. 1977) (per curiam) (analyzing DR 1-102(A)(5), the precursor of Rule 8.4(d)). Persistence in maintaining a frivolous suit on appeal is likewise a violation of Rule 8.4(d). *In re Spikes*, *supra*, 881 A.2d at 1119.

Furthermore, Rule 8.4(d) is violated if the attorney's conduct causes the unnecessary expenditure of time and resources in a judicial proceeding. *In re Cole*, 967 A.2d 1264, 1266 (D.C. 2009). In applying *In re Cole* to this case, the Hearing Committee bears in mind that, "[e]very paper filed with the Clerk . . ., no matter how repetitious or frivolous, requires some portion of the institution's limited resources. A part of the [c]ourt's responsibility is to see that these resources are allocated in a way that promotes the interests of justice." *Corley v. United States*, 741 A.2d 1029, 1030 (D.C. 1999) (per curiam) (citations omitted).[180]

Last, misrepresentations to Bar Counsel made during a disciplinary investigation also constitute a violation of Rule 8.4(d). *In re Boykins*, 999 A.2d 166, 172 and 174 (D.C. 2010); *In re Chapman*, 962 A.2d 922, 925 (D.C. 2005).

4. Relevant Findings of Fact

There is clear and convincing evidence that Respondent seriously interfered with the administration of justice under the tri-partite test of *In re Hopkins*, *supra*.

First, Respondent's misconduct in court proceedings as described above in Sections III(E) (revealing client confidences and secrets), III(G) (frivolous litigation with no basis in law and fact), III(H) (delaying proceedings to harass/injure other persons),

[180] In *Corley*, the Court barred a *pro se* litigant who filed repetitious requests for post-conviction relief, none of which was granted, from making any further filings without prior leave of court. 741 A. 2d at 1030-31.

III(I) (knowingly false statements to a tribunal), III(J) (knowingly offering false evidence), III(K) (falsifying evidence), III(L) (knowing disobedience of rules of tribunal), and III(M) (actions taken to embarrass/delay/burden third parties) was improper. Second, Respondent's misconduct occurred in the context of specific court cases, each of which is identified in the findings of fact. Third, Respondent's misconduct referred to in this paragraph tainted the judicial process in more than a *de minimis* way, whether by placing false statements or false documents before the court, or by making improper use of the courts to accomplish Respondent's personal vindictive ends, or by interfering with the orderly administration of justice through the filing of frivolous pleadings or otherwise asserting issues that lacked a basis in law and fact.

Respondent likewise seriously interfered with the administration of justice by submitting knowingly false evidence and making knowingly false statements of fact to Bar Counsel during the investigation of his conduct, as discussed above in Section III(N) (knowing false statements in a disciplinary matter). *In re Boykins*, *supra*.

IV. RECOMMENDED SANCTION

The Hearing Committee's recommended sanction in these matters is that Respondent should be disbarred. In addition, the Hearing Committee recommends that as a condition of any reinstatement, Respondent should be required to demonstrate that he has paid the $11,000 ACAB arbitration award in favor of Nunnally, with interest at the legal rate as of August 3, 2009 (*i.e.*, the date on which the ACAB arbitration award was confirmed as a judgment of the Superior Court).[181]

[181] If for any reason Nunnally receives payment of the ACAB arbitration award from the D.C. Bar's Clients' Security Fund, reinstatement should be conditioned on Respondent's reimbursing the Clients' Security Fund for the full amount it has paid to Nunnally.

In *In re Thyden*, 877 A.2d 129, 144 (D.C. 2005) (citations omitted), the Court cited seven factors relevant to determining a disciplinary sanction, "including: (1) the seriousness of the conduct at issue; (2) the prejudice, if any, to the client which resulted from the conduct; (3) whether the conduct involved dishonesty and/or misrepresentation; (4) the presence or absence of violations of other provisions of the disciplinary rules; (5) whether the attorney has a previous disciplinary history; (6) whether or not the attorney [has] acknowledged his wrongful conduct; and (7) circumstances in mitigation or aggravation of the misconduct." *In re Hutchinson*, 534 A.2d 919, 924 (D.C. 1987) (en banc) also notes two additional relevant factors: the need to maintain the integrity of the legal profession and to protect the public and the courts; and the need to deter future or similar misconduct by the respondent-lawyer and other lawyers. Last, a disciplinary sanction in any given case should also be comparable to those imposed in similar cases. *See In re Elgin*, 918 A.2d 362, 373 (D.C. 2007); *In re Berryman*, 764 A.2d 760, 766 (D.C. 2000); D.C. Bar Rule XI, § 9 (h)(1) (Court seeks to avoid "inconsistent dispositions for comparable conduct"). Each of these factors is discussed below.

A. Seriousness of the Conduct at Issue

Incompetent representation of a client, misrepresentations, and causing parties and judicial tribunals to engage in unnecessary work are serious violations of the Rules. *In re Cole*, *supra*, 967 A.2d at 1267. "The seriousness of the conduct at issue increases with an additional violation of the rule prohibiting dishonest conduct. There is nothing more antithetical to the practice of law than dishonesty . . . ." *In re Daniel*, 11 A.3d 291, 300 (D.C. 2011) (citing *In re Hutchinson*, *supra*, 534 A.2d at 924). "[A] violation of Rule 3.3(a) is an extremely serious ethical violation[.]" *In re Parshall*, Bar Docket No.

430-01 at 34 (BPR Feb. 18, 2005), *aff'd*, 878 A.2d 1253 (D.C. 2005) (per curiam). "Altering records in a legal matter, even in trivial ways, is not a trivial act." *In re Zeiger*, 692 A.2d 1351, 1357 (D.C. 1997) (per curiam) (appending Board Report).

Respondent's actions in this case are very serious. Respondent failed to provide competent representation of Nunnally at several key points. Multiple violations of the Rules have been found by the Hearing Committee. The record of Respondent's knowingly false statements of fact before numerous tribunals and in the course of Bar Counsel's investigation of the instant matters is extensive and severe. Respondent's sustained and vindictive attack against Nunnally is completely inconsistent with the standards of conduct that should be expected from an attorney. There is also clear and convincing evidence that Respondent altered and fabricated documents in both the Nunnally Case and the Davis Case.

B. Prejudice to the Client

Nunnally was prejudiced in a number of ways by Respondent, whether negligently or intentionally (*see* Sections III(A) (competent representation), III(B) (intentional failure to seek client's objectives), and III(C) (intentional prejudice to client), *supra*), and – more severely – by how Respondent's conduct imposed monetary and other costs on her, and adversely affected the daily quality of her life. FF ¶¶ 50 and 51.[182]

C. The Presence of Dishonesty and/or Misrepresentation

Respondent repeatedly violated Rule 8.4(c), as discussed in Section III(O) (dishonest conduct), *supra*.

[182] Although Bar Counsel has not alleged a separate violation of Rule 1.1 in the Davis Case, Respondent's clients in that matter were prejudiced by his inept presentation of the issues on appeal. *See* FF ¶¶ 319-22, *supra*.

D. The Presence of Multiple Violations of the Rules

Respondent violated many different provisions of the Rules: in the course of representing and in litigating against Nunnally; in the Davis Case; and in responding to Bar Counsel's disciplinary investigations. Multiple violations of the Rules are an aggravating factor warranting a more severe sanction. *In re Martin*, Bar Docket No. 370-04 at 37 (BPR June 24, 2011), *appeal docketed*, App. No. 11-BG-775 (D.C. July 20, 2011).

E. Respondent's Prior Disciplinary Record

As noted in FF ¶ 287, *supra*, on July 22, 2008, Bar Counsel issued Respondent an informal admonition letter (BXN-222). Ordinarily, a single informal admonition might not be given particularly heavy weight in a sanction recommendation, but in this case Respondent's conduct as described in the informal admonition gives the Hearing Committee particular concern. The prior disciplinary matter involved a stream of retaliatory and repetitious litigation directed against a client (and the client's attorney) who filed a Bar Complaint against Respondent. The mistake Respondent made in his prior misconduct was basing his retaliatory litigation on "two defamatory, and libelous letters to the District of Columbia Bar Counsel complaining that [Respondent] had acted in a negligent and unprofessional manner in representing [the former client]" (BXN-222 at 1) – a clear violation of D.C. Bar Rule XI, §19(a).

It would be hoped that the lesson Respondent learned from the prior informal admonition is that an attorney should not use litigation as a retaliatory tactic against a client. Instead, the lesson Respondent appears to have learned insofar as Nunnally is concerned is that harassing litigation may be used, as long as its sole predicate is not the

filing of a Bar Complaint. As Nunnally testified, Respondent viewed the informal admonition he received not as a warning, but as a license to torment clients. FF ¶ 50 at n.34. The conduct described in Bar Counsel's informal admonition to Respondent has been repeated – at a heightened level – in the Nunnally Case: refusal to accept the binding nature of adverse court rulings on the merits; dilatory motions for reconsideration; and reiterative filings of essentially the same claims.

None of the factors that counseled leniency in the Respondent's prior informal admonition is present in the record here: (1) Respondent has received prior discipline; (2) although Respondent replied to Bar Counsel's investigations, in both the Nunnally Case and the Davis Case he made knowingly false statements of fact in doing so; (3) there is no expression of remorse in Respondent's communications with Bar Counsel, and the contrary is shown by his continued use of litigation against Nunnally as a retaliatory tactic long after the filing of Nunnally's Bar Complaint, and extending beyond the period covered by the Specification in the Nunnally Case;[183] (4) Respondent is not a new attorney; and (5) the record contains no evidence of continuing *pro bono* legal services by Respondent, or other mitigating factors.

Accordingly, Bar Counsel's prior informal admonition to Respondent is viewed as a very substantive ground underlying the Hearing Committee's recommended sanction of disbarment.

[183] *See* Section IV(G), *infra*.

F. Respondent's Acknowledgement of Wrongful Conduct

An attorney's failure to acknowledge misconduct is a significant factor affecting a sanction recommendation. *In re Daniel*, *supra*, 11 A.3d at 300-301. Respondent has not demonstrated any acknowledgement of his wrongful conduct.

G. Mitigating and Aggravating Circumstances[184]

Very substantial aggravating factors in the Nunnally Case are Respondent's continued misuse of the legal system and violations of the Rules, even after the period covered by – but in the same manner as described in – the Specification (*see* n.40, *supra*). These aggravating circumstances are summarized as follows:

1. In the Graham Lawsuit, oral argument before the Court on January 12, 2012, makes it clear that Respondent's continued pursuit of his appeal from the denial of his motion to intervene violated Rule 3.1, because such action lacked any substantial basis in law and fact that was not frivolous. FF ¶ 63.

2. In the Confirmation Litigation, the Court's December 2, 2011, granting of Nunnally's motion for summary affirmance demonstrates that Respondent's opposing Nunnally's motion violated Rule 3.1, because the opposition lacked any basis in law and fact that was not frivolous, particularly with regard to Respondent's assertion that

[184] Bar Counsel has proffered BXN-223 – a 2004 sanction order against Respondent entered by the United States District Court for the District of Maryland – as an aggravating factor. The Hearing Committee, however, concludes that BXN-223 should not be given any weight as aggravating factor. The Hearing Committee is required to apply the same standard of proof to aggravating facts as it applies in reaching its conclusions, *i.e.*, a "clear and convincing" standard. *In re Cater*, 887 A.2d 1, 25 (D.C. 2005). BXN-223 does not sufficiently establish that the district judge in that case applied a "clear and convincing" standard of proof to his sanction determination, nor was he legally required to do so, inasmuch as the United States Court of Appeals for the Fourth Circuit (which includes Maryland) had not decided the precise burden proof that must be applied in all sanction cases. *See Suntrust Mortgage, Inc. v. AIG United Guaranty Corp*., 2011 U.S. Dist. LEXIS 33118 at *59 (citing *Glynn v. EDO Corp*. 2010 U.S. Dist. LEXIS 86013, 2010 WL 3294347, at *2 (D. Md. 2010)).

Nunnally acted fraudulently in connection with Judge Hamilton's August 3, 2009, confirmation of the ACAB arbitration award. FF ¶¶ 189-90.

3. In the Confirmation Litigation, Respondent's January 5 and January 27, 2012, pleadings asking the Court for a rehearing and rehearing en banc violated Rules 3.2(a) and 4.4(a) because those pleadings had no substantial purpose other than attempting to delay the finality of the Court's prior grant of summary affirmance. FF ¶¶ 191-94.

4. In the Bankruptcy Proceeding, Respondent's February 13, 2012, opposition to Nunnally's objection to his proofs of claim violated Rule 3.3(a)(1) by making the knowingly false statement that Nunnally had terminated him as her attorney as part of a purported settlement, and violated Rule 1.6 and Rule 4.4(a) by placing in the public record references to and quotations from privileged attorney-client communications with Nunnally. FF ¶ 207.

5. In the Bankruptcy Proceeding, Respondent's February 29, 2012, adversary Complaint against Nunnally, filed more than 2 years after the deadline for filing adversary complaints, baselessly accusing Nunnally of engaging in fraudulent conduct, and quoting from and attaching documents protected by Nunnally's attorney-client privilege, violated Rule 3.1 because the adversary Complaint lacked any basis in law in fact that was not frivolous; violated Rule 1.6 by disclosing confidential information; and violated Rule 4.4(a) because the adversary Complaint had no substantial purpose other than to embarrass, delay, and burden Nunnally. Furthermore, the bankruptcy court sanctioned Respondent in the amount of $450.00 for causing Nunnally to have to respond to his frivolous pleading, and on April 10, 2012, the bankruptcy court

entered a protective order redacting and sealing confidential attorney-client communications that Respondent filed in violation of Rule 1.6. FF ¶¶ 209-15.

6. In *Frison v. Nunnally*, the Court's December 2, 2011, dismissal of Respondent's purported second appeal due to his failure to identify in his notice of appeal the order he was appealing, and particularly after the Court first advised Respondent that he needed to do so, establishes that Respondent's purported second appeal violated Rule 3.1 because it lacked a basis in law and fact that was not frivolous; violated Rules 3.2(a) and 4.4(a) because the purported appeal lacked any substantial purpose other than to burden, delay, and harass Nunnally; violated Rule 3.4(c) by knowingly disobeying obligations under the rules of the Court; and violated Rule 8.4(d) by seriously interfering with the administration of justice. FF ¶¶ 259; 264-66.

7. Respondent's conduct on February 6, 2012, in (a) filing a "Petition for Peace Order" in the District Court of Maryland for Prince George's County, which contained outlandish and untrue allegations about Nunnally, which did not comply with the requirements listed in the petition form, and which was promptly dismissed on February 16, 2012, due to the lack of an adequate factual predicate; and (b) attempting immediately to re-file another petition for a peace order, violated Rule 3.1 because Respondent's actions lacked a basis in law and fact that was not frivolous, and violated Rule 4.4(a) because Respondent's actions had no substantial purpose other than to embarrass and burden Nunnally. FF ¶¶ 279-82.

8. Respondent's March 8, 2012, filing as a public document a "Verified Complaint" in the Court of Appeals as a purported "original action" predicated in part on the ACAB award rendered in favor of Nunnally, which quoted from and attached as

exhibits documents embodying confidential information relating to Nunnally, which falsely accused Nunnally of scurrilous conduct previously asserted in the already-dismissed "Petition for Peace Order" referred to in the preceding paragraph, and which was immediately rejected for filing because the "Verified Complaint" lacked a jurisdictional basis: violated Rule 1.6 by revealing client secrets and confidences; violated Rule 3.1 because it lacked any basis in law and fact that was not frivolous; violated Rule 4.4(a) because the allegations about Nunnally had no substantial purpose other than to embarrass and burden her; and violated Rule 8.4(d) by seriously interfering with the administration of justice. FF ¶¶ 283-86.

H. Protecting the Public, the Courts, and the Profession

Protecting clients and the overall judicial system from the possibility of future misconduct is a principal – if not the principal – function of the disciplinary system. *In re Goffe, supra*, 641 A.2d at 464; *In re Haupt*, 422 A.2d 768, 771 (D.C. 1980) (per curiam). As stated in D.C. Bar Rule XI, § 2(a), "The license to practice law in the District of Columbia is a continuing proclamation . . . that the holder is fit to be entrusted with professional and judicial matters, and to aid in the administration of justice as an attorney and an officer of the Court." The Hearing Committee believes that Respondent's conduct in attacking Nunnally, his many knowingly false statements of fact in his dealings with the court system and with Bar Counsel, and his repetition of the same type of harassing conduct in the Nunnally Case that led to his prior informal admonition, all demonstrate that Respondent cannot be entrusted to carry out the duties required by § 2(a) of D.C. Bar Rule XI.

I. Deterring Similar Conduct by Respondent and Other Attorneys

Deterring future and similar misconduct is an important purpose of the disciplinary system. *In re Kennedy*, 542 A.2d 1225, 1231 (D.C. 1988); *In re Hutchinson*, *supra*, 534 A.2d at 924. Respondent needs deterrence. He has engaged in significant dishonest conduct in both the Nunnally Case and the Davis Case. He has not learned from his mistakes. Other members of the Bar need to be placed clearly on notice that such misconduct is incompatible with retaining the privilege of remaining an attorney.

J. Comparability of Sanction

The sanction recommendation in this matter is supported by three cases with strong factual similarities to the present matter, particularly the extensive and sustained dishonesty of the respondent attorney: *In re Pelkey*, *supra*; *In re Orci*, 974 A.2d 891 (D.C. 2009) (per curiam); and *In re Goffe*, *supra.*

In *Pelkey*, an attorney entered into business transactions with a client, followed by a falling out between the parties and bitter litigation, principally in California. The parties then entered into an arbitration agreement designed to resolve their litigation. A California trial court denied Pelkey's motion to rescind the arbitration agreement, and the arbitrator awarded approximately $300,000 in compensatory damages, attorney's fees, and costs. 962 A.2d at 274. After a California trial court affirmed the arbitration award, Pelkey filed three separate appeals challenging the award. *Id*. The California appellate court verbally chastised Pelkey for taking a meritless appeal, blatantly misrepresenting a court ruling, and distorting the court's comments, and sanctioned him in the amount of $6,000. *Id*. The Board sustained the Hearing Committee's conclusions that Pelkey filed frivolous appeals in violation of Rule 3.1, violated Rule 3.3(a) by making false statements

in declarations filed with the California trial court, violated Rules 3.2(a) and 4.4 by engaging in litigation designed solely to harass and burden the opposing party, violated Rule 8.4(c) by dishonest dealing, and violated Rule 8.4(d) because his frivolous motions and appeals seriously interfered with the administration of justice. *Id*. at 274-76. The Board stated that even without a finding of intentional misappropriation, disbarment was warranted. *Id*. at 276. On review, the Court characterized Pelkey's dishonest conduct as a "blatant and unconscionable violation of Rule 8.4(c) over the course of several years," 962 A.2d at 279, and found "his unconscionable actions in the courts" amounted to "a continuing and pervasive indifference to the obligations of honesty in the judicial system." *Id*. at 282 (citation omitted).

In re Orci, *supra*, involved three different substantive matters, and a Bar Counsel investigation. In the first matter, Orci disobeyed court orders, filed frivolous claims, seriously interfered with the administration of justice, and committed other misconduct. In the second matter, involving Orci's efforts to disrupt the foreclosure sale of his own condominium apartment, Orci made knowingly false statements to the court and engaged in abusive litigation tactics and dishonesty in court actions. In the third matter, Orci used legal proceedings as a threat to gain personal economic benefits, filed frivolous claims, and violated the core ethical obligation of an attorney to act honestly. 974 A.2d at 891. The Court found this misconduct – in which Orci, *inter alia*, "falsified documents . . . . repeatedly and knowingly made false representations to courts . . . . filed multiple frivolous claims to harass and intimidate others . . . . and knowingly flouted court orders" – warranted disbarment. *Id*. at 892.

In re Goffe, *supra*, involved misconduct in two different cases, a tax matter in which the attorney represented his fiancée, and a real estate dispute involving the attorney's own personal interests. In the tax matter, during a meeting with an IRS representative, the attorney knowingly tendered in support of his fiancée's claimed deductions a spurious $7,000 check and a manufactured copy of a church contribution form. 641 A.2d at 461. In the real estate matter, the attorney knowingly fabricated elements of three different documents (including a fabricated notarization, 641 A.2d at 462) and completely fabricated a letter to support his negotiations with an adverse party, with the intention to mislead others to his own financial advantage. 641 A.2d at 642-43. Goffe also subsequently used the fabricated tax documents during a trial before the Tax Court, and used fabricated documents in a deposition in the real estate matter. The Court found disbarment to be warranted because "[t]he use of wholly fabricated evidence should be unthinkable for lawyers[,]" 641 A.2d at 468, and because Goffe's actions evinced a "pattern of misconduct, the absence of meaningful mitigating factors, and the need to protect the public and governmental institutions" (*id*.).

Respondent's misconduct in the present matter involves repeated dishonesty (as well as many other violations of the Rules) in two different cases, extending over several years. Furthermore, the misconduct is similar and repetitive as between the two cases, although in the Nunnally Case it is far more extensive and severe than in the Davis Case.

In the Nunnally Case, Respondent, in attempting to evade the ACAB arbitration award, repeatedly pursued frivolous claims and proceedings and raised frivolous defenses, in violation of Rule 3.1 (*see* Section III(G)); violated Rule 3.2 by engaging in dilatory litigation tactics intended to harass and injure Nunnally (*see* Section III(H));

made many knowingly false statements of fact in court pleadings, in violation of Rule 3.3 (*see* Sections III(I) and III(J)); fabricated and submitted "bills" to various courts in support of his claims for legal fees, in violation of Rule 3.4 (*see* Section III(J) at ¶ "f")); violated Rule 4.4 by engaging in abusive litigation tactics and using legal proceedings to carry out his threats against Nunnally, and to seek unwarranted personal economic benefits, with the intent to harass and burden Nunnally (*see* Section III(M)); engaged in repeated acts of dishonesty, deceit, and knowing misrepresentation in violation of Rule 8.4(c) (*see* Section III(O));[185] and seriously interfered with the administration of justice by his dishonest conduct, by unnecessarily consuming judicial time and effort, and by making knowingly false statements of fact to Bar Counsel, all in violation of Rule 8.4(d) (*see* Section III(P)).

In the Davis Case, Respondent once again raised issues that had no basis in law and fact, in violation of Rule 3.1 (*see* Section III (G)); knowingly made false statements to the Court of Appeals and submitted to the Court a fabricated document that was a central issue in his appeal, in violation of Rules 3.3, 3.4, and 8.4(c) (*see* Sections III(I), III(K), and III(O)); and seriously interfered with the administration of justice by his dishonest conduct, by unnecessarily consuming judicial time and effort, and by misrepresenting facts to Bar Counsel, in violation of Rule 8.4(d) (*see* Section III(P)).

In view of this record, the sanction of disbarment that was found warranted in *Pelkey*, *Orci*, and *Goffe* is the appropriate sanction in this matter.

[185] A heightened sanction is appropriate "where the dishonesty is aimed at obtaining a ruling from a court based upon the false statements." *In re Parshall*, *supra*, Bar Docket No. 430-01 at 35.

CONCLUSION

For the reasons set forth above, the Hearing Committee recommends that Respondent should be disbarred, and as a condition of reinstatement Respondent should be required to prove that he has fully paid the $11,000 ACAB arbitration award rendered in favor of Nunnally, plus interest at the legal rate on that amount beginning to accrue as of August 3, 2009.

Respectfully submitted,

HEARING COMMITTEE NUMBER ONE

/MS/
Martin Shulman, Esq., Chair

/ARF/
Armando Rodriguez-Feo, Esq.

/DB/
David Bernstein

Dated: December 20, 2012

IN RE FRISON—BOARD DOCKET NO. 11-BD-083
EXHIBIT "A" TO HEARING COMMITTEE REPORT

TABLE 1

Month	"Total Due" BXN-94 Bar Counsel	"Total Due" BXN-104 ACAB
Sep-05	$3,515.00	$3,515.00
Oct-05	$8,202.30	$8,602.30
Nov-05	$11,307.32	$11,726.32
Dec-05	$15,994.40	$16,817.59
Jan-06	$18,494.34	$19,725.76
Feb-06	$23,174.28	$24,818.02
Mar-06	$27,985.03	$30,045.20
Apr-06	$28,214.88	$30,695.65
May-06	$28,197.03	$31,102.61
Jun-06	$29,346.00	$32,680.63
July-06	$30,776.46	$34,544.44
Aug-06	$32,034.22	$36,239.89
Sep-06	$32,554.56	$37,202.28
Oct-06	$33,080.11	$38,174.31
Nov-06	$33,110.91	$38,656.05
Dec-06	$38,184.02	$44,184.61
Jan-07	$41,702.86	$48,163.46
Feb-07	$47,344.89	$54,270.09
Mar-07	$50,953.34	$58,347.79
Apr-07	$52,537.87	$60,406.27
May-07	$52,888.25	$61,235.33
Jun-07	$54,082.13	$62,912.69
Jul-07	$54,897.95	$64,216.81
Aug-07	$55,851.93	$65,663.98
Sep-07	$58,105.45	$68,415.62
Oct-07	$59,161.51	$70,074.78
Nov-07	$61,038.12	$72,460.52
Dec-07	$73,538.44	$85,600.48
Jan-08	$76,066.82	$88,649.49
Feb-08	$82,863.51	$95,449.09
Mar-08	$85,920.15	$99,031.58
Apr-08	$91,332.35	$104,574.90
May-08	$93,095.67	$106,870.65
Jun-08	$98,127.63	$112,440.35
Jul-08	$98,408.91	$113,264.76
Aug-08	$98,268.00	$113,672.40
Sep-08	$97,851.68	$113,810.13
Oct-08	No Bill	$114,148.23
Nov-08	$97,406.49	$114,489.71
Dec-08	$115,384.61	$115,384.61

TABLE 2

Month	"Hours/Expenses" BXN-94 Bar Counsel	"Hours/Expenses" BXN-104 ACAB
Sep-05	$5,625.00/$80	Same
Oct-05	$4,250.00/$40	Same
Nov-05	$2,925.00/$36	Same
Dec-05	$5,500.00/$16	Same
Jan-06	$2,750.00/$36	Same
Feb-06	$4,675.00/$100	Same
Mar-06	$5,000.00/$20	Same
Apr-06	$500.00/None	Same
May-06	$250.00/None	Same
Jun-06	$1,375.00/None	Same
July-06	$1,625.00/None	Same
Aug-06	$1,500.00/None	Same
Sep-06	$750.00/None	Same
Oct-06	$750.00/None	Same
Nov-06	$250.00/None	Same
Dec-06	$5,250.00/None	Same
Jan-07	$3,625.00/None	Same
Feb-07	$5,675.00/$100	Same
Mar-07	$3,625.00/$60	Same
Apr-07	$1,625.00/None	Same
May-07	$375.00/None	Same
Jun-07	$1,750.00/$15	Same
Jul-07	$825.00/None	Same
Aug-07	$1,275.00/$30	Same
Sep-07	$2,650.00/$30	Same
Oct-07	$1,125.00/None	Same
Nov-07	$1,950.00/$85	Same
Dec-07	See Footnote[1]	
Jan-08	$2,625.00/None	Same
Feb-08	Same problems as footnote 1	
Mar-08	$3,575.00/$35	Same
Apr-08	$4,425.00/$80	Same
May-08	$1,500.00/None	Same
Jun-08	$5,225.00/$26	Same
Jul-08	$450.00/None	Same
Aug-08	$125.00/None	Same
Sep-08	$75.00/$26	Same
Oct-08	No Bill	$50.00/None
Nov-08	$50.00/None	Same
Dec-08	None	Same

[1] Bar Counsel's for "bill" "Dec-07" has 2 pages. Page 1 (covering 12/2-12/14) shows $6,275.00 for hours and $110 for expenses (unaccountably reduced to $75), with a page "Total Monthly Bill" of $6,350; page 2 (covering 12/14-12/31) shows $5,275.00 for hours and $95 for expenses, with a page "Total Monthly Bill" of $5,370. The ACAB "bill" for "Dec-07," however, consists of only one page, which appears to be a duplicate of page 2 of Bar Counsel's "bill" for "Dec-07" in its description of services and the $5,370 "Total Monthly Bill" charge, but after that all of the numbers at the bottom of the ACAB "bill" for "Payment Amount," "Previous Balance," "Current Charges," "Total Due," and "Payment Due" are completely different from page 2 of the bill submitted to Bar Counsel.

IN RE FRISON—BOARD DOCKET NO. 11-BD-083
EXHIBIT "A" TO HEARING COMMITTEE REPORT

TABLE 3

	"Payment Due"			"Payment Due"	
	BXN-94	BXN-104		BXN-94	BXN-104
Month	Bar Counsel	ACAB	Month	Bar Counsel	ACAB
Sep-05	$400	$400	May-07	$650	$400
Oct-05	$400	$400	Jun-07	$650	$400
Nov-05	$400	$400	Jul-07	$650	$400
Dec-05	$400	$400	Aug-07	$650	$400
Jan-06	$400	$400	Sep-07	$650	$400
Feb-06	$400	$400	Oct-07	$650	$400
Mar-06	$400	$400	Nov-07	$650	$400
Apr-06	$400	$400	Dec-07	$650	$400
May-06	$400	$400	Jan-08	$650	$400
Jun-06	$400	$400	Feb-08	$650	$400
July-06	$400	$400	Mar-08	$650	$400
Aug-06	$400	$400	Apr-08	$650	$400
Sep-06	$400	$400	May-08	$650	$400
Oct-06	$400	$400	Jun-08	$1,100	$400
Nov-06	$650	$650	Jul-08	$1,100	$400
Dec-06	$650	$650	Aug-08	$1,100	$400
Jan-07	$650	$400	Sep-08	$1,100	$400
Feb-07	$650	$400	Oct-08	No Bill	$400
Mar-07	$650	$400	Nov-08	$1,100	$400
Apr-07	$650	$400	Dec-08	$115,384.61	$115,384.61