DISTRICT OF COLUMBIA COURT OF APPEALS
BOARD ON PROFESSIONAL RESPONSIBILITY
AD HOC HEARING COMMITTEE

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

REPORT AND RECOMMENDATION OF THE AD HOC HEARING COMMITTEE

This matter is before the Ad Hoc Hearing Committee (the "Hearing Committee") pursuant to the default procedure of D.C. Bar R. XI, § 8(f) and Board Rule 7.8, arising from Respondent's failure to answer the Specification of Charges or to respond to Disciplinary Counsel's[1] motion for default. Based upon the undisputed evidence submitted in support of Disciplinary Counsel's motion, the Hearing Committee finds clear and convincing evidence of each of the violations charged by Disciplinary Counsel. The Hearing Committee recommends that Respondent be suspended for sixty (60) days and required to show fitness as a condition of reinstatement.

I. INTRODUCTION

Respondent Barbara Hargrove, Esquire, was admitted to the Bar of the District of Columbia Court of Appeals on June 20, 1973. The record reflects no previous discipline against her. In February 1996, Respondent was appointed Personal Representative of the Estate of Emma O. Johnson. The court removed her as Personal Representative in December 2009. Between 1996 and 2009, Respondent did not close the Estate, did not correct a defective deed for the Estate's most

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

significant asset, and engaged in extensive and ineffective proceedings related to that asset. After her removal, Respondent failed to provide her file to the successor Personal Representative. The court eventually referred the estate matter to the Auditor Master so Respondent's final account could be stated.

Disciplinary Counsel has made numerous efforts to communicate with Respondent with only limited success. Respondent has not answered the Specification of Charges, as required by Board Rule 7.5. Respondent did not participate in the pre-hearing conference or the hearing before the Hearing Committee. Based on our review of the *ex parte* proof filed by Disciplinary Counsel, the Hearing Committee makes the following findings of fact, conclusions of law, and recommendation as to the appropriate sanction, as set forth below.

II. PROCEDURAL BACKGROUND AND NOTICE TO RESPONDENT

A. Specification of Charges

On June 3, 2015, Disciplinary Counsel filed a Petition and Specification of Charges against Respondent. Disciplinary Counsel alleged that Respondent violated the following disciplinary rules: 1.1(a) (failure to provide competent representation); 1.1(b) (failure to serve client with commensurate skill and care); 1.3(c) (failure to act with reasonable promptness); 1.16(d) (failure to surrender papers and property after termination of representation); and 8.4(d) (engaging in conduct that seriously interferes with the administration of justice).[2]

Disciplinary Counsel personally served Respondent with the Specification of Charges on June 7, 2015. Respondent did not file an answer to the Specification of Charges. In a letter dated July 16, 2015, Respondent asked Disciplinary Counsel to extend her response date, citing "the press of

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

business in my office and previously scheduled vacation." Disciplinary Counsel Exh. ("BX") 4. Disciplinary Counsel noted in a reply dated July 20 that Respondent would have to apply to the Board on Professional Responsibility by motion to obtain an extension. BX 5. Respondent did not seek an extension from the Board.

B. Pre-Hearing Conference and Motion for Default Judgment

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

On September 14, 2015, the Hearing Committee held a pre-hearing conference. Respondent was notified of the pre-hearing conference, but she failed to appear. On the record, and in an order dated September 18, 2015, the Hearing Committee granted leave to Respondent to move to late-file her Answer, with the Answer attached, on or before October 5, 2015.

On October 6, 2015, Respondent served Disciplinary Counsel with a motion to late-file her answer to the Specification of Charges, with an attached "Answer" – a reply brief filed in the Superior Court in the probate matter underlying the disciplinary proceeding. The motion was not filed with the Hearing Committee. On October 7, 2015, Disciplinary Counsel submitted Respondent's motion to the Hearing Committee, which accepted it for filing. As grounds for the motion to late-file, Respondent cited the "press of business in her law practice [that] caused her to fall behind in staying current with her deadlines." Disciplinary Counsel opposed the motion on the grounds that the "Answer" was more than three months overdue and that Respondent failed to meet her burden under

D.C. Bar R. XI, § 8(e) and Board Rule 7.5 to demonstrate that "the failure to file [the] answer was attributable to mistake, inadvertence, surprise, or excusable neglect." On October 15, 2015, Respondent filed a second motion, again citing the "press of business," and attaching an "Answer to the Specification of Charges" in which she denied all the allegations in the Specification of Charges. Respondent further asserted that the court's order of referral to the Auditor Master and the Auditor Master's report "exceeded D.C. [s]tatutory authority." Attached to the answer was the same brief from the underlying probate matter that was included with the October 6 communication. Respondent noted that the brief "details [R]espondent's position."

On October 28, 2015, the Hearing Committee denied Respondent's motion for leave to late-file her Answer based on Respondent's failure to establish "excusable neglect." In accordance with Board Rule 7.8(b), the Hearing Committee treated the allegations in Disciplinary Counsel's motion for default as admitted, subject to the submission of *ex parte* proof by Disciplinary Counsel sufficient to prove the allegations by clear and convincing evidence. The Hearing Committee directed Disciplinary Counsel to notify Respondent of the order.[3] By order dated November 10, 2015, the Hearing Committee scheduled a hearing for November 30, 2015. Respondent did not submit a witness list or documentary exhibits on sanction as permitted by the October 28 Order. Disciplinary Counsel was present at the November 30, 2015 hearing, but Respondent did not appear, despite being notified by Disciplinary Counsel.

III. FINDINGS OF FACT

Board Rule 7.8(b) provides that an Order of Default is "limited to the allegations set forth in the petition . . . which shall be deemed admitted," where, as here, Respondent fails to answer the petition, Respondent is personally served, and Disciplinary Counsel's default motion is supported by

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[3] Pursuant to D.C. Bar R. XI, § 8(f), a copy of the Order of Default is attached hereto.

sworn proof of the charges in the petition. On the basis of the admitted allegations set forth in the Petition and Specification of Charges, and uncontested sworn statements supporting Disciplinary Counsel's default motion, the Hearing Committee makes the following findings of fact by clear and convincing evidence:

A. Respondent's Bar Membership and Appointment as Personal Representative

1. Respondent (formerly known as Barbara Yorrick) was admitted to the Bar of the District of Columbia Court of Appeals on June 20, 1973, and assigned Bar number 173419. BX 1 (Specification of Charges), ¶1.

2. Emma O. Johnson died intestate on April 9, 1992. BX 7 (Report of the Auditor Master), ¶14. Linda Weedon filed a petition for appointment as Personal Representative of Ms. Johnson's Estate on May 15, 1992. BX 7, ¶15. Ms. Weedon was the mother of Ms. Johnson's minor grandchildren, Joseph and Norel Weedon. BX 7, ¶15, 25. She was appointed Special Administrator on November 23, 1992. BX 7, ¶20.

3. At the time of her death, Ms. Johnson's assets included real property at 3928 New Hampshire Avenue, N.W. in Washington, D.C. ("the New Hampshire Avenue property"), and interests in real property in North Carolina ("the North Carolina property"). BX 7, ¶17-18.

4. On June 26, 1992, Ms. Johnson's brother, James Johnson, filed a complaint contesting the heirship of the grandchildren. BX 7, ¶19. Mr. Johnson died on April 1, 1993, and his sons were substituted as party plaintiffs. BX 7, ¶22.

5. The parties entered into a settlement agreement on October 31, 1994. BX 7, ¶23. Under the settlement, Mr. Johnson's heirs received the North Carolina property, and Ms. Weedon "as surviving parent of Norel [] Weedon and Joseph [] Weedon" received "on behalf of" her children all of the decedent's property in the District of Columbia. BX 7, ¶¶24, 25. The court ratified the

settlement agreement on October 31, 2004. BX 7, ¶26. In its order, the court identified Ms. Weedon as "Personal Representative" rather than Special Administrator. BX 7, ¶27, 28.

6. On December 6, 1994, Ms. Weedon as Personal Representative filed a deed with the D.C. Recorder of Deeds granting the New Hampshire Avenue property in fee simple to herself as guardian for Joseph and Norel Weedon. BX 7, ¶29.

7. The deed was not technically sufficient because it did not refer to the Uniform Transfers to Minors Act and it did not contain language restricting sale or transfer of the New Hampshire Avenue property. BX 7, ¶30. Nevertheless, the property was titled in Ms. Weedon's name, and not the Estate's, after that deed was filed. BX 7, ¶31-32, 118, 138, 175-79, 190.

8. The court removed Ms. Weedon as Personal Representative on February 26, 1996. BX 7, ¶37. The court appointed Respondent as successor Personal Representative by the same order. BX 7, ¶41.[4]

B. Respondent's Conduct as Personal Representative

9. On October 27, 1997, Respondent filed an affidavit of inventory and first account. BX 7, ¶57. She stated that she first obtained access to the New Hampshire Avenue property on October 23, 1997. BX 7, ¶57. According to Respondent, Ms. Weedon's final account had not been approved, and Ms. Weedon had not turned the Estate's assets over to her. BX 7, ¶43.

10. Respondent's affidavit showed $8,512.96 in Ms. Weedon's Estate account as of September 5, 1997, and a zero balance in two other accounts. BX 7, ¶44.

11. On January 14, 1998, Respondent filed a petition for a show cause hearing asserting that Ms. Weedon had refused to turn over all of the Estate's assets. BX 7, ¶60.

[4] We refer to Respondent as the "Personal Representative" to avoid confusion with Mr. Guiterman, who was appointed as the "successor Personal Representative" following Respondent's removal as the Personal Representative.

12. The court entered judgment against Ms. Weedon in 1998. BX 7, ¶62. The amount of the judgment was at least $7,930.84. BX 7, ¶¶62, 164 (stating a higher value for the judgment).

13. Respondent carried the judgment against Ms. Weedon as an asset receivable. BX 7, ¶63. In her ninth through fifteenth accounts, she stated that she intended to turn over the judgment to the heirs for collection. BX 7, ¶64.

14. Respondent never turned the judgment over to the heirs or otherwise sought to enforce it. BX 7, ¶¶65, 166-67. Respondent did not take steps to have the judgment recorded, and it is now uncollectable. BX 7, ¶165.

15. Because the New Hampshire Avenue property was titled in the name of Ms. Weedon as guardian for her children, Respondent did not have authority to exercise ownership rights over the property in her capacity as Personal Representative of the Estate. BX 7, ¶¶29, 45-51, 118. Respondent nevertheless purported to exercise ownership rights over the property in the following ways:

a. In 2002, Respondent attempted to sell the property to Christian Anderson and accepted an earnest money deposit of $5,000 from him. BX 7, ¶72. (Before 2002, Respondent did not list the property with a broker, aggressively market it, or secure a contract for sale. BX 7, ¶¶68-70).

b. In 2003, Respondent moved to intervene in a foreclosure action against the property. BX 7, ¶88.

c. In 2004, Respondent sought to resolve delinquent real estate taxes owned on the property by paying $5,732.56 to the owner of a tax deed in exchange for a quitclaim deed. BX 7, ¶90. Part of that payment was made with Mr. Anderson's deposit, with his permission. BX 7, ¶91. The quitclaim deed was made in favor of the Estate, but Respondent never recorded it. BX 7, ¶90, 92.

16. On April 15, 2005, Respondent filed an emergency petition seeking to remove an alleged squatter, Anita Williams, from the premises and to invalidate the December 6, 1994, deed to Ms. Weedon as guardian. BX 7, ¶97.

17. Respondent did not raise the issue of the return of the New Hampshire Avenue property to the Estate during the June 13, 2005, hearing on the emergency petition. BX 7, ¶¶101, 104. Respondent only raised the issue of Ms. Williams's eviction. BX 7, ¶105.

18. On July 19, 2005, Ms. Williams filed a written response noting that Ms. Weedon was awarded the property in the 1994 settlement agreement. BX 7, ¶108.

19. At a hearing on July 21, 2005, Respondent asserted that Ms. Weedon's effort to transfer the property to herself failed. BX 7, ¶111. Ms. Williams's attorney explained that the property was in Ms. Weedon's name and that the order approving the settlement agreement authorized Ms. Weedon to transfer the property to herself as guardian or custodian of the heirs. BX 7, ¶113.

20. The court opined that the deed was technically defective because Ms. Weedon had not been formally appointed as guardian. BX 7, ¶115. The court stated that Respondent should petition to have an independent person appointed guardian so that the deed could be corrected and the property properly transferred. BX 7, ¶118. That guardian could then bring a petition to dispossess Ms. Williams. BX 7, ¶119. The court denied the eviction petition without prejudice to Respondent taking those steps. BX 7, ¶120.

21. Respondent never petitioned the court to appoint a guardian, and she did not bring that deficiency to the court's attention. BX 7, ¶¶121, 122. In subsequent hearings, she only addressed tax issues. BX 7, ¶123.

22. Respondent deposited Estate assets into a BB&T account titled in her name personally and enumerated in her ninth through fifteenth accounts. BX 7, ¶126. Disciplinary Counsel does not assert that Respondent commingled Estate funds with personal funds in that account. Hr'g Tr. 11:18-

22, 12:1-4 (Nov. 30, 2015). On or around October 24, 2007, that account escheated to the State of Maryland. BX 7, ¶126.

23. Successor Personal Representative Eli Guiterman was unable to recover the funds because the account was titled in Respondent's name instead of the Estate's. BX 7, ¶127.

24. In or around October 2008, a PNC account titled to the Estate escheated to the State of Maryland. BX 7, ¶129.

25. Respondent subsequently retrieved the funds from the BB&T account and returned them to the Estate. BX 7, ¶128. Mr. Guiterman subsequently retrieved the funds from the PNC account. BX 7, ¶129.

26. On July 16, 2008, the Superior Court removed Respondent as Personal Representative because of her continued failures in administering the Estate. BX 7, ¶130.

27. On July 18, 2008,[5] Respondent filed a motion to stay the order of her removal and represented that she was on the brink of going to settlement on the sale of the New Hampshire Avenue property and of closing the Estate. BX 7, ¶133.

28. On August 15, 2008, the court stayed Respondent's removal and scheduled an August 18 hearing on Respondent's request to make the stay permanent. BX 7, ¶134.

29. At the August 18, 2008, hearing, Respondent repeated that she was ready to settle the sale of the New Hampshire Avenue property when the District of Columbia provided an accurate tax figure. BX 7, ¶135-36. The court reinstated her for thirty days. BX 7, ¶139.

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

30. On September 12, 2008, Respondent again asserted that she was about to close the Estate, and she filed a petition to permanently stay her removal and extend her thirty-day reinstatement. BX 7, ¶140.

31. The court granted the motion on October 9, 2008, and reinstated Respondent. BX 7, ¶¶141-42.

32. At several subsequent hearings, Respondent continued to represent that the only factor keeping the Estate from closing was the District of Columbia's failure to provide an accurate amount for the tax owed on the New Hampshire Avenue property. BX 7, ¶143. That property still was not titled in the name of the Estate. BX 7, ¶138.

33. On December 15, 2009, the court removed Respondent as Personal Representative and appointed Eli J. Guiterman as her successor. BX 7, ¶148; BX 9 (Affidavit of Eli J. Guiterman, Esquire), ¶1.

C. Respondent's Conduct after Removal as Personal Representative

34. On January 6, 2010, Mr. Guiterman asked Respondent to produce her entire file on the Estate. BX 9, ¶2.

35. Respondent failed to produce the file, and Mr. Guiterman "requested it again on January 29, 2010, and April 21, 2010." BX 9, ¶2.

36. When Respondent still failed to produce the file, Mr. Guiterman served a subpoena on her on May 7, 2010. BX 9, ¶3. Respondent did not comply with the subpoena. BX 9, ¶3.

37. At a hearing on September 30, 2010, the Superior Court ordered Respondent to produce the file to Mr. Guiterman within fourteen days. BX 9, ¶4. Respondent did not comply with the order. BX 9, ¶4.

38. On September 30, 2010, the court also referred the matter to Louis Jenkins, the Auditor Master for the Superior Court, so Respondent's final account could be stated. BX 6, ¶2; BX 7, p. 1. The Auditor Master conducted a hearing on February 7, 2011. BX 7, ¶2.

39. On November 4, 2010, Mr. Guiterman filed a Motion to Show Cause why Respondent should not be held in contempt of court for failure to produce the Estate file. BX 9, ¶5. The next day Respondent produced some bank documents but not the complete file. BX 9, ¶5.

40. On March 16, 2011, Respondent was held in contempt of court for failure to produce the file and was ordered to pay Mr. Guiterman's attorney's fees. BX 9, ¶6.

41. The court vacated the contempt on April 7, 2011, and ordered Respondent to appear in Mr. Guiterman's office on April 22 with the entire file. BX 9, ¶7. On June 14, 2011, the court ordered Respondent to pay Mr. Guiterman $3,085.00 for his efforts in obtaining the file. BX 9, ¶8. Respondent paid that amount on February 3, 2012. BX 9, ¶9.

42. Respondent has produced some papers and bank records to Mr. Guiterman, but she has not produced a complete file. BX 9, ¶10.

43. The Auditor Master filed his report on October 1, 2012. BX 6; BX 7. The Auditor Master concluded "that this case was too complicated for [Respondent] to handle" and that "[s]he simply has never fully comprehended the impact of the facts and the application of the law." BX 7, ¶¶171-72.

44. Specifically, Respondent "sincerely," but incorrectly, believed the Estate had title to the New Hampshire Avenue property. BX 7, ¶¶173-190. Because Respondent could not exercise ownership rights over the property, Respondent's efforts with respect to it were futile and prevented the Estate from closing for many years. During that time, real estate taxes continued to accrue. BX 7 at p. 2. The taxes totaled $113,000 at the time of the Auditor Master's report. *Id.*

45. The court approved the Auditor Master's report on December 21, 2012. BX 8 (Order Approving Report of Auditor Master). In the same order, the court entered judgment jointly against Respondent and her surety for $2,600 and against Respondent individually for $6,480.84, plus interest in favor of the Estate. *Id.*

46. On January 24, 2013, the court ordered Respondent to pay additional attorney's fees in the amount of $18,300. BX 9, ¶13.

47. The surety paid the $2,600 judgment. BX 9, ¶12. Respondent did not pay either the $6,480.84 judgment or the $18,300 in attorney's fees. BX 9, ¶¶11, 13.

IV. CONCLUSIONS OF LAW

A. Standard of Review

Disciplinary Counsel charged Respondent with violating the following Rules: 1.1(a), 1.1(b), 1.3(c), 1.16(d), and 8.4(d). Respondent did not answer these charges as required by the Board's rules. The sworn statements and documentary proof that Disciplinary Counsel filed in support of its motion for default, together with the allegations set forth in the petition, which are deemed admitted, constitute clear and convincing evidence that Respondent violated all of the disciplinary rules with which she was charged.

B. Violations Alleged in the Specification of Charges

1. Rules 1.1(a) and 1.1(b)

Rule 1.1(a) requires that a lawyer provide competent representation, which includes not only legal knowledge and skill, but the "thoroughness[] and preparation" reasonably necessary for the representation. Rule 1.1(b) requires that a lawyer serve the client with the "skill and care commensurate with that generally afforded to clients by other lawyers in similar matters." Comment [5] to Rule 1.1 reiterates that competent representation includes "adequate preparation and continuing attention to the needs of the representation to assure that there is no neglect of such needs," and states

that "[t]he required attention and preparation are determined in part by what is at stake." In *In re Evans*, the Court explained that:

> To prove a violation [of Rule 1.1(a)], [Disciplinary Counsel] must not only show that the attorney failed to apply his or her skill and knowledge, but that this failure constituted a serious deficiency in the representation. . . . The determination of what constitutes a "serious deficiency" is fact specific. It has generally been found in cases where the attorney makes an error that prejudices or could have prejudiced a client and the error was caused by a lack of competence. . . . Mere careless errors do not rise to the level of incompetence.

902 A.2d 56, 69-70 (D.C. 2006) (per curiam) (appended Board Report). Although the Board referred to Rule 1.1(a) only, the "serious deficiency" requirement applies equally to Rule 1.1(b). *See In re Yelverton*, 105 A.3d 413, 421-22 (D.C. 2014). To prove a "serious deficiency," Disciplinary Counsel must prove that the conduct "prejudices or could have prejudiced the client." *Id.* at 422.

Rule 1.1(b) is "better tailored [than Rule 1.1(a)] to address the situation in which a lawyer capable to handle a representation walks away from it for reasons unrelated to his competence in that area of practice." *In re Lewis*, 689 A.2d 561, 564 (D.C. 1997) (per curiam) (appended Board Report). With respect to Rule 1.1(b), a Hearing Committee may find a violation of the standard of care established through expert testimony or, without expert testimony when an attorney's "conduct is so obviously lacking that expert testimony showing what other lawyers generally would do is unnecessary." *In re Nwadike*, Bar Docket No. 371-00 at 28 (BPR July 30, 2004), *findings and recommendation adopted*, 905 A.2d 221, 227, 232 (D.C. 2006); *see In re Schlemmer*, Bar Docket Nos. 444-99 & 66-00 at 13 (BPR Dec. 27, 2002) (noting that Disciplinary Counsel need not "necessarily produce evidence of practices of other attorneys in order to establish a Rule 1.1(b) violation").

The competency, skill, and care of an attorney under Rules 1.1(a) and (b) must be evaluated in terms of the representation required and provided in the particular matter at issue:

> Competent handling of a particular matter includes inquiry into and analysis of the factual and legal elements of the problem, and use of methods and procedures meeting

> the standards of competent practitioners. It also includes adequate preparation and continuing attention to the needs of the representation to assure that there is no neglect of such needs. The required attention and preparation are determined in part by what is at stake; major litigation and complex transactions ordinarily require more elaborate treatment than matters of lesser consequence.

Rule 1.1, cmt. [5].

The Hearing Committee concludes that Respondent violated both subsections of Rule 1.1 in her handling of issues related to the New Hampshire Avenue property. Her treatment of the judgment against Ms. Weedon also violated Rules 1.1(a) and (b).

For the first six years of her service as Personal Representative, Respondent believed the Estate had title to the New Hampshire Avenue property, despite the 1994 deed transferring the property to Ms. Weedon. Finding of Fact ("FF") 9, 15. During that time, she took no steps to list the property or otherwise arrange for its sale. FF 15. Respondent has offered no reason or justification for that delay. As the Personal Representative of the Estate, Respondent was "under a general duty to settle and distribute the estate . . . as expeditiously and efficiently as is prudent and consistent with the best interests of the persons interested in the estate." D.C. Code § 20 701(a). A competent attorney would have taken steps to dispose of the only potentially significant Estate asset so the Estate could be closed. Had Respondent done so, she presumably would have discovered the 1994 deed to Ms. Weedon, which removed the property from the Estate and rendered futile all of Respondent's subsequent efforts related to the property. FF 7, 15, 44. Respondent's failure to deal with the property between 1996 and 2002 demonstrates a lack of the "thoroughness[] and preparation" required by Rule 1.1(a) and the skill and care required by Rule 1.1(b). Disciplinary Counsel's evidence establishes a violation of Rule 1.1(b) even in the absence of expert testimony because Respondent's failure to take action on the property was "obviously lacking." In re Nwadike, Bar Docket No. 371-00 at 28 (BPR July 30, 2004), *findings and recommendation adopted*, 905 A.2d 221, 227, 232 (D.C. 2006).

Respondent also violated Rules 1.1(a) and (b) when she failed to address the effect of the 1994 deed to Ms. Weedon after becoming aware of it. After that deed, the New Hampshire Avenue property was no longer titled in the Estate's name. FF 7. In 2005, Respondent raised the issue of the property's title to the court. FF 16. The court advised Respondent to petition for appointment of a guardian so the deed could be corrected. FF 20. However, Respondent continued to treat the property as Estate property, without addressing the title issue, to the detriment of the Estate and the heirs. FF 21, 27, 29, 30, 32. She disregarded the Court's advice to petition for a guardian to correct the deed, and she engaged in extensive proceedings to sell the property and attempt to resolve tax issues related to it. FF 21, 27, 29, 30, 32, 44. All of those activities unnecessarily delayed the closing of the Estate, and by 2012, the unpaid real estate taxes on the property had risen to $113,000. FF 44. Respondent's failure to appreciate the significance of the 1994 deed and her subsequent unnecessary and wasteful efforts related to the property fell below the level of competence, skill and care required by Rules 1.1(a) and (b).

Respondent's failure to act on the Estate's 1998 judgment against Ms. Weedon also violated Rules 1.1(a) and (b). Respondent's own accounts indicated that she intended to turn the judgment over to the heirs (the children of the party owing the judgment) for collection. FF 13. She never did so, nor did she take other steps to record or collect the judgment. FF 14. The judgment is now uncollectable. FF 14. A competent practitioner at least would have taken the step identified in Respondent's own accounts and turned the judgment over to the heirs.

2. Rule 1.3(c)

Rule 1.3(c) requires a lawyer to "act with reasonable promptness in representing a client." Comment [8] to Rule 1.3 provides:

> Perhaps no professional shortcoming is more widely resented by clients than procrastination. A client's interests often can be adversely affected by the passage of time or the change of conditions; in extreme instances, as when a lawyer overlooks a statute of limitations, the client's legal position may be destroyed. Even when the

> client's interests are not affected in substance, however, unreasonable delay can cause a client needless anxiety and undermine confidence in the lawyer's trustworthiness. Neglect of client matters is a serious violation of the obligation of diligence.

The Court has held that the failure to take action for a significant time to further a client's cause, whether or not prejudice to the client results, violates Rule 1.3(c). *See In re Dietz*, 633 A.2d 850 (D.C. 1993). The Hearing Committee finds that Respondent violated Rule 1.3(c).

As discussed above (Section IV.B.1), Respondent did not take any significant steps to dispose of the New Hampshire Avenue property between her appointment in 1994 and the 2002 contract of sale to Mr. Anderson. In doing so, Respondent clearly failed to act with "reasonable promptness."

Once Respondent became aware that the property was titled in Ms. Weedon's name, she again delayed taking any steps to address the ownership of the property. FF 21. She did not petition for appointment of a guardian who could correct the deed, as the court recommended, nor did she take any other steps to address the effect of the deed. FF 21.

Despite the fact that the Estate had few assets other than the New Hampshire Avenue property, Respondent failed to close the Estate in the thirteen years she served as Personal Representative. FF 3, 8, 44. Instead, she engaged in extensive, futile proceedings related to the property. FF 15, 44. That delay is unreasonable under the circumstances and demonstrates a lack of "reasonable promptness."

During Respondent's delay, significant real estate taxes accrued on the property. FF 44. Although Disciplinary Counsel suggests that the $113,000 in unpaid real estate taxes were "owed by the estate" (Disciplinary Counsel's Pre-Hearing Brief at 11) it is not clear from the record whether the Estate, Ms. Weedon, or the heirs were responsible for paying those taxes. BX 7, ¶138 (noting that Respondent could not follow the "wise advice" to sell the property, pay the tax, and then seek a corrected tax figure since "she did not have title to the property"). Accordingly, the Hearing Committee does not find that Respondent's failure to resolve the tax issues violated Rule 1.3(c).

Respondent violated Rule 1.3(c) when she delayed action on the 1994 judgment against Ms. Weedon until it became uncollectable and when she unreasonably delayed recording a quitclaim deed that was made in favor of the Estate. FF 14, 15. The deed was made in 2004, and Respondent had not recorded it at the time of her removal in 2009. FF 15. Respondent's delay in transferring, recording, or enforcing the judgment and her delay in recording the quitclaim deed were patently unreasonable, and Respondent has offered no justification for those delays.

3. Rule 1.16(d)

Rule 1.16(d) provides that when a representation is terminated, the lawyer must take timely and reasonable steps to protect the client, including "surrendering papers and property to which the client is entitled, and refunding any advance payment of fee or expense that has not been earned or incurred." Pursuant to Rule 1.16(d), "'a client should not have to ask twice' for [her] file." *In re Thai*, 987 A.2d 428, 430 (D.C. 2009) (quoting *In re Landesberg*, 518 A.2d 96, 102 (D.C. 1986)).

Respondent violated Rule 1.16(d) when she failed to provide her file for the Estate to Mr. Guiterman. *See* FF 34-42. As the Estate's successor Personal Representative, Mr. Guiterman was clearly entitled to the file at his first request. Instead, Respondent's failure to provide the file required Mr. Guiterman to make two additional requests, to serve a subpoena, and to seek contempt findings in an effort to obtain the file. FF 35-36, 39, 41. Even after a court order to produce and subsequent contempt proceedings, Respondent failed to provide a complete file for the matter. FF 37, 40-41, 42. Respondent has offered no evidence that the requested file did not exist or that there was any justification for withholding it.

4. Rule 8.4(d)

Rule 8.4(d) provides that a lawyer shall not "[e]ngage in conduct that seriously interferes with the administration of justice." To establish a violation of Rule 8.4(d), Disciplinary Counsel must demonstrate by clear and convincing evidence that: (i) Respondent's conduct was improper, *i.e.*, that

Respondent either acted or failed to act when he should have; (ii) Respondent's conduct bore directly upon the judicial process with respect to an identifiable case or tribunal; and (iii) Respondent's conduct 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). Rule 8.4(d) is violated if the attorney's conduct causes the unnecessary expenditure of time and resources in a judicial proceeding. *See In re Cole*, 967 A.2d 1264, 1266 (D.C. 2009).

Respondent violated Rule 8.4(d) by (1) unnecessarily extending the estate proceedings; (2) resisting her removal as Personal Representative on the grounds that the Estate was about to settle; and (3) resisting the successor Personal Representative's efforts to obtain Respondent's file.

Respondent's extensive and unnecessary efforts in connection with the New Hampshire Avenue property that had been deeded away from the Estate prevented the Estate from closing during the thirteen years she served as Personal Representative. FF 44. As discussed above (Sections IV.B.1, 2), that conduct violated Rules 1.1 and 1.3(c). Respondent's conduct bore directly on the proceedings in *In re Estate of Emma O. Johnson* in the District of Columbia Superior Court Probate Division because those proceedings were unnecessarily extended. FF 44. In addition, Respondent's failure to provide a final accounting after her removal caused the court to refer the matter to the Auditor Master, requiring additional expenditure of judicial time and resources that would have been unneeded if Respondent had closed the Estate and performed her other obligations in a timely and competent manner. FF 38.

Respondent also violated Rule 8.4(d) when she repeatedly resisted her removal as Personal Representative by asserting incorrectly that she was about to sell the New Hampshire Avenue property and close the Estate. The court first removed Respondent as Personal Representative in July 2008. FF 26. Several days later, Respondent moved to stay the removal on the grounds that she was just about to sell the property and close the Estate, and she moved to permanently stay her removal

for the same reasons in September 2008. FF 27, 30. In fact, Respondent never went to settlement on the property and never closed the Estate. FF 32, 33. Respondent was finally removed as Personal Representative in December 2009. FF 33. Respondent's resistance to her removal needlessly multiplied the proceedings in the *Estate of Emma O. Johnson* matter and delayed appointment of a successor personal representative.

Respondent's failure to provide her file to the successor Personal Representative even after multiple court orders to do so also violated Rule 8.4(d). Mr. Guiterman, the successor Personal Representative, initially asked Respondent for her file three times, but Respondent did not provide it. FF 34-35. Mr. Guiterman then served a subpoena on her for the file. FF 36. Respondent did not comply, and the court ordered her to produce the file. FF 37. Respondent again failed to do so. FF 37. When Mr. Guiterman filed a motion to show cause why Respondent should not be held in contempt of court, Respondent provided a limited number of documents but still did not provide a complete file. FF 39. The court held her in contempt for her failure to produce the file. FF 40. The court later vacated the contempt and ordered Respondent to pay Mr. Guiterman for his efforts to obtain the file. FF 41. None of those extensive judicial proceedings would have been necessary if Respondent had provided her file to the successor Personal Representative when he requested it as Rule 1.16(d) required her to do.

V. RECOMMENDATION AS TO SANCTION

The appropriate sanction is what is necessary to protect the public and the courts, maintain the integrity of the profession, and "deter other attorneys from engaging in similar misconduct." *In re Kline*, 113 A.3d 202, 215 n.9 (D.C. 2015) (citing *In re Reback*, 513 A.2d 226, 231 (D.C. 1986) (en banc)). The determination of an appropriate disciplinary sanction is based on consideration of the following factors: the nature and seriousness of the misconduct, the presence of misrepresentation or dishonesty, the respondent's attitude toward the underlying misconduct, prior misconduct, prejudice

to the client, and circumstances in aggravation and mitigation. *Id.* (citing *In re Hutchinson*, 534 A.2d 919, 924 (D.C. 1987) (en banc)). Under D.C. Bar R. XI, § 9(h), the sanction imposed also must be consistent with cases involving comparable misconduct or not otherwise unwarranted.

Disciplinary Counsel contends that Respondent should be suspended from practice for sixty (60) days and required to show fitness as a condition of reinstatement. For the reasons that follow, we agree with and recommend the sanction proposed by Disciplinary Counsel.

A. The Nature and Seriousness of the Misconduct

The Hearing Committee finds that Respondent's misconduct was serious. Although it was limited to one client matter, Respondent's neglect and failure to protect the Estate's interests extended over thirteen years. *See* Sections IV.B.1, 2, above. During that period, Respondent failed to close an Estate that had extremely limited assets after the 1994 deed of the New Hampshire Avenue property was transferred to Ms. Weedon, and Respondent engaged in extensive, futile proceedings related to that transferred asset. *Id.*, FF 44. She also failed to collect a judgment in favor of the heirs. FF 14. After her removal, her misconduct continued when she failed to produce her file to the successor Personal Representative and failed to provide an adequate final accounting, resulting in the court's referral to the Auditor Master. FF 34-42. Respondent's misconduct injured the heirs' and the Estate's interests and unnecessarily used significant judicial resources over an extended period of time.

B. Whether the Conduct Involved Dishonesty or Misrepresentation

Disciplinary Counsel does not allege that Respondent's conduct involved dishonesty or misrepresentation, nor is there a basis to find that Respondent engaged in dishonesty or misrepresentation. Although Respondent incorrectly told the court on a number of occasions that she expected to sell the property and close the Estate soon, the record does not show that Respondent intentionally misled the court. Rather, the record suggests that Respondent misunderstood the relevant facts and law, including the effect of the 1994 deed. FF 43.

C. Respondent's Attitude

Nothing in the record suggests that Respondent recognizes the seriousness of her misconduct. In the underlying matter, the Auditor Master concluded that Respondent "never fully comprehended the impact of the facts and the application of the law." FF 43. In several instances, Respondent persisted in her misconduct after specific recommendations or orders to the contrary. For example, she failed to provide her file to her successor despite multiple court orders, and she failed to address the effect of the 1994 deed despite the court's advice to do so. FF 20, 37, 40.

Respondent did not meaningfully participate in these disciplinary proceedings. She did not submit a timely answer or appear at any hearing in the matter, nor did she offer any explanation for her failure to do so other than the unspecified "press of business." Respondent's nonparticipation suggests, at best, indifference to the impropriety of her conduct.

D. Violation of Other Disciplinary Rules and Prior Misconduct

Disciplinary Counsel has not offered clear and convincing evidence that Respondent violated other disciplinary rules. Respondent has no record of prior discipline. *See* Disciplinary Counsel's Pre-Hearing Brief at 14.

E. Prejudice to the Client

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

F. Other Circumstances in Aggravation and Mitigation

The record does not show any mitigating circumstances. Disciplinary Counsel suggests that the Hearing Committee should consider as aggravating circumstances (1) Respondent's failure to

participate in the disciplinary process, and (2) the circumstances described in a second Auditor Master's report, *In re Estate of Desiree Knights-Taylor* (the "Second Auditor Master's Report" submitted as BX 10). *See* Disciplinary Counsel's Pre-Hearing Brief at 15-16.

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

With respect to the circumstances described in the second Auditor Master's report, a Hearing Committee may consider uncharged misconduct that has been proven by clear and convincing evidence when assessing aggravating factors in determining the appropriate sanction. *See, e.g., In re Martin*, 67 A.3d 1032, 1050 n.21 (D.C. 2013); *see also id.* at 1051 n.23, 1054; *In re Waller*, 573 A.2d 780, 785 (D.C. 1990) (considering evidence of uncharged conflict of interest in recommending a sanction); *see also In re Cater*, 887 A.2d 1, 25 (D.C. 2005) (where proven misconduct does not support a fitness requirement, Disciplinary Counsel may rely on other aggravating facts, which must be proven by clear and convincing evidence); *In re Boykins*, 999 A.2d 166, 175 (D.C. 2010) (same).

The Hearing Committee finds that the conduct of Respondent alleged in the Second Auditor Master's Report should not be considered in aggravation because that conduct has not been established by clear and convincing evidence through testimony or documentary proof.[6] Disciplinary Counsel notes that no cases in the District of Columbia appear to address directly "whether an Auditor Master's Report, written after the occurrence of misconduct that gave rise to disciplinary charges,

[6] Respondent has not addressed the Second Auditor Master's report during these proceedings. Board Rule 7.8(e) would have allowed her to do so. *See* Board Rule 7.8(e) (a respondent who failed to submit an answer may "may present documentary and testimonial evidence and argument with respect to sanction" at the hearing). Disciplinary Counsel offered the Second Auditor Master's Report as evidence relevant to sanction in its Pre-Hearing Brief. *See* Disciplinary Counsel's Pre-Hearing Brief at 14-15.

may be considered in aggravation in imposing a sanction." Disciplinary Counsel's Post-Hearing Brief on Sanction at 1. Courts in the District of Columbia and elsewhere have considered as aggravating factors misconduct that occurred after the charged conduct. In those cases, though, the subsequent misconduct was established on the record either during the disciplinary proceedings or in separate proceedings. *See In re Howes*, 52 A.3d 1, 20 (D.C. 2012) (discussing "absence of prior or subsequent disciplinary actions"); *In re Goffe*, 641 A.2d 458, 465 (D.C. 1994) (noting the Hearing Committee's finding that a respondent testified falsely during disciplinary proceedings); *Mississippi Bar v. Alexander*, 697 So.2d 1164, 1169 (Miss. 1997) (considering "subsequent federal and state court sanctions" against an attorney). The findings of the Auditor Master's report do not appear to have been adopted by the court or established by sworn testimony. BX 10 (Second Auditor Master's Report) (recommending removal of Ms. Hargrove as personal representative and setting a date for a hearing on the report and the due date for objections). "In acting on a master's order, report, or recommendations, the court must afford an opportunity to be heard and may receive evidence, and may: adopt or affirm; modify; wholly or partly reject or reverse; or resubmit to the master with instructions." Super. Ct. Civ. R. 53(g)(1). The record does not reflect that any of those steps have been taken on the report, and accordingly the Hearing Committee believes it is not appropriate to treat the facts found in the report as established aggravating circumstances.

G. The Mandate to Achieve Consistency

A sixty-day suspension is consistent with the sanction in other matters involving serious neglect of client matters and aggravating factors. *See, e.g., In re Chapman*, 962 A.2d 922, 926 (D.C. 2009) (imposing a sixty-day suspension for violations of Rules 1.1(b), 1.1(b), and 1.3(a) in light of aggravating circumstances; "[w]e have imposed greater punishment [than a thirty-day suspension] in neglect cases where there were significant aggravating factors—such as deliberate dishonesty, a pattern of neglect, or an extensive disciplinary history"); *In re Outlaw*, 917 A.2d 684 (D.C. 2007)

(imposing a sixty-day suspension for violation of Rules 1.1(a) and (b), 1.3(a), 1.4(a) and (b), and 8.4(c) and noting aggravating factor of dishonesty).

H. The Fitness Requirement

Disciplinary Counsel contends that Respondent should be required to prove her fitness to practice as a condition of reinstatement. Disciplinary Counsel's Pre-Hearing Brief at 19. A fitness showing is a substantial undertaking. *In re Cater*, 887 A.2d at 20. Thus, in *Cater*, the Court held that "to 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." *Id.* at 6. Proof of a "serious doubt" involves "more than 'no confidence that a Respondent will not engage in similar conduct in the future.'" *In re Guberman*, 978 A.2d 200, 213 (D.C. 2009). It connotes "real skepticism, not just a lack of certainty." *Id.* (quoting *Cater*, 887 A.2d at 24).

In articulating this standard, the Court observed that the reason for conditioning reinstatement on proof of fitness was "conceptually different" from the basis for imposing a suspension. As the Court explained:

> The fixed period of suspension is intended to serve as the commensurate response to the attorney's past ethical misconduct. In contrast, the 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. . . . [P]roof of a violation of the Rules that merits even a substantial period of suspension is not necessarily sufficient to justify a fitness requirement . . . .

Cater, 887 A.2d at 22.

In addition, the Court found that the five factors for reinstatement set forth in *In re Roundtree*, 503 A.2d 1215, 1217 (D.C. 1985), should be used in applying the *Cater* fitness standard. They include:

(a) the nature and circumstances of the misconduct for which the attorney was disciplined;

(b) whether the attorney recognizes the seriousness of the misconduct;

(c) the attorney's conduct since discipline was imposed, including the steps taken to remedy past wrongs and prevent future ones;

(d) the attorney's present character; and

(e) the attorney's present qualifications and competence to practice law.

Cater, 887 A.2d at 21, 25.

We find that a fitness requirement is appropriate in this case. As discussed above (Sections V.A-F), Respondent's misconduct was serious, and there is no evidence that she recognizes its seriousness. Respondent's conduct since her removal also favors imposition of a fitness requirement. She has failed to pay the judgments awarded against her or provide a complete file to her successor. FF 42, 47. Respondent has also failed to participate in these disciplinary proceedings. Nothing in the record suggests that she has taken any steps "to remedy past wrongs and prevent future ones." Respondent should be required to establish her fitness to practice before reinstatement.[7]

[7] Disciplinary Counsel has not offered evidence that Respondent's misconduct was the result of any infirmity. Presumably such infirmity could be addressed upon a petition for reinstatement. *See* D.C. Bar R. XI, § 16.

VI. CONCLUSION

For the foregoing reasons, the Hearing Committee finds that Respondent violated Rules 1.1(a), 1.1(b), 1.3(c), 1.16(d), and 8.4(d) and recommends that she be suspended from practice for sixty (60) days and required to show fitness as a condition of reinstatement. We recommend that Respondent's attention be drawn to the requirements of D.C. Bar R. XI, § 14, and their effect on eligibility for reinstatement. *See id.* § 16(c).

AD HOC HEARING COMMITTEE

By: _____
Leslie Spiegel, Esquire, Chair

_____
David Bernstein

_____
Malcolm L. Pritzker, Esquire

Dated: FEB 22 2016