THIS REPORT IS NOT A FINAL ORDER OF DISCIPLINE*

DISTRICT OF COLUMBIA COURT OF APPEALS
BOARD ON PROFESSIONAL RESPONSIBILITY

Issued
December 9, 2022

In the Matter of:	:	
	:	
GEORGE W. CRAWFORD II,	:	
	:	Board Docket No. 15-BD-108
Respondent.	:	Bar Docket No. 2013-D022
	:	
A Member of the Bar of the District of Columbia Court of Appeals (Bar Registration No. 311639)	:	

REPORT AND RECOMMENDATION OF THE BOARD ON PROFESSIONAL RESPONSIBILITY

I. INTRODUCTION

Before the Board is the Ad Hoc Hearing Committee's Report and Recommendation, finding by clear and convincing evidence that Respondent, George W. Crawford II, violated Rules 3.1, 3.3(a)(1), 3.4(c), 8.4(a), 8.4(c), and 8.4(d) of the District of Columbia Rules of Professional Conduct (the "Rule" or "Rules") based on misconduct related to a civil judgment against him and a subsequent settlement agreement. The Committee recommended that Respondent be suspended for six months, with reinstatement conditioned upon a showing of fitness, payment of any outstanding sanctions, and compliance with any pending court orders. The Board finds that Respondent violated each of the charged Rules and adopts the Hearing Committee's recommended sanction.

* Consult the 'Disciplinary Decisions' tab on the Board on Professional Responsibility's website (www.dcattorneydiscipline.org) to view any prior or subsequent decisions in this case.

The Board "'must accept the Hearing Committee's evidentiary findings, including credibility findings, if they are supported by substantial evidence in the record.'" *In re Krame*, No. 19-BG-674, 2022 WL 16642018, at *9 (D.C. Nov. 3, 2022); *In re Klayman*, 228 A.3d 713, 717 (D.C. 2020) (per curiam) (quoting *In re Bradley*, 70 A.3d 1189, 1193 (D.C. 2013) (per curiam)); *see also In re Thompson*, 583 A.2d 1006, 1008 (D.C. 1990) (per curiam) (defining "substantial evidence" as "enough evidence for a reasonable mind to find sufficient to support the conclusion reached"). We review *de novo* its legal conclusions and its determinations of ultimate fact. *See Klayman*, 228 A.3d at 717; *Bradley*, 70 A.3d at 1194 (The Board owes "no deference to the Hearing Committee's determination of 'ultimate facts,' which are really conclusions of law and thus are reviewed *de novo*."). Where the Board makes its own findings of fact, we employ a clear and convincing evidence standard. *See* Board Rule 13.7.

Neither Respondent nor Disciplinary Counsel have taken exception to the Committee's report. Under D.C. Bar R. XI § 9(b), "[i]f no exceptions are filed, the Board shall decide the matter on the basis of the Hearing Committee record."

II. OVERVIEW

Respondent was sued in the District of Columbia Superior Court because he had agreed to be a guarantor for funds lent to co-defendants who defaulted on the loans. After two years of litigation, the court granted a motion for summary judgment against Respondent and entered a judgment against him in the amount of $1,158,701.40. Thereafter, Respondent agreed to a settlement with the plaintiffs wherein he promised to pay $10,000 to the plaintiffs, instead of the judgment. Over the next six years, Respondent engaged in obstructionist behaviors in an effort to avoid payment of the settlement, which resulted in his incarceration for civil contempt. In doing so, he spurned his obligations as an officer of the court and repeatedly violated the disciplinary rules.

III. KEY FINDINGS OF FACT

On or around June 7, 2006, Respondent personally guaranteed a secured loan in the amount of $850,000 made by First Washington Insurance Company ("First Washington") to Joy Kelly and Sunshine WV, LLC (the "Borrowers"). FF 6, 8. Respondent had introduced the Borrowers to First Washington's majority owner, Gerald Schaeffer, and received an $8,500 finder's fee (1% of the loan amount) for the referral. FF 4-9. Respondent believed that four properties, valued at $2.4 million total, would serve as collateral for the loan. FF 8. He believed that the value of one of the collateral properties ("the 9th & Upshur Property") underlying the loan was

itself worth $895,000 – $45,000 more than the loan amount.[1] FF 8. Unbeknownst to Respondent or First Washington, the Borrowers had used the 9th & Upshur Property to secure a separate loan with a different bank prior to the closing. Tr. 202-06. The Borrowers soon defaulted on both loans. Tr. 46-47. On August 23, 2007, Mr. Schaeffer filed suit against the Borrowers in D.C. Superior Court for breach of contract, Respondent for breach of personal guaranties, and First American Title Insurance Company ("First American") for negligence in their handling of the closing. (*First Washington Insurance Co. v. Kelly*, No. 2007 CA 005890B (the "-5890 Action")). *See* Tr. 45-46. Respondent asserted cross-claims against First American. Tr. 51.

On March 6, 2009, Judge Brian F. Holeman orally granted First Washington's motion for summary judgment against Respondent and other defendants in the -5890 Action. On December 1, 2009, the court ordered the clerk to enter judgments against Respondent totaling $1,158,701.40. FF 11. Following the Superior Court's entry of the judgments, the court ordered the parties to participate in mediation. FF 13. During a January 7, 2010 mediation session, Respondent, First Washington, and First American entered into a partial settlement of the case, agreeing to resolve all the claims and cross-claims against each other.[2] FF 13-14; DCX 23. Specifically,

[1] The Hearing Committee found that the record evidence "suggested that First Washington would have had the first priority lien position only on the 9th & Upshur Property, not all four properties." FF 9.

[2] Although ordered to do so, the Borrowers did not appear and the settlement had no effect on First Washington's judgments against them. *See* DCX 23.

First American agreed (provided Respondent's cross-claim against it would be dismissed), to pay First Washington $100,000, subject to execution of a mutually acceptable release and settlement agreement. First American also agreed to dismiss its claims against Respondent with prejudice. In return, First Washington agreed to dismiss the claims against First American with prejudice. *See* DCX 23. Respondent agreed to the following terms:

> First Washington would release Respondent from the $1.2 million judgment against him subject to (1) his execution of an affidavit detailing all of his assets and liabilities, (2) his agreement to pay plaintiffs a total of $10,000 over the next three years, and (3) his signing a promissory note consistent with D.C. law confirming his payment obligation. As part of this settlement, Respondent also agreed to dismiss the cross-claims he had asserted against First American Title.

FF 15-16; DCX 23-24. Shortly after agreeing to the settlement, Respondent began attempts to avoid complying with its terms. The Hearing Committee found that those efforts included engaging in frivolous litigation, disregard of court orders, and dishonesty to the court. We discuss each in turn below.

A. Respondent's Motions to Vacate the Judgment and for Rule 11 Sanctions

On March 15, 2010, Respondent filed a Motion to Vacate Judgment, pursuant to D.C. Superior Court Rules 12-I and 60, in which he contended that First Washington's $1.2 million judgment against him was void because it had been obtained by fraud, misrepresentation, and misconduct. FF 49-52. The basis of Respondent's fraud claim was that First American had procured his guaranty by misrepresenting that First Washington would have first priority lien position on the collateral properties securing the loans. FF 50. Respondent also claimed that First

Washington's counsel had engaged in fraud by failing to assert a fraud claim on behalf of First Washington against First American and by failing to pose deposition questions that would have provided evidence of the alleged fraud. FF 63. The Hearing Committee found that Respondent knew that First Washington did not have first priority lien position by November 2006 – mere months after he signed as a loan guarantor, almost a year before the lawsuit to enforce the guaranty was filed, and more than three years before he filed the motion to vacate the judgment. FF 54-55.

The court denied Respondent's motion to vacate at a May 28, 2010 hearing, finding that the motion was frivolous. FF 87; DCX 30 at 49-52. The court found that Respondent filed the motion in an attempt to avoid the judgment or post-judgment settlement. DCX 30 at 51. The court also suggested that Respondent had "gone to sleep on [his] fraud claims that should have been brought by the exercise of due diligence." DCX 30 at 49-52.

Undeterred by the court's order, less than three months after the court denied his motion to vacate the judgment, Respondent filed a motion seeking Rule 11 sanctions against First Washington, asserting the same fraud claims contained in the motion to vacate the judgment. FF 109 *et seq*. [3] The court denied the Rule 11 motion in a May 31, 2012 omnibus order, stating, among other things, that Respondent was

[3] Disciplinary Counsel originally charged that Respondent filed two additional frivolous motions – a motion for clarification and a motion for reconsideration. The Hearing Committee found that those motions did not violate Rules 3.1 or 8.4(d). Because Disciplinary Counsel did not take exception the Hearing Committee's conclusions, we do not address these motions herein.

"resurrect[ing] the same baseless claims" made in the prior motion – claims that the court had rejected as frivolous and meritless at the May 28, 2010 hearing. The court issued sanctions against Respondent in the amount of $30,517.35. *See* FF 112, 125.

B. Contempt Proceedings Against Respondent

Despite the court's order awarding sanctions against Respondent, he failed to pay them. At an August 17, 2012 hearing on contempt motions filed by First Washington and First American, the court found Respondent to be in contempt for failing to pay the $30,517.35 sanctions award. *See* FF 164, 182. The court advised Respondent that he would be incarcerated unless he purged the contempt. *See* DCX 17 at 7-8. Respondent did not do so. DCX 17 at 8. By the hearing held on December 10, 2012, Respondent still had not paid the sanctions award and the court incarcerated him. DCX 17 at 8.

The court held additional hearings on December 14, December 19, and December 21, 2012, to determine whether Respondent had made any effort to purge the contempt. FF 236, 241, 245. At the hearing on December 14, the court awarded further sanctions to First American and First Washington totaling $123,257.50 (covering the parties' attorneys' fees) to be paid by March 15, 2013. FF 240. After the hearing on December 21, 2012, Respondent was released, with the understanding that he would pay $15,000 towards the first sanctions award and that arrangements would be made to pay the remaining sanctions by January 17, 2013. FF 245. Respondent paid the $15,000 that day as required. FF 245.

By the next status hearing on January 17, 2013, Respondent had paid the remaining balance of the $30,517.35 sanctions award. FF 247. But the court's March 15 deadline came and went without payment of the second sanctions award of $123,257.50. FF 249. The court warned Respondent that the outstanding sanctions needed to be paid by the upcoming April 15, 2013 hearing and warned that it would incarcerate him once again if he failed to do so, or if he failed to come up with an agreement to resolve payment of the outstanding amount. FF 251. At the subsequent hearing, the court determined that Respondent had failed to comply with the court's order and incarcerated him once again until, at a minimum, he demonstrated either a good-faith effort to pay the sanctions or an inability to pay the award. *See* FF 253, 259; DCX 18 at 1, 5, 11.

At the next hearing on April 30, 2013, the court found that Respondent had the ability to pay the sanctions but had not done so and ordered that Respondent remain incarcerated. FF 275-76. By the next hearing – on May 28, 2013 – Respondent had still not complied with the court's order and he remained incarcerated. FF 279-80. On May 29, 2013, Respondent's counsel filed a pleading proposing a plan by which the sanctions could be paid: (i) Respondent's son would sell one property that Respondent owned to pay a portion of the sanctions; and (ii) Respondent and his wife would complete "necessary repairs" to a rental property that Respondent and his wife jointly owned, conduct a refinancing, and use the proceeds from the refinancing of that property to pay the outstanding balance of the sanctions. FF 137, 281-82. Respondent's pleading added that, if the proceeds from

the sale and refinancing were insufficient to cover the total amount of the sanctions, he would pay $2,500 per month until the sanctions were paid in full. *See* FF 284; DCX 27.

Both Respondent and his wife appeared at the next day's hearing. Through counsel, Respondent assured the court that "[t]hrough this payment plan [Respondent] along with his wife will access the equity to pay the fees owed and to purge the contempt." FF 292. The court specifically addressed Respondent's wife at the hearing, advising her that she could obtain independent legal advice concerning the agreement, given that she also had ownership rights in the property to be refinanced and that the court had no jurisdiction over her. FF 295; DCX 44 at 18. Following an off-the-record discussion between the parties (including Respondent's wife), and Respondent's counsel's representation that the first refinancing was scheduled to close on the following day, the court accepted the core of Respondent's proposal – that Respondent would complete both refinancings and use the entire net proceeds of the second refinancing to pay the sanctions. FF 297-99, 301, 307. Respondent also agreed to assign $2,500 of his Civil Service retirement pension to First Washington and First American to initiate payment of the sanctions. FF 300. The court ordered Respondent to pay the sanctions in full no later than December 1, 2013 and released him from custody. FF 302, 307-308.

Respondent and his wife completed the second refinancing as planned but did not use any of the proceeds ($118,000) to pay the sanctions. FF 322-24. By that point, Respondent had paid only $10,000 of the outstanding sanctions using his

pension funds. FF 323. When the refinancing funds became available in September 2013, Respondent's wife promptly transferred $78,000 of the proceeds into a bank account solely in her name, leaving $40,000 in their joint account. FF 325. She specifically removed the funds to keep them from being spent on sanctions but also intended to set aside funds for the future care of her elderly mother. FF 326. She ultimately used the entire remaining $40,000 to pay household expenses. FF 327.

When asked whether Respondent was truthful when he initially agreed to use the refinancing proceeds to pay the sanctions, Respondent's wife assured the Committee that it was Respondent's intent to do so at that time. *See* Tr. 467. But, having followed the court's suggestion that she obtain independent counsel, she came to understand that she was not liable for Respondent's debts and had property rights in the funds as well. Tr. 403. She did not dispute that Respondent could have taken the $40,000 that remained in the account to pay the sanctions before they were used to pay other expenses. Tr. 472. For his part, Respondent explained to the Hearing Committee that he allowed his wife to divert the funds because he did not want to upset her:

> [Y]ou've heard the expression ["]happy wife, happy life?["] So my wife took the lead. I wasn't going to upset her, and I didn't need that kind of – I'd been to jail, you, know. You know, I felt that as a principal [sic] I was doing what was right. Legally, and as far as my wife was concerned, I was trying to do what was right by my family. Those are the first two things that come foremost in my mind, and that's doing what's right by my family, and that's how I felt, and how I feel today.

FF 330 (emphasis omitted). He did not recall discussing with his wife the possibility of using the remaining $40,000 to pay any of the outstanding sanctions. FF 332.

C. Respondent Ignored Court Orders Designed to Enforce the Settlement.

Respondent does not dispute that he knowingly ignored court orders requiring that he (i) pay the full sanctions assessed against him, (ii) sign a promissory note, and (iii) provide an affidavit disclosing all of his assets and liabilities, including those held jointly.

IV. DISCUSSION

A. Respondent's Motion to Dismiss

At the start of the hearing, Respondent orally moved to dismiss this matter on grounds that the Specification of Charges was insufficiently clear or specific to meet the standard set forth in Board Rule 7.1.[4] In recommending that Respondent's motion be denied, the Hearing Committee concluded that: (i) the motion was untimely because it was not filed within 7 days of the time prescribed for filing an answer, in accordance with Board Rule 7.14(a); (ii) Respondent could have filed a motion for a bill of particulars or otherwise asked Disciplinary Counsel to clarify the theory of its case; and (iii) the Specification was sufficient to provide Respondent with notice of the charges against him. HC Rpt. at 141-43. While we note that a respondent may move to dismiss charges against him at any time, we agree that the Specification of Charges provided Respondent sufficient notice of the charges

[4] Board Rule 7.1 requires that the petition be (i) "sufficiently clear and specific to inform respondent of the alleged misconduct and the disciplinary rule or rules alleged to have been violated[,]" and (ii) "based on probable cause to believe that respondent has . . . violated the rules of professional conduct."

against him to comport with the requirements of Board Rule 7.1. If Respondent had in fact been unclear as to any aspect of the charges against him, he had ample opportunity to seek clarification prior to the start of the hearing. Like the Hearing Committee, we find it persuasive that, at no point during the hearing or thereafter, did Respondent claim that he was surprised by the evidence or Disciplinary Counsel's contentions related thereto. HC Rpt. at 143. For these reasons, Respondent's motion to dismiss is denied.

B. Respondent Violated Rule 3.1.[5]

Under 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." An objective test is used to determine whether Respondent's conduct violated Rule 3.1. A filing is frivolous if, after an "objective appraisal of merit," a reasonable attorney would conclude that there was "not even a faint hope of success on the legal merits." *In re Spikes*, 881 A.2d 1118, 1125 (D.C. 2005) (citing *Tupling v. Britton*, 411 A.2d 349, 352 (D.C. 1980) and *Slater v. Biehl*, 793 A.2d 1268, 1278 (D.C. 2002)).

> In determining whether Rule 3.1 has been violated, "consideration should be given to the clarity or ambiguity of the law." *In re Spikes*, 881 A.2d 1118, 1125 (D.C. 2005). The "plausibility of the position

[5] As discussed above, the Hearing Committee found that Disciplinary Counsel did not meet its burden in proving that Respondent's motion for clarification or the motion for reconsideration violated Rule 3.1 or 8.4(d). Because Disciplinary Counsel has not taken exception to these findings, the Board does not address them.

> taken[ ] and the complexity of the issue" are also relevant factors. *Id.* Ultimately, a position is "frivolous when it is wholly lacking in substance and not based upon even a faint hope of success on the legal merits." *Id.*
>
> Attorneys have a continuing responsibility to make an "objective appraisal of the legal merits of a position," asking how a "reasonable attorney" would evaluate "whether a claim is truly meritless or merely weak." *In re Yelverton*, 105 A.3d 413, 425 (D.C. 2014).

In re Pearson, 228 A.3d 417, 423-24 (D.C. 2020); *see also In re Yelverton*, 105 A.3d at 426 (attorney violated Rule 3.1 where he "filed numerous repetitive and unfounded motions in Superior Court and in this court, and . . . twice asked the trial judge to recuse himself from the case when he lacked any objective reason to do so").

1. Respondent's Motion to Vacate the Judgment Violated Rule 3.1 Because He Settled the Matter with Full Knowledge of the Alleged Fraud in the Underlying Matter.

D.C. Superior Court Civil Rule 60(b)(3) "explicitly permits the court to grant a party relief from a final judgment on grounds of fraud, misrepresentation, or other misconduct of an adverse party." *Olivarius v. Stanley J. Sarnoff Endowment for Cardiovascular Science*, 858 A.2d 457, 464 (D.C. 2004).[6] "'[T]he purpose of 60(b)

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[6] The full text of D.C. Super Ct. Civ. R. 60(b) provides:

> On motion and just terms, the court may relieve a party or its legal representative from a final judgment, order, or proceeding for the following reasons:
> (1) mistake, inadvertence, surprise, or excusable neglect;
> (2) newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b);
> (3) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party;

is to respect the finality of judgments by providing post-judgment relief only under exceptional circumstances, . . . in unusual and extraordinary situations justifying an exception to the overriding policy of finality, . . . or where the judgment may work an extreme and undue hardship.'" *Id*. (quoting *Clement v. D.C. Dep't of Hum. Servs*., 629 A.2d 1215, 1219 (D.C. 1993)).

Respondent believed that his motion to vacate was proper because Superior Court Civil Rule 60 "permits reconsideration of a judgment procured through fraud," that his motion was timely because "[s]ubsection (b)(3) of the rule required that he file the motion within a year of December 2, 2009, the date the judgment was entered" and that, by filing on March 10, 2010, he complied with that requirement. Resp. Response to ODC's PFFCL at 28. In defending the filing of his motion, Respondent explained to the Hearing Committee that "[f]raud is never frivolous." Tr. 330.

The Hearing Committee found that Respondent's motion to vacate the judgment lacked even a faint hope of success for several reasons, chief among them being Respondent's settlement of the very judgment that he sought to vacate at a time when he had full knowledge of the facts that would have supported his fraud claims. HC Rpt. at 155-56. Relying on *Brown v. Hornstein*, 669 A.2d 139, 142 (D.C. 1996), the Committee determined that when Respondent entered into the settlement

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(4) the judgment is void;
(5) the judgment has been satisfied, released, or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable; or
(6) any other reason that justifies relief.

agreement with the parties with full knowledge of all the facts underlying his motion to vacate the judgment, that settlement extinguished all of the claims that he may have had with respect to the underlying lawsuit. *See also* DCX 23 at 2 (Praecipe of Partial Settlement) ("As part of this settlement, First American [Title Insurance Company] and Mr. Crawford agree to dismiss the claims they have against one another with prejudice."). The *Brown* court explained:

> [T]his court stated more than forty years ago, "[t]he general rule is that a compromise and settlement agreement operates as a merger of and bars the right to recovery on any claim included therein." *McGee v. Marbury*, 83 A.2d 157, 159 (D.C.1951). The law favors the settlement of controversies, and a compromise agreement will be enforced just like any other contract. *Goozh v. Capitol Souvenir Co., Inc.*, 462 A.2d 1140, 1142 (D.C.1983).

669 A.2d at 142.

The law on this issue was clear and unambiguous. By entering into the settlement agreement with full knowledge of his fraud claims, Respondent's claims related thereto were extinguished. *See* HC Rpt. at 155-56.[7] He cites no authority in support of his position to the contrary. His argument could not have been based upon even a faint hope of success on the legal merits. Accordingly, he violated Rule 3.1.

[7] The Hearing Committee relied on two other bases for finding that this motion violated the Rule. *See* HC Rpt. at 155-66. Because the Board's review is *de novo* and we find that the settlement vitiated any fraud claims that he may have otherwise retained concerning the underlying judgment, it is not necessary for us to address these additional bases.

2. Respondent's Motion for Rule 11 Sanctions Violated Rule 3.1 Because it Rested on the Same Grounds as the Motion to Vacate the Judgment.

On the very heels of the court denying his motion to vacate the judgment, Respondent filed his Rule 11 sanctions motion asserting the very same claims that he should have understood were barred. An objective appraisal of the merits of his position surely would have led a reasonable attorney to understand that his claim was truly meritless. *See Pearson*, 228 A.3d at 423-26. Respondent failed to undertake such an appraisal and, here too, his claims violated Rule 3.1.

C. Respondent Violated Rule 3.3(a)(1).

Rule 3.3(a)(1) provides that a lawyer shall not knowingly "[m]ake 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." "This is an extremely serious ethical violation." *In re Johnson*, 275 A.3d 268, 277 (D.C. 2022) (quoting *In re Ukwu,* 926 A.2d 1106, 1140-41 (D.C. 2007) (appended Board Report)). The obligation under Rule 3.3 to speak truthfully to the tribunal is one of a lawyer's "fundamental obligations." *In re Ukwu*, 926 A.2d 1106, 1140 (D.C. 2007) (appended Board Report). Unlike Rule 8.4(c), which can be violated based on reckless conduct, Rule 3.3 requires the Respondent to "knowingly" make a false statement. As the Court of Appeals noted in *Ukwu*, it must be determined that (1) Respondent's statements or evidence were false, and (2) Respondent knew that they were false. *Id.* at 1140. The term "knowingly" "denotes actual knowledge of the fact

in question" and this knowledge may be inferred from the circumstances. *See* D.C. Rule 1.0(f); *see also Ukwu*, 926 A.2d at1116 ("[i]ntent must ordinarily be established by circumstantial evidence. . ."); *In re Starnes*, 829 A.2d 488, 500 (D.C. 2003) (appended Board Report) (circumstantial evidence was sufficient to prove respondent's state of mind as "more direct proof of state of mind, such as an outright assertion of an individual's intent, is rarely available").

The Hearing Committee found that Respondent "clearly and unmistakably represented to the court through counsel that, if released, he intended to use the entire net proceeds" of the refinancing of his rental property to pay the outstanding sanctions. HC Rpt. at 181. The Committee also found that it was "equally clear" and undisputed by Respondent that the court relied on that representation in releasing him from custody. *Id*. Yet, Respondent did not make good on his promise. The Committee found that Respondent never intended to do so, including when he made the statement. As the Committee wrote:

> We recognize that a statement of intention is not a guarantee, and that other circumstances could have arisen that might have prevented Respondent from carrying out his stated intention. [] What is remarkable in this case is the complete absence of any such claim by Respondent. He points to no supervening events or circumstances, no "overtaking by events," no unexpected financial reverses, nothing at all that prevented him from devoting the entire net proceeds of the Second Refinancing to the payment of the outstanding sanctions. Respondent remained completely passive and did nothing to prevent his wife from diverting every penny of these proceeds to the payment of other parties (his mother-in-law and their household creditors), all of which alleged obligations were well known to him when he made his representation to the court.

> Other compelling evidence supports our conclusion that Respondent had no such intent. We are not writing on a clean slate here. We might be inclined to give Respondent the benefit of the doubt if he had not, throughout the course of the underlying litigation, done everything he could to delay, obstruct, and avoid paying anything to First Washington and First American Title. As we recite in detail in our findings, Respondent settled a $1.2 million judgment for $10,000 payable over three years. He then asserted an extreme, wholly unsupportable interpretation of the Settlement Agreement and persisted in it, disobeying numerous court orders and generating sanctions awards against him totaling over $240,000 in three separate awards. Despite his ability to do so, he refused to pay any amount of these sanctions until he was incarcerated the first time. The court quite accurately referred to Respondent's "loathsome pattern of non-compliance," and his "demonstrated bad faith throughout the proceedings." [] Taken together, Respondent's years of unlawful avoidance of his obligations and frustration of First Washington's legitimate claims, coupled with his admitted acquiescence in his wife's diversion of the Second Refinancing proceeds, and the absence of any claim of changed circumstances or overtaking by events leave no doubt: Respondent never intended to make good on his representation to the court that he would apply the entire net proceeds of that refinancing to the payment of the sanctions, and his representation to this effect to the court was knowingly false.

HC Rpt. at 188-89.

We acknowledge, however, that there is evidence pointing in the opposite direction as well. First, Respondent's wife's unimpeached testimony was that Respondent indeed intended to use the refinancing funds to pay the sanctions when he made the promise. *See* Tr. 467. It was her consultation with counsel that offered her a more fulsome understanding of her rights to the refinancing funds and, based on that newly acquired insight, she removed the lion's share of those funds from their bank account. We have also considered that Respondent honored his agreement

to pay the $2,500 per month from his pension fund. This too is some evidence that Respondent intended to pay the sanctions award.

"A play cannot be understood on the basis of some of its scenes, but only on its entire performance." *Ukwu*, 926 A.2d at 1116 (quoting *Andrews v. Philadelphia,* 895 F.2d 1469, 1484 (3d Cir. 1990)). As the Court of Appeals instructed in that case, "[i]ntent must ordinarily be established by circumstantial evidence, and in assessing intent, the court must consider the entire context. '[I]t is generally in the interests of justice that the trier of fact "consider the entire mosaic.'" 926 A.2d at 1116 (internal citations omitted).

In assessing the complete mosaic in this case, we find that there is substantial record evidence supporting the Hearing Committee's determination that Respondent never intended to pay the outstanding sanctions with the refinancing proceeds. The sum total of Respondent's conduct in this matter was deeply problematic. Even after being warned on more than one occasion that he would be held in contempt if he failed to pay the sanctions, Respondent persisted in ignoring the court's admonition. During his incarceration, he continued to drag his feet in repaying the sanctions. And, despite the fact that his wife removed the lion's share of the refinancing funds from the bank account, there is no dispute that he could have used the remaining funds to pay the outstanding sanctions. He did not. Nor does he even recall raising the possibility of doing so with his wife. *See* FF 332. Though Respondent's wife may have believed that Respondent intended to pay the sanctions with the proceeds of the refinancing, we assign her testimony little weight because Respondent's own

behavior demonstrates otherwise. For these reasons, we find that Respondent knowingly made a false statement to the court and, in doing so, violated Rule 3.3(a)(1).

D. Respondent Violated Rule 8.4(c).

Rule 8.4(c) provides that it is professional misconduct for a lawyer to "[e]ngage in conduct involving dishonesty, fraud, deceit, or misrepresentation."

> [The] court has stated that dishonesty, fraud, deceit, and misrepresentation are four different violations, that may require different quantums of proof. Hence, while an intent to defraud or deceive may be required for a finding of fraud, dishonesty may result from conduct evincing a lack of honesty, probity or integrity in principle; a lack of fairness and straightforwardness. Thus, what may not legally be characterized as an act of fraud, deceit or misrepresentation may still evince dishonesty.

In re Romansky, 825 A.2d 311, 315 (*Romansky I*) (D.C. 2003) (internal citations and quotation marks omitted); *see also In re Scanio*, 919 A.2d 1137, 1142-43 (D.C. 2007). Unlike Rule 3.3(a)(1), which requires Disciplinary Counsel to meet the higher burden of proving that Respondent "knowingly" made a false statement, a violation of Rule 8.4(c) can be proven based upon on a recklessly false statement – *i.e.* that the statement was made with a "conscious disregard" of its truth or falsity. *In re Romansky*, 938 A.2d 733, 741-42 (*Romansky II*) (D.C. 2007).

Because Respondent violated Rule 3.3(a)(1) in making a knowingly false statement, he violated Rule 8.4(c) as well.

E. Respondent Violated Rule 3.4(c).

The Hearing Committee also found that Respondent violated Rule 3.4(c). HC Rpt. at 194-215. Rule 3.4(c) provides that a lawyer shall not "[k]nowingly disobey an obligation under the rules of a tribunal except for an open refusal based on an assertion that no valid obligation exists." At issue here are Respondent's failures to comply with the court's orders (1) to sign one of the First Washington-provided promissory notes, (2) to pay the sanctions the court had ordered, and (3) to provide an affidavit disclosing all of his assets and liabilities (as required by the parties' Settlement Agreement). Before the Hearing Committee, Respondent did not dispute that he knowingly disobeyed the orders in question. Accordingly, we find that Disciplinary Counsel established that Respondent violated this Rule by clear and convincing evidence as well.[8]

F. Respondent Violated Rule 8.4(a).

It is misconduct under Rule 8.4(a) to "violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another." The Committee concluded that "[b]ecause we have found that Disciplinary Counsel has proved by clear and convincing evidence that Respondent violated other Rules of Professional Conduct, we conclude that

[8] Before the Hearing Committee, Respondent argued that he could not be found to have violated this Rule because the orders he disobeyed were void and a nullity. The Hearing Committee found that Respondent failed to establish that any of the orders were void and that, because he did not refuse to comply "based on an assertion that no valid obligation exists" – instead simply attacking the orders as erroneous and unfair, and that he was unable to comply – the Rule's safe harbor provision was not available to him. HC Rpt. at 195-96; *See* Rule 3.4(c). Respondent did not challenge the Committee's determination before the Board and we see no reason to disturb it.

Disciplinary Counsel has also proved by clear and convincing evidence that Respondent violated Rule 8.4(a) as well." HC Rpt. at 217.

We agree with the Hearing Committee's application of the plain language of Rule 8.4(a). However, because this Rule violation is rooted solely in the fact that other Rules were violated, our conclusion that Respondent violated Rule 8.4(a) does not affect our sanction analysis, as discussed below.

G. Respondent Violated Rule 8.4(d).

Finally, the Hearing Committee found that Respondent violated Rule 8.4(d) due to his frivolous motions, misrepresentation to the court, and repeated contemptuous violations of the court's orders. HC Rpt. at 220-24. To establish a violation of Rule 8.4(d), there must be clear and convincing evidence:

> (1) that the attorney acted improperly, in that the attorney either [took] improper action or fail[ed] to take action when . . . he or she should [have] act[ed]; (2) that the conduct involved bear[s] directly upon the judicial process (*i.e.*, "the administration of justice") with respect to an identifiable case or tribunal; and (3) that the conduct taint[ed] the judicial process in more than a *de minimis way*, meaning that it at least potentially impact[ed] upon the process to a serious and adverse degree.

In re White, 11 A.3d 1226, 1230 (D.C. 2011) (appended Board Report) (alterations in original) (internal quotation marks omitted) (quoting *In re Owusu*, 886 A.2d 536, 541 (D.C. 2005) (quoting *In re Hopkins*, 677 A.2d 55, 60-61 (D.C. 1996))).

"Rule 8.4(d) seeks to protect both litigants and the courts from unnecessary 'legal entanglement.'" *Pearson*, 228 A.3d at 426 (respondent's Rule 3.1 frivolous litigation violated Rule 8.4(d) as they "unduly burdened the judicial system").

"Frivolous actions 'waste the time and resources of th[e] court, delay the hearing of cases with merit and cause . . . unwarranted delay and added expense.'" *Id*. at 427 (quoting *In re Spikes,* 881 A.2d 1118, 1127 (D.C. 2005)).

Like *Pearson*, this case presents "a textbook example of unnecessary legal entanglement" and easily meets the requirements of the *Hopkins* test. *See id*. Respondent's frivolous motions burdened the opposing parties, as well as the court. He delayed and prolonged the proceedings, even after the matter had been settled. He refused to comply with the court's orders, including those awarding sanctions to the parties who were forced to incur legal expenses to oppose his repeated frivolous filings. Moreover, his failures to comply with the court's orders are expressly contemplated by the Rule. *See* D.C. Rule of Prof. Conduct 8.4, Comment [2] ("The cases under paragraph (d) include acts by a lawyer such as: [] failure to obey court orders.").

For these reasons, we agree with the Hearing Committee's conclusion that Respondent violated Rule 8.4(d).

V. SANCTION

The Hearing Committee recommended that Respondent receive the sanction of a six-month suspension, with reinstatement conditioned upon (i) his demonstrating his fitness to practice law, (ii) his compliance with any pending court orders, and (iii) his payment of any outstanding sanctions awards. Before the Board, neither party has taken exception to the Hearing Committee's sanction recommendation.

The sanction imposed in an attorney disciplinary matter is one that is necessary to protect the public and the courts, maintain the integrity of the legal profession, and deter the respondent and other attorneys from engaging in similar misconduct. *See, e.g.*, *In re Hutchinson*, 534 A.2d 919, 924 (D.C. 1987) (en banc); *In re Martin*, 67 A.3d 1032, 1053 (D.C. 2013); *In re Cater*, 887 A.2d 1, 17 (D.C. 2005). "In all cases, [the] purpose in imposing discipline is to serve the public and professional interests . . . rather than to visit punishment upon an attorney." *In re Reback* (*Reback II*), 513 A.2d 226, 231 (D.C. 1986) (en banc); *see also In re Goffe*, 641 A.2d 458, 464 (D.C. 1994) (per curiam). The sanction also must not "foster a tendency toward inconsistent dispositions for comparable conduct or . . . otherwise be unwarranted." D.C. Bar R. XI, § 9(h)(1); *see, e.g.*, *Hutchinson*, 534 A.2d at 923-24; *In re Berryman*, 764 A.2d 760, 766 (D.C. 2000).

In determining the appropriate sanction, the Court of Appeals considers a number of factors, including: (1) the nature and seriousness of the misconduct; (2) the prejudice, if any, to the client which resulted from the conduct; (3) whether the conduct involved dishonesty 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 the attorney has acknowledged his wrongful conduct; and (7) circumstances in mitigation or aggravation. *See, e.g.*, *Martin*, 67 A.3d at 1053 (citing *In re Elgin*, 918 A.2d 362, 376 (D.C. 2007)). The Court also considers "'the moral fitness of the attorney' and 'the need to protect the public, the courts, and the legal profession . . . .'" *In re Rodriguez-Quesada*, 122

A.3d 913, 921 (D.C. 2015) (per curiam) (quoting *In re Howes*, 52 A.3d 1, 15 (D.C. 2012)).

"[T]he choice of sanction is not an exact science but may depend on the facts and circumstances of each particular proceeding Indeed, each of these decisions emerges from a forest of varying considerations, many of which may be unique to the given case." *In re Edwards*, 870 A.2d 90, 94 (D.C. 2005) (internal quotation marks and citations omitted). Respondent's misconduct falls into three categories, each of which is very serious and strikes at the heart of an attorney's obligations – (1) knowingly false statements to the court; (2) defiance of numerous court orders over a period of three years; and (3) frivolous court filings. Collectively, he violated six disciplinary Rules and has never acknowledged that his conduct was wrongful.[9] As the Hearing Committee aptly stated, "[t]his is a lawyer with an invincible sense of his own rectitude and propriety in everything he did in this case." HC Rpt. at 228. Because Respondent was his own client, no client was harmed by his misconduct. In mitigation, Respondent does not have a disciplinary history.[10]

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[9] As discussed above, because the misconduct underlying the Rule 8.4(a) violation is the same as that giving rise to the other five Rule violations, it does not serve to aggravate the recommended sanction.

[10] In recommending that Respondent receive an aggravated sanction, the Hearing Committee *sua sponte* considered two categories of uncharged misconduct: (1) frivolous appeals that Respondent made to the Court of Appeals and his frivolous filing of a forum-shopping action; and (2) additional false statements to the court that successfully concealed his ownership interest in a property. According to the Committee, there were "references to the uncharged misconduct in opening statements, witness testimony, closing arguments, and post-hearing briefs." HC Rpt. at 233-38.

Critically, in the instant case, the Committee does not identify any point – prior to the issuance of its own report – where the respondent was placed on notice that he needed to defend against the

Under applicable precedent, Respondent's dishonesty and failures to comply with court orders alone could warrant a sanction well exceeding the six-month suspension proposed by Disciplinary Counsel.[11] *See In re Tun*, 195 A.3d 65 (D.C. 2018) (one-year suspension for intentional false statement in a motion); *In re Untulan*, 174 A.3d 259 (D.C. 2017) (respondent suspended for six months with all but 60 days stayed where he knowingly failed to comply with court orders in seven cases but offered extensive evidence in mitigation and took full responsibility for his actions); *In re McClure*, 144 A.3d 570 (D.C. 2016) (respondent disbarred where, among other things, he violated multiple court orders – including one requiring that he pay sanctions for filing "ill-founded motions" in pursuit of his fee claims); *In re Martin*, 67 A.3d 1032, 1053-54 (D.C. 2013) (eighteen-month suspension for pattern of dishonesty in several matters); *In re Ukwu*, 926 A.2d 1106, 1120 (D.C. 2007)

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above-referenced allegation. Disciplinary Counsel's passing references to the conduct during the hearing and in its post-hearing briefing lack the precision required to put Respondent on notice. Neither Disciplinary Counsel's opening brief nor its reply brief cites this conduct as violating a specific disciplinary rule or contends that it should be considered in aggravation. *See In re Schwartz*, 221 A.3d 925, 930 (D.C. 2019) (Disciplinary Counsel's contention that respondent engaged in client neglect could not fairly be considered in aggravation of the sanction where, among other things, Disciplinary Counsel had declined to pursue the charge before the Hearing Committee as a separate violation or as an aggravating circumstance). Because Respondent did not have a fair opportunity to respond to these allegations, we do not adopt the Committee's characterizations of his appeals or the statements made to the court concerning his property interests. And we do not consider this alleged misconduct in determining the appropriate sanction in this case.

[11] Cases involving lawyers who assert frivolous claims in violation of Rules 3.1 and 8.4(d) have resulted in a range of sanctions from a suspension of thirty days to ninety days. *See, e.g.*, *In re Pearson*, 228 A.3d 417, 428-29 (D.C. 2020) (per curiam) (ninety-day suspension for lawyer who litigated frivolous claims against his dry cleaner); *In re Spikes*, 881 A.2d 1118, 1119, 1127-28 (D.C 2005) (thirty-day suspension for filing a frivolous defamation claim based on privileged complaint to Disciplinary Counsel).

(appended Board Report) (two-year suspension for neglecting client matters, dishonesty to client, and false statements to Disciplinary Counsel).

Given the nature of our adversarial disciplinary system, we do not recommend a sanction exceeding that sought by Disciplinary Counsel. *See In re Cleaver-Bascombe*, 892 A.2d 396, 412 n.14 (D.C. 2006) ("Our disciplinary system is adversarial – [Disciplinary Counsel] prosecutes and Respondent's attorney defends – and although the court is not precluded from imposing a more severe sanction than that proposed by the prosecuting authority, that is and surely should be the exception, not the norm, in a jurisdiction, like ours, in which [Disciplinary Counsel] conscientiously and vigorously enforces the Rules of Professional Conduct.").

In addition, we agree with the Hearing Committee that a fitness requirement is appropriate in accordance with the *Roundtree* factors, as discussed below. "[T]o justify requiring a suspended attorney to prove fitness as a condition of reinstatement, the record in the disciplinary proceeding must contain clear and convincing evidence that casts a serious doubt upon the attorney's continuing fitness to practice law." *In re Lattimer*, 223 A.3d 437, 453 (D.C. 2020) (per curiam) (quoting *In re Cater*, 887 A.2d 1, 6 (D.C. 2005)). "[I]mposing a proof-of-fitness requirement is 'conceptually different from the reason for suspending a respondent for a period of time.'" *In re Askew*, 225 A.3d 388, 400 (D.C. 2020) (quoting *Cater*, 887 A.2d at 22). A suspension "is 'intended to serve as the commensurate response to the attorney's past ethical misconduct, . . . [an] open-ended fitness requirement is intended to be an appropriate response to serious concerns about whether the

attorney will act ethically and competently in the future, after the period of suspension has run.'" *Id*. (quoting *Cater*, 887 A.2d at 22). The Court of Appeals explained in *Cater* that it is useful to consider the same factors that guide us in determining whether to reinstate attorneys who have been suspended (or disbarred):

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

Cater, 887 A.2d at 21 (citing *In re Roundtree*, 503 A.2d 1215, 1217 (D.C. 1985)).

Here, as the Committee discussed, (i) Respondent's misconduct was serious, wide-ranging, and pervasive; (ii) he failed to recognize the seriousness of his actions; (iii) he has done nothing to remedy his past wrongs or prevent future ones; and (iv) his present character and competence to practice law are called into question by the very nature of the misconduct in this matter. *See* HC Rpt. at 249-51. The Board agrees that a fitness requirement should be imposed for the reasons identified by the Hearing Committee.

VI. CONCLUSION

For the foregoing reasons, the Board recommends that the Court conclude that that Respondent violated Rules 3.1, 3.3(a)(1), 3.4(c), 8.4(a), 8.4(c), and 8.4(d). We recommend that he should be suspended for six months, with reinstatement conditioned upon (i) his demonstrating his fitness to practice law, (ii) his compliance

with any pending court orders, and (iii) his payment of any outstanding sanctions awards. We further recommend that Respondent's attention be directed to the requirements of D.C. Bar R. XI, § 14, and their effect on eligibility for reinstatement. *See* D.C. Bar R. XI, § 16(c).

BOARD ON PROFESSIONAL RESPONSIBILITY

By: Sundeep Hora

Sundeep Hora

All members of the Board concur in this Report and Recommendation except Mary Larkin who is recused from this matter.