THIS REPORT IS NOT A FINAL ORDER OF DISCIPLINE*

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

In the Matter of:	:	
	:	
BENJAMIN M. SOTO,	:	
	:	
Respondent.	:	Board Docket No. 20-BD-057
	:	Disc. Docket No. 2015-D087
A Member of the Bar of the	:	
District of Columbia Court of Appeals	:	
(Bar Registration No. 453728)	:	

REPORT AND RECOMMENDATION OF THE AD HOC HEARING COMMITTEE

Respondent, Benjamin M. Soto, is charged with violating Rules 8.1(a) (knowingly making false statement of fact in disciplinary matter), 8.1(b) (knowingly failing to respond reasonably to Disciplinary Counsel's lawful demand for information), 8.4(b) (criminal act—forgery in violation of D.C. Code § 22-3241—that reflects adversely on the lawyer's fitness), 8.4(c) (dishonesty, fraud, deceit, or misrepresentation), and 8.4(d) (serious interference with the administration of justice) of the District of Columbia Rules of Professional Conduct (the "Rules"). Disciplinary Counsel contends that Respondent committed all charged violations through his role as a settlement and title insurance agent for a real estate transaction and his conduct during the subsequent disciplinary investigation. Disciplinary Counsel also alleges that Respondent testified falsely during the evidentiary hearing. As a sanction, Disciplinary Counsel seeks disbarment. Respondent denies all

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

charges and argues for a dismissal. In the alternative, Respondent argues that an appropriate sanction for his alleged misconduct would be a public censure or informal admonition, and that "[e]ven in cases involving more serious conduct" the sanction imposed has not exceeded a six-month suspension.[1]

As set forth below, the Ad Hoc Hearing Committee finds that Disciplinary Counsel has proven by clear and convincing evidence the violations of Rules 8.1(a), 8.4(c) and 8.4(d), but has failed to meet its burden of proof for the Rule 8.1(b) and Rule 8.4(b) charges. The Committee additionally finds that the aggravating circumstance of intentional false testimony has not been established by clear and convincing evidence. We recommend that Respondent be sanctioned with a six-month suspension.

As explained below, Respondent's misconduct arose from his response to a disgruntled new client's complaints about the amount of taxes that would result from the filing of a signed and notarized deed intended to transfer title of a property to the client's wife's LLC. That signed and notarized deed recorded a "zero consideration" amount that, under District of Columbia law, resulted in transfer and recordation taxes based on the current assessed value of the property. After considering his client's protestations, Respondent improperly directed the alteration of the previously signed and notarized deed and tax form, to change the amount of

[1] *See* Respondent's Second Corrected Proposed Findings of Fact, Conclusions of Law, and Recommended Sanction at 23-24 (citing cases with sanctions ranging from a six-month suspension to an informal admonition).

consideration from zero to $450,000, which, in effect, reduced the taxes to an amount that satisfied his client. Instead of being taxed at the then-current assessed value of the property (approximately $857,000), his client was then taxed at almost half that amount ($450,000). Not only were the alterations to the notarized documents improper, but Respondent concedes he never notified the probate attorney (who had previously signed the deed as a witness for her client's signing) of the changes, and, as a result, the probate attorney and her client were ordered to appear at hearings before an auditing branch manager and the Auditor-Master of the D.C. Superior Court's Probate Division who were concerned about possible fraud. It is undisputed that the changes to the notarized documents resulted in Respondent's client's wife's LLC paying approximately $12,000 less in taxes to the D.C. government. What is in dispute, however, is whether Respondent's actions in accommodating his client's view were consistent with relevant D.C. law or otherwise made in good faith, or whether Respondent knowingly altered the documents with an intent to defraud the D.C. government. While we find violations of Rules 8.4(c) and 8.4(d) for the improper altering and recording of the notarized documents, we decline to find that Respondent had an intent to defraud the D.C. government in light of the unusual preceding 16-year history of the property at issue and Respondent's good faith belief that his estimated amount of consideration and the reduction in taxes were appropriate. Accordingly, we find that Disciplinary Counsel has not established by clear and convincing evidence that Respondent violated Rule 8.4(b). *See, e.g.*, Order

In re Reid, Board Docket No. 17-BD-072, at 26-27 (BPR Dec. 8, 2020) (dismissal where the Rule 8.4(b) evidence fell short of clear and convincing).

I. PROCEDURAL HISTORY

On November 5, 2020, Disciplinary Counsel served Respondent with a Specification of Charges ("Specification"). The Specification alleges that Respondent violated the following rules:

- Rule 8.1(a), by knowingly making false statements of fact to Disciplinary Counsel in the course of its investigation;
- Rule 8.1(b), by knowingly failing to respond reasonably to lawful demands for information;
- Rule 8.4(b), by engaging in criminal conduct reflecting adversely on his fitness to practice law, specifically forgery (D.C. Code § 22-3241);
- Rule 8.4(c), by engaging in conduct involving dishonesty, fraud, deceit and misrepresentation; and
- Rule 8.4(d), by engaging in conduct that seriously interfered with the administration of justice.

Specification ¶ 70.

Respondent filed an Answer on December 2, 2020. A hearing was held on February 22, 24, 26, and March 1, 3, 5, and 10 of 2021, before the Ad Hoc Hearing Committee (the "Hearing Committee") composed of Seth I. Heller, Esquire, Chair;

Billie LaVerne Smith, Public Member; and Aaron Pease, Esquire, Attorney Member. Disciplinary Counsel was represented at the hearing by Assistant Disciplinary Counsel Joseph C. Perry, Esquire, and Assistant Disciplinary Counsel Hendrik DeBoer, Esquire. Respondent was present during the hearing and was represented by Peter R. Kolker, Esquire, and Casey Trombley-Shapiro Jonas, Esquire.

Disciplinary Counsel called the following fact witnesses in its case-in-chief: Ara Washington, Linda Brooks, Richard Bianco, Ida Williams, and Respondent. Disciplinary Counsel called Brian Louis Kass as an expert witness.[2] Respondent testified on his own behalf and called the following fact witnesses in his case-in-chief: John Hopkinson, Marcella Puente, Richard Basile, Esther Blackwell, Gabriela Carter, Alaine Donovan, Meheret Kebede, Latifa Garrison, and Roy Kaufmann. Respondent called Douglas Bregman as an expert witness.[3] Disciplinary Counsel called William Duggan as a rebuttal witness.

The following exhibits were admitted into evidence on behalf of Respondent: RX 1, 3-4, 6, 8, 14-16, 19, 21, 23, 25-28, 34-36, 40-42, 45, 47, 49, 52-55, 58, 63-64, 66-67, 70, 73-74, 76, 78, 84, 86, 88, 91, 94-95, 97, 101, 103, 107-109, 124-127.[4] The following exhibits were admitted into evidence on behalf of Disciplinary

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[2] Mr. Kass was qualified as an expert in real estate law. Tr. 444.

[3] Mr. Bregman was qualified as an expert "in the area of real estate law, settlement procedures and the conduct of lawyers in real estate closings." Tr. 1655.

[4] "RX" refers to Respondent's exhibits. Respondent did not move all his exhibits into evidence. RX 125 (Expert Opinion of Douglas Bregman) was admitted over Disciplinary Counsel's objections.

Counsel: DCX 2-3, 5, 7, 9-11, 13-15, 17-19, 24, 27-35, 37-38, 40, 42, 44-45, 47-55, 58-59, 62, 65, 67-68, 70-71, 75, 84-87, 90-91, 100, 102, 105, 107, 110-111, 115-116, 120, 122, 126-127, 129, 135-137, 139, 142, 144-147, 149-152, 154, 157-165, 170-174, 177, 183, 186-187, 191-192, 199, 201-208, 212, 216, 219-221, 223, 228, 230, 233-236, 238-243, 245, 249-251, 253, 256-258, 262-265, 275-278.[5]

Upon the conclusion of the violations phase of the hearing, the Hearing Committee made a preliminary non-binding determination that Disciplinary Counsel had proven at least one of the violations set forth in the Specification. Tr. 2023; *see* Board Rule 11.11. In the sanctions phase of the hearing, Disciplinary Counsel offered evidence of prior discipline, a public censure in January 2004, in aggravation of sanction. Tr. 2025. Disciplinary Counsel advised the Hearing Committee that additional factors in aggravation would be presented in its post-hearing briefing. *Id*. Respondent called two character witnesses, Earl C. Horton, III and Mark G. Griffin, in mitigation of sanction. *See* Tr. 2025-2041.

Disciplinary Counsel submitted its Proposed Findings of Fact, Conclusions of Law, and Recommendation as to Sanction ("ODC Br.") on April 12, 2021, and Respondent filed his Second Corrected Proposed Findings of Fact, Conclusions of Law, and Recommended Sanction on May 6, 2021 ("Resp. Br."). Disciplinary Counsel filed its Reply on May 17, 2021 ("ODC Reply").

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[5] "DCX" refers to Disciplinary Counsel's exhibits. Disciplinary Counsel did not move all of its filed exhibits into evidence. DCX 86 (January 15, 2013 email from Respondent), DCX 87 (January 15, 2013 email from Bianco), and DCX 177 (September 23, 2016 Respondent letter to Disciplinary Counsel) were admitted over Respondent's objections.

II. FINDINGS OF FACT

The following findings of fact have been established by clear and convincing evidence based on the Hearing Committee's evaluation of testimony, documentary evidence admitted at the hearing, and stipulations of fact filed by the parties. *See* Board Rule 11.6; *In re Cater*, 887 A.2d 1, 24 (D.C. 2005) ("clear and convincing evidence" is more than a preponderance of the evidence, it is "evidence that will produce in the mind of the trier of fact a firm belief or conviction as to the facts sought to be established" (internal quotations and citation omitted)).

A. Background

1. Respondent is a member of the Bar of the District of Columbia Court of Appeals, having been admitted by motion on January 6, 1997, and assigned Bar number 453728. Stipulation of Fact ("Stip.") ¶ 1.

2. Since 2002, Respondent has owned and operated Premium Title & Escrow, LLC ("Premium Title"), which handles real estate transactions. Stip. ¶ 2; Tr. 879-880 (Respondent). Premium Title is one of the highest volume real estate settlement companies in the Washington, D.C., Maryland, and Virginia region. Tr. 879-880 (Respondent); Tr. 1373 (Donovan).

3. Generally, in connection with settling real estate transactions, Premium Title collects fees to examine a property's title and to cover document preparation, a settlement closing fee, and a portion of any title insurance premiums collected on behalf of the title insurer. Tr. 919 (Respondent). Given Premium Title's high-

volume business, Respondent has maintained a workforce of about 20 employees that work under his supervision. Tr. 879-880 (Respondent).

4. Because the employees at Premium Title have varying levels of education and professional experience, Respondent relies on them to assist in the administrative aspects of closing real estate transactions, including storing settlement files, refunding dormant balances, preparing documents, recording property records with the Recorder of Deeds of the District of Columbia, and operating escrow accounts. Tr. 659-660, 689-690, 693-94, 697-98, 781-82, 784, 931-32, 943 (Respondent).

5. In contrast, Respondent is an attorney and has promoted himself on Premium Title's website as "an attorney who practices Real Estate Transactions and Bankruptcy." Stip. ¶ 3. And while Respondent is an attorney, he claims that he does not generally represent individuals as clients in a real estate transaction. *See* Tr. 794 (Respondent). However, Premium Title serves as a title insurance agent, and parties to a real estate transaction serviced by Premium Title rely on Respondent's competence and expertise to settle the transaction. Tr. 794 (Respondent: "I'm a lawyer, and title – title insurance, title requires legal analysis. But I'm not – I don't represent clients as an attorney."), Tr. 880 (Respondent: "We handle approximately 150 closings a month. . . . [W]e underwrite with four title insurance companies, Chicago Title, Old Republic Title insurance company, Stuart Title insurance company and Westcor Title insurance company."); Tr. 1363 (Donovan describing

Premium Title as an insurance agent for title insurance companies); *see also* DCX 111 at 002 (Respondent authorized signatory for title insurance commitment).

6. This disciplinary matter is an outgrowth of Premium Title's handling of a transaction involving 2461 18th Street, N.W. ("the Property") in 2012 and 2013. Tr. 175 (Bianco); Tr. 881 (Respondent); Tr. 1780 (Duggan); Stip. ¶ 6. In that transaction, Respondent served as a title insurance agent for Chicago Title Insurance Company, which is owned by Fidelity National Financial Family of Companies (hereinafter "Fidelity"). Tr. 880 (Respondent); Tr. 1363-64 (Donovan); *see also* DCX 111 at 002. At that time and at the time of the hearing, William Duggan operated a bar called Madam's Organ on the Property, which is located in the District of Columbia's popular Adams Morgan neighborhood. Tr. 881 (Respondent); Tr. 1776, 1780 (Duggan). In the summer of 2012, Mr. Duggan was referred to Premium Title by his attorney at the time, Richard Bianco, to help Mr. Duggan complete a transaction associated with refinancing financial obligations associated with the Property. Tr. 257, 259, 261 (Bianco); Tr. 1780 (Duggan). Mr. Duggan had identified "title problem[s]" that Mr. Bianco thought Respondent was particularly qualified to "take care of." Tr. 1780-81 (Duggan); *see also* Tr. 175, 261 (Bianco); Tr. 881 (Respondent).

7. Once hired, Respondent and Premium Title ordered a title report, which showed that title to the Property was in the name of Jack Littlejohn, a prior owner of the Property, and not Mr. Duggan—meaning that Mr. Duggan could not simply refinance or borrow money against the Property unless he (or an entity under his

control) was the recorded title owner. RX 34; Tr. 177-181 (Bianco); Tr. 881-83 (Respondent). Respondent developed a strategy to amend the Property's title to allow Mr. Duggan to obtain financing. *See* Tr. 883-84 (Respondent); Tr. 1807 (Duggan). Ultimately, Mr. Duggan successfully obtained a loan on the Property, but Respondent's involvement in amending the Property's title and recording the deed resulted in these disciplinary charges. *See* Tr. 271 (Bianco) (discussing use of proceeds from the refinancing).

8. As early as 1975, Jack Littlejohn held title to the Property. RX 34 at 34.1. Before his death in May 1993 (DCX 240 at 001), Jack Littlejohn took out various loans—recorded on written instruments called promissory notes—which were each secured by separate deeds of trust ("DOTs") to the Property. *See* Tr. 183-84, 186-88, 198-99, 203-04 (Bianco); DCX 212 (1989 DOT), DCX 216 (1990 DOT), DCX 219 (1991 DOT), DCX 220 (1992 DOT). Each promissory note was a promise by Jack Littlejohn to pay back a certain amount of money to a lender. *See* Tr. 183-84, 186-88, 198-99, 203-04 (Bianco). Each DOT secured a separate promissory note. *See* RX 1, RX 3, RX 4, RX 8.

9. With exceptions not applicable here, in the District of Columbia, a DOT gives lenders an interest in a property to secure money they have loaned to a borrower. Tr. 453 (Kass); Tr. 1714 (Bregman). In the event the borrower defaults on his financial obligations to the lender, the lender can use the DOT to foreclose on the property identified on that DOT. Tr. 453 (Kass); Tr. 1714 (Bregman). A DOT

is signed by the borrower and deeds the property in trust to a third party—the trustee—for the benefit of the lender. Tr. 453 (Kass).

10. DOTs and promissory notes are negotiable instruments that can be purchased from the original lender by a third party (who then assumes the same rights, including the right to foreclose, previously held by the original lender). *See* Tr. 516-17 (Kass); Tr. 1661-62 (Bregman). The third party (the new beneficiary) can thereafter assign or sell the DOT and note to a subsequent third party (who would become a new or subsequent beneficiary). Tr. 516-17 (Kass); Tr. 1660-62 (Bregman). As described by Respondent's expert, Douglas Bregman, "the one who buys the loan from a prior lender stands in the shoes of the prior lender and has the same rights." Tr. 1662 (Bregman).

11. Jack Littlejohn's loans were in the amount of $205,000, $100,000, $50,000, and $25,000, which as noted above, were each secured by separate DOTs. *See* DCX 212, DCX 216, DCX 219, DCX 220; RX 1, RX 3, RX 4, RX 8. The $25,000 note was paid off in 1991 (*see* RX 6; Tr. 184 (Bianco)), but Jack Littlejohn defaulted on the three other loans ("Three Defaulted Notes"). Tr. 268-69 (Bianco); *see* DCX 240. After Jack Littlejohn passed away, the Littlejohn Estate executors were tasked with closing the estate's finances. A statement of account filed by the Littlejohn Estate stated that the Property had been lost in a March 1995 foreclosure and valued the loss at $350,000. DCX 240 at 5. That March 1995 foreclosure was

not actually completed, however, and title remained in Jack Littlejohn's name. RX 34.[6]

12. The Three Defaulted Notes ($205,000, $100,000, $50,000) (DCX 212, 219, 220) which were secured by three separate DOTs on the Property, *see* RX 1, 4, 8, therefore remained in force after the incomplete foreclosure in March 1995. By 1996, the Estate of David Levin owned the Three Defaulted Notes and the Property's title remained in Jack Littlejohn's name. *See* RX 14, RX 15, RX 16, RX 34.

B. Coles Farm's Purchase of the Three Defaulted Notes and Mr. Duggan's Use of the Premises

13. Mr. Duggan became aware that the Estate of David Levin was motivated to sell the Three Defaulted Notes at a favorable price if the buyer was able to settle the transaction quickly. Tr. 1779 (Duggan). Mr. Duggan recognized this as a favorable real estate investment opportunity, because he wanted to operate his bar, Madam's Organ, on the premises. Tr. 1786-87 (Duggan).

14. Given the opportunity to purchase the Three Defaulted Notes at the "very reduced price" of $270,000 if settlement occurred immediately, Mr. Duggan contacted Mr. Daniel Solomon, his "very close" and "very wealthy" friend, to have Mr. Solomon purchase the Three Defaulted Notes for $270,000 cash and with Mr. Duggan signing a $350,000 promissory note (hereinafter "1996 Promissory Note" or "1996 Note") for Mr. Solomon ($270,000 for the property, $70,000 for payment

[6] The attempted March 1995 foreclosure on the Property was unsuccessful because David Levin passed away unexpectedly prior to the foreclosure being perfected. Tr. 1779 (Duggan).

of an earlier loan to Mr. Solomon, and $10,000 for the closing costs of settlement with the Levin Estate). RX 21, RX 88; Tr. 1076, 1096-97 (Hopkinson); Tr. 1779, 1785-88, 1811 (Duggan).

15. As John Hopkinson, Manager of Coles Farm Enterprises LLC, recalled, the "intention of Daniel [Solomon] and Duggan [was] that Daniel would acquire the properties for the money and that Duggan would get control of the property." Tr. 1096-97 (Hopkinson). According to Mr. Hopkinson, Mr. Solomon:

> would finance deals that would sometimes, for example, be direct purchases of real estate that Duggan had identified that was opportunistic and advantageous prices.
>
> But Duggan's apparent favorite way of doing business is to acquire the debt of a property and control over the property that way. And I would call it as an accountant[,] incidence of ownership, where you – if you own the debt, you can control the property.

Tr. 1073 (Hopkinson).

16. Mr. Duggan's and Mr. Solomon's agreement was not memorialized in writing because the two frequently conducted business through oral or otherwise informal agreements and did not routinely document their business dealings. Tr. 194, 255-56 (Bianco); Tr. 1112-13 (Hopkinson); Tr. 1785-87, 1793-96 (Duggan). However, the two planned for Mr. Solomon to purchase the Three Defaulted Notes through Mr. Solomon's corporate entity called Coles Farm Enterprise, LLC (hereinafter "Coles Farm"). Tr. 1785-88, 1793-1797 (Duggan). Once Coles Farm owned the Three Defaulted Notes, Mr. Duggan and Mr. Solomon initially intended to foreclose on the Property so that Mr. Duggan would own or otherwise control the Property, thus allowing him to operate Madam's Organ. Tr.

1072, 1096-97 (Hopkinson); Tr. 1169-1170 (Basile); Tr. 1786-88, 1794 (Duggan). The intended foreclosure, however, was never completed. *See* RX 34.

17. On November 18, 1996, Coles Farm purchased the Three Defaulted Notes for $270,000 in cash. Tr. 196-197, 204-205 (Bianco); RX 14, RX 15. As planned, on December 31, 1996, Mr. Duggan, through his entity "2461 Corporation,"[7] executed a 1996 Promissory Note in the amount of $350,000 in favor of Mr. Solomon's Coles Farm which placed Mr. Solomon in the position of "lender." Tr. 261-268 (Bianco); Tr. 1169-1171 (Basile); Tr. 1786-1794 (Duggan); RX 21, RX 14, RX 15. Mr. Hopkinson recalled that Mr. Duggan made the 1996 Promissory Note payable to Coles Farm "so that he could then have what I would call incidence of ownership of the building, because he was going to move Madam's Organs bar from down the street to that location." Tr. 1078 (Hopkinson).

18. Coles Farm owned the Three Defaulted Notes through at least 2012. Mr. Bianco, Mr. Duggan's attorney, unequivocally testified that Coles Farm owned the Three Defaulted Notes from 1996 to 2012. Tr. 196-197, 201-202, 204-06 (Bianco). Because Coles Farm did not yet have title to the Property, it could not convey title to the Property to "2461 Corporation" or Mr. Duggan.[8] *See* Tr. 1171

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[7] 2461 Corporation is the "ownership entity for Madam's Organ, which is the bar and restaurant that Mr. Duggan owns at 2461 18th Street." Tr. 213-14 (Bianco).

[8] In 2003, Coles Farm unsuccessfully attempted to foreclose on the Property using its financial interest in the Three Defaulted Notes. Tr. 1080-81, 1138 (Hopkinson); DCX 45 at 003, 008; DCX 230; RX 23, RX 25. And in 2004, after winning the foreclosure auction with a $100,000 bid, Mr. Hopkinson executed a deed transferring the Property to Mr. Duggan's wife, Mercedes Bien, for

(Basile); Tr. 1788 (Duggan). It was undisputed that the chain of endorsements for at least one of the Three Defaulted Notes—the $205,000 note—did not include 2461 Corporation, as the endorsements ended with Coles Farm. Tr. 1742 (Bregman); *see also* Tr. 1743 (Respondent's expert agreeing that 2461 Corporation had no ability to foreclose on the Property without this endorsement). An endorsement transfers ownership rights of a note from one entity to another. *See* Tr. 499 (Kass); Tr. 1741-43 (Bregman). "If 2461 didn't buy the notes, then they were in Coles Farm. And if . . . 2461 didn't buy the notes, they couldn't assign notes they didn't buy to [another entity]." Tr. 1748 (Bregman).

19. While Mr. Duggan may have intended to purchase the Property, *see* RX 21 (asserting that the note is "secured by a First Deed of Trust on 2461 18th Street N.W., Washington, DC 20009 [(the Property)]"), no DOT was ever recorded related to the 1996 Promissory Note and the Property remained titled to Jack Littlejohn. Tr. 177 (Bianco). Mr. Duggan only assumed *de facto* ownership of the Property by operating Madam's Organ on the property, making periodic mortgage payments to Coles Farm at an interest rate of 10%, and paying the real property taxes owed to the District of Columbia. Tr. 306 (Bianco); Tr. 1791-1794, 1803, 1836 (Duggan); Tr. 1134-35 (Hopkinson). Mr. Duggan paid the D.C. Treasurer for the annual property

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$500,000. Tr. 1126-28 (Hopkinson); DCX 45 at 005-007. Ms. Bien paid Coles Farm $300,000 on December 16, 2003. Tr. 1130, 1132 (Hopkinson). The deed was never recorded, however, and legal title to the Property remained in Jack Littlejohn's name. Tr. 1045-1047 (Soto); Tr. 1174-1175 (Basile).

taxes that were still in the name of Jack Littlejohn, pursuant to his previously agreed upon arrangement with Mr. Solomon. Tr. 1805-06 (Duggan); *see* RX 21 at 21.2.

20. The two transactions completed in 1996 (Coles Farm purchasing the Three Defaulted Notes for $270,000 in cash and Mr. Duggan's $350,000 Promissory Note to Coles Farm) were successful to the extent they permitted Mr. Duggan to use the Property. Tr. 1096-97 (Hopkinson: "[I]t was always the intention of Daniel [Solomon] and Duggan that Daniel [Solomon] would acquire the properties for the money and Duggan would get control of the property."). Mr. Duggan operated his business, Madam's Organ, out of the Property without any concern that Coles Farm would foreclose on the property. Tr. 239-245 (Bianco); Tr. 1803-05 (Duggan describing that he was "never in fear . . . that it was going to be taken out from under me," and that both he and Coles Farm were concerned that a foreclosure would attract an outside bidder who could outbid them).

B. Respondent's Handling of the Property's Title Issues

21. Richard Bianco is an attorney who has represented Mr. Duggan in multiple real estate, litigation, and board licensing matters for more than a decade. Tr. 172-73 (Bianco) (as of 2012, Mr. Bianco worked with Mr. Duggan for "more than a decade").

22. In the summer of 2012, Mr. Duggan sought Mr. Bianco's assistance to address the title issues in connection with the Property and another nearby property, 2423 18th Street. Tr. 175 (Bianco). Mr. Duggan wanted to use those properties as collateral for a $1.1 million loan from a bank to Lenjeswil, LLC ("Lenjeswil"), a

limited liability company that Mr. Duggan had not yet formed, but was to be created for the purposes of the transaction.[9] *See* Tr. 258-59 (Bianco); Tr. 1808 (Duggan); DCX 105 at 002 (Lenjeswil Certificate of Formation signed November 2012); DCX 100 (email chain showing loan amount initially sought was $1.1 million on both properties).

23. Mr. Bianco referred Mr. Duggan to Respondent to handle the closing for the anticipated loan. Tr. 176-177 (Bianco). Respondent first met Mr. Duggan in the summer of 2012 when he received a title order from City First Bank to handle a commercial refinance[10] of the Property. Tr. 881 (Respondent); *see also* Tr. 1780 (Duggan: "Richard [Bianco] just came to me saying that this attorney that he knew, title attorney, Ben Soto, could take care of the [title] issue."). Mr. Duggan hired Respondent to handle the refinance, "take care of the issue" with title, and to prepare the deed for "the contemplated deed in lieu of foreclosure from the Littlejohn Estate to the first trust holder." Tr. 175, 210-11 (Bianco); Tr. 1780 (Duggan). Premium Title continued to do business with Mr. Duggan into at least the fall of 2015. Tr. 1289-1292 (Blackwell).

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[9] The property at 2423 18th Street also had a title problem that Mr. Bianco and Mr. Duggan asked Respondent to handle, but that property was ultimately not purchased even though it was initially part of the $1.1 million loan. Tr. 1780-81 (Duggan); DCX 192 at 001-002 (emails between Mr. Duggan and Respondent stating that the $1.1 million loan was reduced to $595,000 because Mr. Duggan had "yet to settle on" the other property). However, the charges in this case do not involve Respondent's work related to this second property.

[10] A commercial refinance occurs when an owner of a commercial property seeks to refinance an existing loan; the owner/borrower gives a security interest in the property to a lender. Tr. 447 (Kass).

24. Aware that title needed to be in an entity controlled by Mr. Duggan to complete the commercial refinance, Respondent began working with his title insurance underwriter, Mr. Bianco, Mr. Solomon, John Hopkinson (Coles Farm's accountant and manager), and Mr. Duggan to figure out how best to proceed. *See* Tr. 318 (Bianco), Tr. 883-86 (Respondent). Everyone's goal was to get title to Mr. Duggan (or an entity under his control), so that he could use the Property as collateral for the $1.1 million loan. *See* Tr. 175, 207-08 (Bianco); Tr. 1089-1090 (Hopkinson). According to Mr. Bianco, "There seemed to be some disagreement on exactly what happened" between 1996 and 2003 "by Mr. Duggan and, you know, that disagreement, coupled with the lack of documentation, coupled with the amount of time that had lapsed between '96 to '03 to '12 made it all sort of very convoluted and difficult to deal with," and "the parties' understanding seemed to differ from what was actually recorded among land records . . . ." Tr. 248 (Bianco).

25. Because the Property was still titled in the name of Jack Littlejohn, the Littlejohn Estate, which had been long closed, had to be reopened so that it could transfer title to Lenjeswil. Tr. 208-209 (Bianco); *see* Tr. 810 (Respondent). Mr. Duggan contacted one of the Littlejohn Estate's personal representatives, Homer Littlejohn, to ask if he would cooperate in transferring title to the Property from Jack Littlejohn to Mr. Duggan. *See* Tr. 883-885 (Respondent); 1527-28 (Kaufmann).

26. Homer Littlejohn, who had assumed the Property had been long lost through foreclosure, agreed to cooperate and Mr. Duggan agreed to pay for a probate attorney—Ms. Ara Parker, now Ms. Ara Washington—to represent the Littlejohn

Estate. Tr. 76, 79-81, 119-120 (Washington); RX 36 at 36.2, ¶ 8; DCX 239. Mr. Duggan also paid Homer Littlejohn $5,000 for his assistance in reopening the estate. Tr. 1739 (Bregman).

27. On or around July 17, 2012, Ms. Washington agreed to represent Homer Littlejohn in the reopening of the estate. Stip. ¶ 10. On August 20, 2012, Ms. Washington filed a petition to reopen the Littlejohn Estate solely to transfer the title to the Property out of Jack Littlejohn's name. Tr. 82-84 (Washington); DCX 241.

28. When she filed the petition, Ms. Washington understood that the Littlejohn Estate would be transferring title to the Property via a "deed in lieu of foreclosure." Tr. 79-80, 99, 122-23 (Washington); Tr. 885 (Respondent); DCX 11. Her petition included a supporting memorandum, which stated: "That, at this time, the foreclosing entity is willing to accept a deed in lieu of foreclosure." DCX 241 at 007.

29. A deed in lieu of foreclosure is a mutual agreement between a borrower (typically the property owner) and the holder of debt secured by the property (who may or may not be the original lender). Tr. 469, 509-510 (Kass); Tr. 1661-62, 1709-1710 (Bregman).

> When a lender of a property has the security in the property and the mortgagor is not paying, the mortgagee can, by virtue of the deed of trust of the mortgage document, foreclose on the property.
>
> Or instead of doing [a foreclosure], . . . the mortgagee can forgive some or all of the debt in return for having the property deeded to the mortgagee or perhaps even a third party as part of the deed in lieu of a foreclosure.

Tr. 1659 (Bregman). A deed in lieu of foreclosure conveys the property from the borrower to the lender and/or noteholder. Generally, it is a method used to avoid foreclosure proceedings. Tr. 469 (Kass), Tr. 1659 (Bregman).

30. In a deed in lieu of foreclosure, the lender or mortgagee who holds the debt, forgives either part or all of the debt in exchange for the borrower deeding the property (which conveys legal title). Tr. 1716-17 (Bregman); *see* Tr. 469 (Kass). When drafting a deed in lieu of foreclosure, the basis for the consideration in the deed should be set out, and if the lender is forgiving of the debt, that should be in writing. Tr. 1719, 1721 (Bregman describing best practices).

31. On or around September 20, 2012, the Probate Court reappointed Homer Littlejohn as personal representative and reopened the Littlejohn Estate. Tr. 85 (Washington); DCX 243. In the meantime, Mr. Bianco worked with Respondent to transfer title from the Littlejohn Estate to a legal entity under Mr. Duggan's control. Tr. 210-212 (Bianco). Respondent was to handle the title work and prepare the deed in lieu of foreclosure. *Id*.; DCX 11.

32. Initially, Mr. Bianco believed that Respondent wanted to change legal title from the Littlejohn Estate to Coles Farm. Tr. 210-212, 264 (Bianco). However, by November 5, 2012, after further consultation with Respondent, Mr. Bianco became aware that Respondent wanted the deed in lieu of foreclosure to be structured to benefit Lenjeswil, LLC, and not Coles Farm. Tr. 212-213 (Bianco); Tr. 207-208 (Bianco) ("direct deed" from the estate to Lenjeswil); DCX 13. Named after Mr. Duggan's children, Lenjeswil was a newly created legal entity whose sole member

was Mr. Duggan's wife, Ms. Mercedes Bien. Tr. 208, 213, 257-58 (Bianco); Tr. 1810-11 (Duggan).[11] Mr. Duggan informally assigned 2461 Corporation's interest in the Property to Lenjeswil, which only had been created in November 2012. *See* Tr. 214, 257-58, 269-272 (Bianco); Tr. 1812, 1814 (Duggan).[12]

33. On November 5, 2012, based on his conversation with Mr. Duggan, Mr. Bianco emailed Respondent a proposed transaction structure to effect transfer of the Property's title to the newly-formed Lenjeswil. DCX 13, DCX 14 ("[T]he estate is going to transfer the property to an llc which was just set up."). In his email, Mr. Bianco identified two parties: the "Grantor" in the transaction as the "Estate of Jack Littlejohn" and the "Grantee" as "Lenjeswil, LLC," listing Mercedes Bien as its "Sole Member." DCX 14 at 001. Upon receipt of Mr. Bianco's email message, Respondent knew that Mr. Bianco had not yet seen the original assignments. *Id*. (Mr. Bianco in email message to Respondent: "the client [(Mr. Duggan)] claims that Coles Farm has the original note. I didn't see anything in the land records indicating an assignment . . . but he [(Mr. Duggan)] says they can produce an original"). Respondent replied that "We will be ready to close" and asked for the estate's

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[11] Despite Ms. Bien's status as the sole member of Lenjeswil, she never interacted with Mr. Bianco. Tr. 270 (Bianco). Mr. Duggan saw whatever ownership interest he had in the Property to be one shared with his family, irrespective of legal formalities or written instruments. *See, e.g.*, Tr. 1798 (Duggan) ("[W]e went in to clear the title for us, for my family to continue ownership of the property."); Tr. 1812 (Duggan) ("We, me, my wife, my son, our – our family in the two entities, [2461 Corporation and Lenjeswil,] we bought the property from Coles Farm.").

[12] Ultimately, Lenjeswil paid off 2461 Corporation's debt to Coles Farm under the 1996 Promissory Note. Tr. 1812 (Duggan); DCX 191.

information so Premium Title "can prepare the Deed accordingly." DCX 13. Respondent then spoke with his underwriter and, about five minutes later, again responded by email clarifying that "we will need both the estate *and* the secured lender [Coles Farm] to sign a Deed. Since the secured lender foreclosed, it will need to also transfer its interest" to Lenjeswil. DCX 14 (emphasis added); Tr. 216 (identifying the secured lender referred to in the email message as Coles Farm).[13] Respondent then prepared a deed that included Coles Farm as a Grantor conveying its interest in the Property to Lenjeswil. *See* DCX 52.

34. On December 11, 2012, Mr. Bianco provided Respondent with executed copies of assignments from the Estate of David Levin, showing that it had assigned all its interest in the three associated DOTs to Coles Farm. DCX 31 at 001, 008-009. With copies of the assignments in hand, the parties intended to record the assignments with the District of Columbia's Recorder of Deeds. *See* Tr. 233-235 (Bianco). On December 11, 2012, Respondent emailed Mr. Bianco that he did not believe the assignments were recorded and, if not, they would "need originals to record." DCX 32.

35. By December 12, 2012, Respondent obtained documents and information explaining why a 2003 foreclosure was on the Property's land records

[13] In 2003, Coles Farm attempted to foreclose on the Property and Respondent saw that attempted foreclosure on the Property's title report. Tr. 216 (Bianco). However, the foreclosure was never completed because although Coles Farm won the auction, the associated deed was never recorded and title remained in Jack Littlejohn's name. DCX 45 at 001, 008; Tr. 1138 (Hopkinson); Tr. 1174-1175 (Basile).

even though title had remained in Jack Littlejohn's name. *See* DCX 33, DCX 34; Tr. 1045-46 (Respondent). Respondent was aware that the attempted foreclosure in 2003 was never recorded. Tr. 1045-46 (Respondent).

36. Respondent understood that Coles Farm never recorded the trustee's deed, that the 2003 foreclosure was never recorded, and that legal title to the Property never passed from the Littlejohn Estate to Coles Farm. *See* Tr. 1045-47, 1058-59 (Respondent). Respondent explained that one could argue that such a failure to record results in the purchaser having "equitable title," where one could theoretically "file an action to quiet title" based on having paid a purchase price. Tr. 1059 (Respondent); *see also* DCX 186 at 15. At the time of the hearing, Respondent still did not understand why the two prior foreclosure attempts were not completed by Coles Farm and Mr. Duggan.

> All they had to do was record the trustee's deed, which does require you to pay transfer and recordation tax. Maybe that had something to do with it. I don't know.
>
> It makes no sense to me why they never completed the [foreclosure] process [in 1996 and 2003]. But doing the deed in lieu [of foreclosure in 2013] enabled Mr. Duggan to get what he ultimately was looking for, which was to obtain the property.

Tr. 1046-47 (Respondent). Because the 1996 and 2003 foreclosure processes were never completed, Respondent testified both attempts were "null and void." Tr. 1046 (Respondent).

37. Mr. Duggan's attempt to obtain title to the Property through the 2003 foreclosure and a 2004 deed to Ms. Bien (*see supra* n.8) was never recorded. Tr. 1174-75 (Basile); Tr. 1126-28 (Hopkinson); DCX 45 at 005-007. In

Respondent's view, that 2004 transaction did not convey equitable or legal title to Ms. Bien, and the $500,000 she promised to pay Coles Farm for title to the Property was ineffective and null and void. Tr. 1046, 1059 (Respondent); *see also* Tr. 319-320 (Bianco); Tr. 1175-76 (Basile); RX 26, RX 27, RX 28; DCX 34 at 8. However, by December 12, 2012, Respondent was in possession of a signed and notarized 2004 deed memorializing both Coles Farm's purchase of the Property for $100,000 at auction, and a subsequent attempted sale of the Property by Coles Farm to Ms. Bien for $500,000. DCX 34 at 001, 007-009.

38. To Respondent, this meant that the Littlejohn Estate had lost equitable title to the Property by 2004, and possibly in 1996, but the estate had never lost legal title because complete paperwork showing transfer of legal title to the Property through the foreclosures or other transactions had never been recorded. DCX 186 (Respondent's 2016 statement) at 015 ("equitable ownership had passed").[14]

39. To permit the underwriting of the title insurance, Respondent provided his senior settlement processor, Esther Blackwell, instructions about how to draft the deed from the Littlejohn Estate to Lenjeswil. Tr. 781-83 (Respondent); DCX 7; *see* Tr. 1253 (Blackwell) (identifying maiden name as Hemphill and confirming identity for email)). On December 13, 2012, Respondent emailed Ms. Blackwell requesting that they "send the Deed to the attorney for the Estate of Littlejohn right now. She

[14] Equitable title is defined as "[t]he portion of control that a buyer has while a party in a contract for deed or an installment contract for the property; the ability to gain full control and title to the property while someone else owns legal title." Black's Law Dictionary (2d. ed.) (1910).

is going out of town. I assured her she would have it yesterday. Please forward it to her. . . . This is important!" DCX 37 at 001. In response, Ms. Blackwell emailed Respondent a draft of the deed and asked him to review the "Whereas clause" and "revise to make it sound better." Tr. 782-783 (Respondent); DCX 37 at 001-004. She also forwarded a draft copy of the FP 7/C tax form that would accompany the deed. DCX 37 at 005-008.

40. Later that day, Ms. Blackwell emailed the deed and tax form to Ms. Washington (then Ms. Parker). Tr. 87-89 (Washington); DCX 38.[15] The deed sent to Ms. Washington on December 13, 2012, listed "No and 00/100 Dollars" consideration. DCX 38 at 006. The deed also contained references to two "Grantors": Richard Basile, Substitute Trustee for Coles Farm, and Homer Littlejohn, in his capacity as the personal representative for the Littlejohn Estate. *Id.* It further contained a third page for Mr. Basile's signature. *Id.* at 008. The FP 7/C tax form sent to Ms. Washington identified both the Littlejohn Estate and Mr. Richard Basile as "Grantors" and listed an assessed value of the property of $856,990. *Id.* at 003 (Part J line 3, "If no consideration, use Assessed Value").

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[15] The "Whereas clause" in the deed emailed to Ms. Washington is slightly different than the "Whereas clause" in the draft deed Ms. Blackwell had emailed to Respondent that morning. *Compare* DCX 37 at 002 ("Whereas the Substitute Trustee . . . filed a Notice of Foreclosure . . . foreclosing on the Estate of Jack Littlejohn . . **. and they both wish to convey their interest [sic].**") (emphasis added), *with* DCX 38 at 006 ("Whereas the Substitute Trustee . . . filed a Notice of Foreclosure . . . foreclosing on the Estate of Jack Littlejohn . . . **and the Grantors desire to convey their interest to the Grantee.**") (emphasis added). This shows that Respondent reviewed and revised the deed and tax form at Ms. Blackwell's request.

41. The FP 7/C tax form also reflected that transfer and recordation taxes were *each* calculated as 1.45% of the assessed value and, together, totaled **$24,852.72**. *Id.* at 004 ($856,990 x 1.45% = $12,426.36); *see also* Tr. 464 (Kass) (calculations in wrong box); DCX 38 at 004 (Part K: "commercial transactions use Lines 4, 5 and 6").

42. Respondent forwarded to Mr. Duggan Ms. Blackwell's email message with the attached deed and FP 7/C tax form. DCX 40. Respondent's email simply stated "FYI. Email to Attorney Parker [(Washington)]." *Id.* Respondent also sent Ms. Blackwell's email to Mr. Bianco, as an "Fyi," and Mr. Bianco also later forwarded that message to Mr. Duggan. DCX 42.

43. After reviewing the draft deed, Mr. Duggan objected via email to Mr. Bianco, stating:

> This appears totally wrong[.] [T]here [i]s no substitute trustee[.] [I]t should be a sale from Littlejohn estate to Lenjeswil LLC on 2461 18th [.] Am I missing something? . . . I thought we were doing the price as $205,000 the same as the 1st trust, with the short sale debt being forgiven[?]

DCX 42; *see also* Tr. 220-22 (Bianco).

44. Mr. Bianco forwarded Mr. Duggan's email to Respondent at 5:52 PM that day (December 13, 2012). DCX 42. In light of Mr. Duggan's email, Respondent decided that he would make some changes to the draft of the deed and, at 8:43 PM that night, Respondent emailed Ms. Washington to request that she "disregard the Deed sent earlier today," because Respondent would "be making some revisions," and Respondent would "forward to [her] tomorrow." DCX 44.

45. The next day, December 14, 2012, Respondent sent his underwriter, Donna Lacy, an email attaching the 2003 foreclosure documentation and the 2004 deed with a note that he would be calling that morning about the attached documents.[16] Tr. 618-19 (Respondent); DCX 45.

46. Later, on the afternoon of December 14, after discussing the transaction with his underwriter, Respondent emailed Mr. Bianco, Ms. Blackwell, and Mr. Duggan (but not Ms. Washington):

> After further deliberation with my underwriter, here is where we stand: The [2003] Foreclosure is considered null and void, because the lender, who foreclosed, did not have the authority to foreclose based on never recording the Assignments. Therefore, we only need to record the Assignments and have the Deed of Trusts released. Once we have that and the Deed from Littlejohn's estate, we will have clear title. Let me know if you have any questions.

DCX 47; *see also* Tr. 809-810 (Respondent).

47. That same day (December 14, 2012), Respondent sent a revised copy of the deed and tax form to Ms. Washington. Tr. 89 (Washington); DCX 49. The FP 7/C tax form removed references to Richard Basile as Substitute Trustee (and Grantor), but the *deed* remained unchanged (listing Mr. Basile and the Littlejohn Estate as Grantors). *Compare* DCX 38 at 003-006, *with* DCX 49 at 003-006. Both documents continued to note zero consideration ($.00) and taxes based on the assessed value of $856,990.

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[16] As noted above, the 2003 foreclosure did not pass legal title to Coles Farm and the 2004 deed to Ms. Bien did not give her or Mr. Duggan legal title to the Property.

48. Ms. Washington responded that afternoon and advised Respondent she would review the documentation and follow up with any questions. Tr. 808 (Respondent); DCX 50. Three days later, on December 17, 2012, Ms. Washington emailed Respondent, confirming that she had reviewed the documents and noting that the tax assessed value should be $857,590, not $856,990. DCX 51.

49. Ms. Washington attached signed and notarized versions of the deed and the FP 7/C tax form to that email. DCX 52, DCX 53. On December 17, 2012, Homer Littlejohn and Ms. Washington (as a witness) had signed the deed that Respondent had provided (Tr. 91-93 (Washington); DCX 52 at 002), and Homer Littlejohn, in the presence of Ms. Washington, signed the FP 7/C tax form that Respondent provided (Tr. 94 (Washington); DCX 53 at 003). Notary Linda Brooks notarized Mr. Littlejohn's signature on both documents. Tr. 138-140 (Brooks); DCX 52 at 002, DCX 53 at 003.

50. With the deed and FP 7/C tax forms signed and notarized, Ms. Washington understood and expected that the Littlejohn Estate could be closed as soon as she provided a final account to the Probate Court. Tr. 95 (Washington). In signing the deed and FP 7/C Form, Homer Littlejohn certified that he had examined the documents and found them to be "correct and true." Tr. 465 (Kass). The making of a false statement in a FP 7/C is "punishable by criminal penalties under the laws

of the District of Columbia." *See* DCX 49 at 004 (Part L: Affidavit)[17]; *see also* Tr. 465 (Kass).

51. Meanwhile, Respondent and Mr. Bianco continued to correspond about the assignments of the DOTs to Coles Farm, because they planned to obtain notarized versions to record with the District of Columbia. Tr. 738 (Respondent); DCX 54, DCX 55, DCX 58, DCX 59. Eventually, Respondent proposed that instead of obtaining and recording assignments of the DOTs, "the best and easiest thing to do" would be "to prepare [r]eleases for Cole[s] Farm[] to execute that provide[d] the history of how Cole[s] Farm[] got assigned the [n]otes." DCX 65; *see also* Tr. 739-741 (Respondent), Tr. 236 (Mr. Bianco: "we changed tack").[18] On January 4, 2013,

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[17] Part L of the "Real Property Recordation and Transfer Tax Form FP 7/C" includes the following Affidavit that the Grantor and Grantee must sign and have notarized:

> I/We hearby swear or affirm under penalty of perjury that this return, including any accompanying schedules/documents/and statements, has been examined by me/us and to the best of my/our knowledge and belief, the statements and representations are correct and true. I/We hereby acknowledge that any false statement or misrepresentations I/We made on this return is punishable by criminal penalties under the laws of the District of Columbia.

[18] By December 26, 2012, Respondent had a better understanding of the history of the Property and the possible difficulty in re-executing assignments:

> Richard [Basile],
>
> I received the Assignments from the PR [personal representative] of the David Levin Estate to Coles Farm Enterprises, LLC and I am more confused now. Let's talk about this tomorrow when I am back in the office.
>
> Also, I am not really following the attached Endorsements that you sent. I have attached a[] current title search. As you will see, there are 3 Deed[s] of Trust[] on title.

Mr. Hopkinson sent an email to Respondent and others stating, "To the extent that Coles Farm needs to provide releases, as owner of the 3 notes, I am available to sign them whenever, wherever." DCX 70; *see also* Tr. 1068-69 (Hopkinson).

52. By January 9, 2013, Mr. Bianco had begun work on the releases, which took the form of certificates of satisfaction. *See* RX 58. The certificates that he prepared reflected transactional histories wherein the Estate of David Levin assigned each of the three deeds of trust "[o]n or about November 18, 1996" (DCX 233, DCX 234) or "[o]n November 18, 1996" (DCX 235) to Coles Farm. Each certificate went on to declare that each deed of trust has been "paid in full" and was therefore "released." DCX 233, DCX 234, DCX 235; *see also* Tr. 239-245 (Bianco).

> The first with Perpetual for $205,000 from 1989 that was latter assigned to M & E Partnership. A second with Perpetual in the amount of $25,000 from 1990. And, a third to David Levin for $50,000 from 1992. You attempted to foreclose on the third Deed of Trust.
>
> What is going to happen with the first 2 Deed of Trusts? Will they be Released?
>
> Instead of recording Assignments, why don't we have all 3 Trusts Released and just have Littlejohn Estate transfer their interest to the new owner?
>
> As I mentioned, your attempted foreclosure had no impact on title. If we are just trying to give clear title to the new owner, we should just record the Deed from Littlejohn, who is the current title owner and have the 3 DOTs Released.
>
> Benjamin M. Soto, Esq.

DCX 62 at 001 (December 26, 2012 email from Respondent to Mr. Basile, copied to Mr. Duggan, Mr. Bianco, and Esther Blackwell).

53. On January 15, 2013, Mr. Solomon faxed to Premium Title copies of the three certificates of satisfaction and advised Respondent that he was going to bring the originals to closing. DCX 90; RX 63.

54. The following month, on February 15, 2013, Ms. Blackwell forwarded draft closing documents for the loan to Mr. Duggan. DCX 115 at 001-002. The attachments included: i) a draft copy of a deed of trust and security agreement memorializing the proposed $1,100,000 loan to Lenjeswil (*id.* at 029 et seq.); and ii) a District of Columbia FP 7/C tax form to be recorded with the deed of trust, reflecting that taxes on the deed of trust would be calculated based on 1.45% of its face value of the $1,100,000 mortgage loan (resulting in a recordation tax on the deed of trust of $15,950) (*Id.* at 005-007).

55. The email also attached a draft HUD-1 that reflected the $15,590 in recordation tax for the deed of trust for the $1,100,000 loan, *see* DCX 115 at 011 (line 1203, recordation tax "Mortgage" entry) and $24,852.72 in transfer and recordation taxes for the deed transferring title from the Littlejohn Estate to Lenjeswil, *see* DCX 115 at 011 (line 1202, transfer tax "Deed" entry; line 1203, recordation tax "Deed" entry) and *supra* FF 41 (calculation of taxes on assessed value of the Property).

56. Copying Respondent, Mr. Duggan responded to Ms. Blackwell (Esther) with the following email dated February 18, 2013, at 11:46 A.M.:

> Esther
>
> this is supposed to be a short sale from Littlejohn to Lenjeswil at $205,000. Where do those ridiculous transfer/recordation fees come from[?]
>
> The whole reason for re-opening the Littlejohn estate was to effect [sic] this.
>
> Please have ben [sic] call asap
>
> Bill

DCX 116.

D. Respondent Directed that Changes Be Made to the Amount of Consideration

57. The next day, February 19, 2013 at 2:24 PM, Respondent directed Ms. Blackwell to change the consideration amount in the deed and the tax form from "no consideration" to "$450,000." Tr. 800-01, 911-12 (Respondent). *Compare* DCX 115 at 011, *with* DCX 258 (February 19, 2013, 2:24 PM Blackwell email to bank attaching HUD-1) at 004 (showing the reduction of transfer and recordation tax amounts at lines 1202 and 1203 "Deed" entry from a total of $24,852.72 to **$13,050.00** in connection with the deed transferring title from the Littlejohn Estate to Lenjeswil).[19]

[19] Ms. Blackwell testified that Respondent told her that taxes needed to be "based off of $450,000," but that he never advised her to change the consideration amount on the deed or the tax form. Tr. 1273-74, 1301-02, 1310-12 (Blackwell). She claimed that she altered the deed's consideration to $450,000 because she had "heard gripes" that the Recorder of Deeds "gives a hard time for a zero consideration[.]" Tr. 1312. Her explanation is discredited by Respondent's own stated prior practice of using zero consideration. *See, e.g.*, Tr. 768-69, 905 (Respondent). Respondent himself

58. A new first page was also created for the deed which now listed $450,000 as the consideration amount and removed all references to Coles Farm and Mr. Basile as a Substitute Trustee foreclosing on the Property on behalf of Coles Farm. *Compare* DCX 52 (deed notarized by Homer Littlejohn on December 17, 2012), *with* DCX 145 (revised and recorded deed). The original second page of the deed (which contained Mr. Littlejohn and Ms. Washington's signature) was attached to this new first page. Tr. 1301-02 (Blackwell). *Compare* DCX 52 at 001-003, *with* DCX 145 at 001-002.

59. The original second page of the deed FP 7/C tax form (which listed zero consideration and reflected that taxes would be calculated on the assessed value) was replaced with a page that stated consideration was "$450,000." *Compare* DCX 53 at 001-003 (the FP 7/C tax form signed my Homer Littlejohn and notarized) *with* DCX 146 at 001-003 (revised and recorded FP 7/C tax form). In addition, the

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admitted that he "instructed [Ms. Blackwell] to correct the consideration on the deed and on the [FP 7/C]." Tr. 911-12 (Respondent). This admission was made more than once by Respondent:

> Q. [Disciplinary Counsel]: So [Ms. Blackwell]'s asking you to review what she wrote; correct?
>
> A. [Respondent:] Correct.
>
> Q. And [Ms. Blackwell] had previously received instructions from you about how to draft it; correct?
>
> A. Correct. As I stated, I didn't prepare the deed, but I would have reviewed it.
>
> Q. Ultimately, you decided the consideration should be changed from no consideration to 450,000; correct?
>
> A. That's correct. Again, when [Mr. Duggan] raised the issue, I thought it was a valid point.

Tr. 783. Accordingly, we do not credit Ms. Blackwell's testimony on this point.

signature page that Mr. Littlejohn signed on December 17, 2012, had the prior typed higher tax amounts whited out or erased, with the new, lesser amounts written in by hand (without initials). *Compare* DCX 53 at 003 (line 7, total recordation and transfer tax: **$24,852.72**) *with* DCX 146 at 003 (line 7, total recordation and transfer tax: **$13,050.00**).

60. It is undisputed that Respondent's instruction to change the consideration amount from "$0" to "$450,000" reduced the transfer and recordation taxes to be paid on the deed from $24,852.72 to $13,050. Stip. ¶¶ 15, 22.

61. Respondent acknowledged that after Mr. Duggan's February 18, 2013 email complaining about the transfer and recordation taxes, Respondent himself spoke with Mr. Duggan about the consideration amount. DCX 116; Tr. 904 (Respondent). Mr. Duggan was angry, and Respondent—soon after the phone call—decided to depart from his typical practice of using $0 consideration for deeds in lieu of foreclosure. Respondent testified that he deviated from his standard practice because he thought that Mr. Duggan had a "good point" that he should use "what you pay to be able to acquire the property" as the consideration amount. Tr. 771-72, 905-06, 910 (Respondent).

62. At the hearing, Respondent claimed that he calculated the amount of consideration to be $450,000, by adding $350,000—the amount 2461 Corporation borrowed on the 1996 Promissory Note—plus $100,000 that Mr. Duggan had "guesstimate[d]" he had paid on improvements and taxes on the Property from 1996 through 2012. Tr. 783-84, 815-18 (Respondent). Respondent acknowledged that

Mr. Duggan initially argued that the consideration should be $205,000. Tr. 767 (Respondent); *see supra* FF 43, 56. Respondent, however, then advised Mr. Duggan, that if the estimated consideration was less than 30% of the assessed value, he still would be taxed at the assessed value. Tr. 767 (Respondent); Tr. 463 (Kass). According to Respondent, he also reminded Mr. Duggan that the consideration was more than $205,000. Tr. 905-06 (Respondent: "But then I reminded him [Mr. Duggan] that he actually purchased three notes. So that's when he and Mr. Bianco did more digging, and they – they verified that Mr. Duggan had actually purchased all three notes for $350,000. So we then at that point tried to guesstimate what his – the amount of property taxes that he would have paid since 1996.").[20]

63. We credit Respondent's statement that Mr. Duggan first suggested that the consideration was "205,000" but Respondent then dissuaded him from insisting on that amount. However, we also recognize that Respondent decided not to use that amount only because it was too low—it amounted to "nominal" consideration which would result in the assessed value being used. Tr. 767, 905-906 ("He first mentioned the $205,000 note that he had purchased, and I told him that that was nominal, it was under 30 percent of the tax-assessed value."); DCX 202 at 009

[20] However, according to Respondent's own expert, Mr. Bregman, the amount that was forgiven to clear up the borrower's title rights through a deed in lieu of foreclosure is "appropriately recited as consideration." Tr. 1736 (Bregman); *see also* RX 125 at 125.4. And in 2012, what really mattered was not how much anyone paid for the initial note but how much was still owed on the note. *See* Tr. 1735 (Bregman).

(Respondent's May 2017 Supplemental Statement to Disciplinary Counsel); DCX 116.

64. Respondent knew that the legal entity Lenjeswil did not pay $450,000 to the Littlejohn Estate. *See*, *e.g.*, DCX 122 (HUD-1); DCX 151 at 001 ("certainly no consideration was paid to your client"). He knew that Lenjeswil was formed in 2012 and was a separate entity from Mr. Duggan, the individual, because his wife, Ms. Bien, was the sole member. *See* DCX 105, DCX 107; Tr. 904 (Respondent). However, Respondent was also aware that Mr. Duggan and Mr. Solomon had cooperated in 2461 Corporation's uninterrupted use of the Property after 2461 Corporation issued the 1996 Note for $350,000. Respondent also understood that Coles Farm was not disputing Mr. Duggan's assertion that 2461 Corporation had purchased the notes if not the Property. Tr. 883-84, 887 (Respondent: "Well Mr. Bianco, Mr. Duggan and Mr. Solomon had confirmed that Mr. Solomon in Cole Farms [sic] had purchased these three deeds of trust. The assignments just simply weren't recorded in land records.")[21]; DCX 33 at 006-008; DCX 34 at 005-009; RX 21.

[21] As early as July 2012, Respondent knew that Coles Farm had an incomplete foreclosure on the Property in 2003, having sold the Property at auction for $100,000 through a purchase by the Substitute Trustee of Coles Farm, Richard Basile, on March 13, 2003, but never recorded the associated deed. DCX 33 at 001, 006 (July 11, 2012 email message and attachments related to the title search). He also was aware that on March 5, 2004, Richard Basile had executed a deed suggesting that he sold the Property to Ms. Bien, Mr. Duggan's wife, for $500,000, *see* DCX 33 at 007-008 (signed and notarized deed between Richard S. Basile, Substitute Trustee, Coles Farm, and Ms. Bien), but the deed was never recorded.

65. As Respondent recalled, "We were just trying to strategize on ways to title the property into Mr. Duggan's entity, since he did not own it at that time." Tr. 895 (Respondent). Respondent also acknowledged that Lenjeswil was created in 2012 and "obviously didn't purchase the note in 1996." Tr. 922-23 (Respondent).

66. Whether Coles Farm or 2461 Corporation owned the Three Defaulted Notes, Respondent's stated concern was that official land records needed to show that Mr. Duggan (or an entity under his control) possessed "title to the property." Tr. 922-23 (Respondent); RX 58 at 58.1 (Respondent: "In order for you to close on the loan, you have to have title to the property and the Deed[s] of Trust[] need to be released.").

67. Respondent wanted to find the "easiest" way to create a proper and recorded record showing Lenjeswil's entitlement to foreclose on the Property. DCX 65 ("Rather than trying to get proper assignments that show Cole[s] Farm[] as the secured party of the 3 Notes, I think the best and easiest thing to do is to prepare Releases for Cole[s] Farm[] to execute that provide[] the history[.]"). Lenjeswil agreed that it would be "completely responsible for whatever the cost was of transfer and recordation, as well as the legal fee and I think even some consideration of $5,000 to Homer Littlejohn for getting involved with this." Tr. 1739 (Bregman).

68. As Respondent was charged with closing the transaction, he communicated to Mr. Duggan that "lenders require you to be the title holder prior to closing" and that recording a deed to give him ownership was therefore important. DCX 91 at 001. Respondent recognized the fact Coles Farm had to sign releases.

See DCX 70. During the hearing, Respondent also explained his view that Mr. Duggan and Ms. Bien (his wife), while "sitting at the kitchen table," decided to agree to an "informal assignment" of 2461 Corporation's rights to the Property (or the notes) to Lenjeswil. Tr. 777-78 (Respondent).

69. Based on our review of the record, it is clear that Respondent quickly decided to change the consideration amount to lower Mr. Duggan's liability for recordation and transfer taxes. DCX 152, DCX 165 at 100 ("base Deed on $450k to reduce trans. & rec taxes"); Tr. 616-17 (Respondent). It is clear to the Hearing Committee that, but for Mr. Duggan's complaint about the transfer taxes, Respondent would not have changed the consideration. Tr. 800-01 (Respondent acknowledging that his decision to increase the amount of consideration was made in one day). Despite knowing that the deed and tax form had already been signed and notarized, Respondent did not have the parties meet to re-execute the documents. *See* Tr. 912 (Respondent acknowledging that "whenever there's a change of a document after it's signed, you have to get consent or we have to get the documents re-executed"); *supra* FF 58-59. Instead, after a rushed analysis of Mr. Duggan's proposed method for calculating consideration, Respondent decided that Mr. Duggan's method was "consistent with the definition of consideration in the D.C. Code." Tr. 771 (Respondent). D.C. Code § 42-1101(5), defines consideration as "the price or amount actually paid, or required to be paid, for real property including any mortgages, liens, encumbrances thereon, construction loan deeds of trust or mortgages or permanent loan deeds of trust or mortgages."

70. Respondent knew that inserting a false consideration amount into the deed was illegal. Tr. 793 (Respondent). We credit Respondent's explanation that his decision to depart from his longstanding practice of using a zero consideration amount in deeds in lieu of foreclosure was based on his review of the D.C. Code, discussions with Mr. Duggan, his conversation with the Recorder of Deeds (see below), and a "guesstimated" amount of consideration. Tr. 771, 783-84, 904-06, 910-11 (Respondent). Respondent admittedly could not point to records showing his calculation of the $450,000 consideration amount was accurate, and Respondent acknowledged that his files in 2013 had recorded tax payments for the Property in excess of $100,000 from 2002-2012, but he relied on what Mr. Duggan had told him. Tr. 987-88 (Respondent: "I relied on him to guesstimate on what he thought he had paid over the years."); DCX 165 and 344 (Property tax payments equaling approximately $103,781.00).[22]

71. After deciding that D.C. law would justify changing the consideration amount and giving himself less than a day for thought and possible legal research, Respondent contacted Ida Williams, the Recorder of Deeds in the District of Columbia, to confirm that the consideration amount should be the amount paid for

[22] We do not adopt Disciplinary Counsel's proposed factual finding which asserts that "Respondent testified falsely that based on a conversation with Mr. Duggan about consideration, he realized for the first time that putting no consideration on a deed in lieu of foreclosure was the incorrect practice." *See* ODC Br. at 46, ¶ 176. That statement does not accurately describe Respondent's testimony, as he further explained that he came to this conclusion also based on his conversation with Ms. Williams, the Recorder of Deeds in D.C., and his review of the D.C. Code. While the consultation was overly brief, we do not find that he testified falsely when describing how he came to decide to change the amount of consideration.

the notes when there is a deed in lieu of foreclosures. Tr. 769, 910-11 (Respondent). Respondent contacted Ms. Williams about this newly-realized theory for calculating consideration for a deed in lieu of foreclosure to confirm there were not any "exceptions." Tr. 910-11 (Respondent). According to Respondent, Ms. Williams "agreed" and "[i]t was probably a conversation that didn't last more than two minutes." Tr. 769 (Respondent). The Hearing Committee credits Respondent's testimony concerning his recollection of making the call to Ms. Williams and her response. However, given the brevity of the call itself, Respondent's testimony is relevant only inasmuch as it goes to his state of mind but not to the accuracy of his calculation of the consideration.

72. Respondent's memory of the purported two-minute call confirms that Ms. Williams was not provided with adequate information to make an informed decision regarding the calculation of consideration for the Property. Tr. 354 (Williams); Tr. 769, 910-11 (Respondent); *see* DCX 207.[23] Respondent's cursory

[23] In 2020, Respondent emailed Robert McKeon, Deputy Chief Counsel at the D.C. Office of Tax and Revenue and legal counsel for the Recorder of Deeds. *See* RX 108; Tr. 391 (Williams). While this email from 2020 is irrelevant to Respondent's state of mind in 2013, it is similarly indicative of how Respondent provides nothing more than general statements in trying to confirm his calculation of consideration, despite the complicated history of the Property. *See* RX 108. In his email to Mr. McKeon, Respondent purports to be asking a "general question" when, in fact, he could have asked a very specific question based on specific facts that, by 2020, were clearly the crux of this disciplinary action. In a case like this, where Respondent was dealing with a complicated transaction with formal and several informal agreements that may or may not have been null and void, his request that Mr. McKeon opine on "cases involving a Deed in Lieu of Foreclosure where the secured lender purchased and was assigned the Note" does not adequately reflect the facts in this case. His question whether the consideration is the "amount the lender paid for the Note/Debt" failed to account for the fact that the 1996 Note included a pre-exisitng unrelated $70,000 debt and $10,000 closing cost or the fact that 16 years had passed during which

explanation of the transaction, in contrast to prior detailed written communications in the record between Respondent and Ms. Williams, *see, e.g.*, DCX 207 shows that Respondent was more interested in a general blessing of the estimated $450,000 consideration amount, instead of a detailed and more reliable analysis. Ms. Williams credibly testified that "definitely the recorder's office was not aware of" the details of the transaction and that her office is (and was not) in a position to verify the correct consideration, but it, instead, simply ensures that what is stated in the deed or FP 7/C is "above the nominal threshold." Tr. 366, 377 (Williams).

73. Respondent defended his decision to change the consideration amount at the hearing. Tr. 772 ("[W]hen [Mr. Duggan] raised the issue [of the amount of consideration], . . . it was consistent with the definition of consideration in the D.C. Code."), 797 ("He was the first person that has ever brought up to me in my career, and I've done a lot of deed in lieu of foreclosures prior to that, that suggested why is my consideration not based on what I paid. And I thought that was a valid point."), 904-06 ("[H]e first mentioned the $205,000 note that he had purchased, and I told him that that was nominal, it was under 30 percent of the tax-assessed value. And after I mentioned that, he brought up that he had been paying property taxes over the years, he had made improvements, couldn't that be added. And I thought that was a

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it had been sold for $100,000 at a foreclosure auction, and then purchased for $500,000, with $200,000 being represented as payment on the 1996 Note. *See id.*

good point too.").[24] We credit Respondent's recollection of his conversations with Mr. Duggan, who sought to have the consideration amount changed to more closely reflect the amount that had been paid for the Three Defaulted Notes. By contrast, we found Mr. Duggan's testimony to be unreliable as to his recollection of conversations and events that occurred in 2012-2013. *See, e.g.*, Tr. 1842-1853 (Duggan) (Tr. 1842: "I don't remember seeing the docs that day.") (Tr. 1844: "I don't think it started off as zero consideration.") (Tr. 1852-53: "[A]t first I guess he was going to record at the [$]850[,000] or at least make me pay the taxes on the [$]856[,000], and then, you know, it was basically, you know, I guess he spoke with whoever it is at the recorder of deeds and said that they came up with this 450 figure. . . . It was not in discussion with me.").

74. Respondent admittedly failed to obtain authorization to change the consideration amount, or otherwise discuss changing the consideration amount, with Homer Littlejohn's probate counsel, Ms. Washington. Stip. ¶ 21; Tr. 805-06, 912-13 (Respondent) ("I thought my processor would also follow-up with Ms. [Washington] . . . but it slipped through the cracks. . . . [W]e didn't accomplish getting consent of that."). Respondent also failed to obtain written authorization from Homer Littlejohn to make the change. Tr. 804 (Respondent: "We could never reach him [Mr. Littlejohn]. I mean, the guy was impossible to reach."), 912-14

[24] At the time of the closing, Respondent did not have a copy of the 1996 Note for $350,000 but he had the copies of the certificates of satisfaction which amounted to $350,000 and Mr. Duggan's representation of the 1996 Note's existence. Tr. 632 (Respondent).

(Respondent: "I remember talking to Mr. Duggan and letting him know that Mr. Littlejohn was going to need to re-execute the documents."); RX 97 at 97.3, ¶ 23; RX 124 at 124.2 & n.2. Respondent knew he did not have any power of attorney to make any sort of corrections on Homer Littlejohn's behalf. Tr. 805 (Respondent); *see also* DCX 186 at 011-012 (¶ 20). He also knew that Homer Littlejohn was still represented by Ms. Washington. *See* DCX 151 at 001. Changing the consideration from zero to $450,000, however, negatively impacted the Littlejohn Estate because it had previously listed the property as a loss. *See* Tr. 1740 (Bregman); DCX 240 at 5.

75. Respondent also did not obtain authorization from Ms. Brooks, the notary, to take a page she signed and attach it to a different document. Tr. 807 (Respondent); Tr. 141 (Brooks). Respondent was aware that "notarization is required for filing with the Recorder of Deeds," but he believes that his alteration of the notarized document without Ms. Brooks' authorization was simply "an oversight. It wasn't done intentionally." Tr. 807 (Respondent). Respondent also did not subsequently contact Ms. Brooks about the changes to the deed or tax form. *See* Tr. 140 (Brooks). According to Ms. Brooks, to alter a notarized document "would be against the law. It would make it not official if someone does anything after my signature and [after] I put the seal on it." Tr. 140.

76. When Ms. Washington confronted Respondent several months later regarding the change in the amount of consideration in the previously signed and

notarized documents (*see infra* FF 101), Respondent responded as follows in an October 2, 2013 email message:

> Hi Ara,
>
> I just tried calling you. At some time after the signing, the Deed was changed to show consideration of 30% of the tax assessed value in order to assist the grantee in paying less transfer taxes. You are correct that we should have ran [sic] this past you. The transaction was a complete mess and that slipped through the cracks. But, as I mentioned, no consideration was paid to your client. The consideration was obviously the loan that foreclosed on your client.

DCX 206 at 034.

E. Settlement on February 20, 2013

77. On February 20, 2013, Ms. Blackwell forwarded via email, with Respondent copied, the *altered* documents to Mr. Duggan. DCX 120. The materials included a draft HUD-1 changed to reflect that transfer and recordation taxes for the deed were now based on $450,000 consideration. *See id.* at 094 (respective transfer and recordation tax entries for "Deed" entry reflecting 1.45% of $450,000). The attachments also included the signature page from the original deed and the altered first page that now reflected an amount of $450,000 in consideration. *Id.* at 096-097. A copy of the tax form for the deed, with consideration changed to $450,000 and the tax amounts lowered, did not include the page Homer Littlejohn had already signed. *Id*. at 098-101.

78. On February 20, 2013, Respondent signed the altered HUD-1 settlement statement. Tr. 635 (Respondent); DCX 122 at 004. Respondent certified

that $15,950 would be paid in recordation taxes for recording the deed of trust related to the $1.1 million loan mortgage. Tr. 635 (Respondent); DCX 122 at 002, 004.

79. As the licensed "Title Insurance Producer," *see* D.C. Code § 31-5041.01(19), Respondent understood that funds deposited with him in connection with the settlement or closing "shall be applied only in accordance with the terms of the individual instructions, settlement statement, or agreements under which the funds were accepted." *See* Stip. ¶¶ 4-5 (internal quotations and citation omitted). At the time he signed the HUD-1 in this matter, in response to a request for a written procedure explaining how Premium Title resolves its dormant escrow funds,[25] Respondent wrote that Premium Title understood "the importance of disbursing escrows immediately" to its purchasers, but also noted that "it is not unusual for [Premium Title] to hold deposits for a long time." DCX 149.

80. As reflected in the HUD-1, what was originally supposed to be a $1,100,000 loan had been split into two parts, with an initial loan amount of $595,000 being paid by the bank based on securing the Property as collateral, and the remainder to be paid after the title issues surrounding the other property, 2423 18th Street, had been resolved and related financing for that property could be approved. *See* DCX 122 at 001; *see also* Tr. 755 (Respondent); DCX 91 at 002; DCX 100.

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[25] "Dormant balances" is a term describing monies related to a specific property and which are leftover in a settlement attorney's account after settlement. As settlement agent, Respondent was responsible for continuing to monitor his escrow account for dormant balances, even after most of the payments listed on the settlement sheet had been made. *See* Tr. 1697-98 (Bregman).

81. The HUD-1 represented that no monies were paid to the Littlejohn Estate as part of settlement. *See* DCX 122. And at the time the transaction settled, Mr. Solomon had signed the three certificates of satisfaction, thus releasing the Deeds of Trust for Lenjeswil to obtain the Property. DCX 233, DCX 234, DCX 235; *see also* Tr. 197-98, 201-02, 204, 206 (Bianco).

82. On February 22, 2013, City First Bank wired $587,219.50 to Premium Title's account. Tr. 636-37 (Respondent); DCX 129.

F. Recording of Documents

83. D.C. law requires that deeds be recorded. Tr. 396 (Williams); *see also* Tr. 1058-59 (Respondent); D.C. Code § 47-1431. Without the recording, the Recorder of Deeds is unable to collect recordation and transfer taxes, although such taxes would still technically be owed. Tr. 396-99 (Williams).

84. In the District of Columbia, taxes on a deed are based on the amount of consideration stated on the deed or tax form. Tr. 342-43 (Williams). Under D.C. law, the estimated consideration of $450,000 results in transfer and recordation taxes calculated at 1.45% of the whole consideration amount. *Id.*; *see also* DCX 146 at 003 (Part K instructions).[26]

85. The Recorder of Deeds compares the assessed value of property with

[26] If consideration is under $400,000 for a *residential* property, the transfer and recordation taxes are calculated as 1.1% of the consideration amount. *See, e.g.*, DCX 146 at 003 ("If the residential deed transfer is for a total consideration of less than $400,000 use Lines 1, 2 and 3. All other deed transfers . . . and *commercial transactions* use Lines 4, 5 and 6 (emphasis added)).

the listed consideration. Tr. 342 (Williams). If the consideration listed on a deed is less than 30% of the assessed value, the consideration is considered "nominal" and taxes are based on the assessed value of the property. *Id.*

86. The deed and tax form as initially signed and prepared resulted in the below calculation of recordation and transfer taxes owed to the District of Columbia:

Assessed Value of Property:	$856,990
Recordation Tax Amount:	$12,426.36 (856,990 x 1.45%)
Transfer Tax Amount:	$12,426.36 (856,990 x 1.45%)
Recordation and Transfer Tax Total: (as reflected in original FP 7/C form)	**$24,852.72**

DCX 53 (original deed tax form) at 002-003 (emphasis added).

87. After Respondent decided to alter the deed and tax forms to reflect a $450,000 consideration, the deed and tax form, as recorded, resulted in the below calculation of recordation and transfer taxes owed to the District of Columbia:

Changed Consideration Amount:	$450,000
Recordation Tax Amount:	$6,525 ($450,000 x 1.45%)
Transfer Tax Amount:	$6,525 ($450,000 x 1.45%)
Recordation and Transfer Tax Total: (as reflected in altered FP7/C form):	**$13,050**

DCX 146 (recorded deed tax form) at 002-003 (emphasis added). Premium Title paid the reduced amount of taxes ($13,050) associated with changing the consideration listed on the deed from no consideration to $450,000. Stip. ¶ 32.

88. As noted above, outside of determining whether consideration is nominal, the Recorder of Deeds office does not examine whether the stated consideration is appropriate for a property. Tr. 342-43 (Williams). Generally, members of the office may have conversations with individuals from settlement offices about whether a methodology for arriving at a taxable amount is correct but will not approve a specific amount. Tr. 346-48 (Williams).

89. DOTs are subject to recordation tax only (not transfer tax). Tr. 343-44 (Williams). For DOTs, an individual can obtain a full or partial exemption from paying recordation tax if funds from the loan memorialized by the deed of trust are used to acquire property (called the "purchase money exemption"). Tr. 368-69 (Williams). An individual can claim a purchase money exemption up to the amount of funds used to acquire the property and only the remaining loan amount will be subject to recordation tax. *Id.*

90. In early March 2013, Gabriella Carter, a Premium Title employee, took the altered deed, altered deed tax form, DOT, and DOT tax form to the Recorder of Deeds for recording. *See* Tr. 1321-22, 1329, 1335-36, (Carter). The Recorder of Deeds rejected the documents because 1) they were submitted without letters of administration, 2) there was an apparent misunderstanding that a purchase money exemption should have been claimed in connection with the deed of trust, and 3) when the letters of administration were submitted, they did not have the requisite embossed seal. *See* Tr. 1328, 1337-38, 1344-45 (Carter); DCX 135, DCX 136, DCX 137, DCX 139, DCX 142, DCX 144.

91. Without Respondent's knowledge, Ms. Carter returned to Premium Title's office and made handwritten changes to the deed of trust tax form (*see* DCX 147 at 003), effectively claiming a purchase money exemption in connection with the deed of trust and reducing the taxes to be paid for recording the deed of trust by $6,525. Tr. 1342 (Carter); Stip. ¶ 30 (amount of reduction); *see also* DCX 202 at 005 (change made "by my employee's hand."). On or around March 5, 2013, Ms. Carter also obtained from a Premium Title processor a new check (for a lesser amount) for payment of recordation and transfer taxes (and other fees) for all the documents being recorded. Tr. 1338-39, 1321-22 (Carter); DCX 202 at 024 (History Disbursement Statement showing March 5, 2013 voiding of check 23732 and showing check 23763 created on March 5, 2013 and cleared on April 30, 2013).

92. The deed of trust tax form as it was initially signed and prepared resulted in the below calculation:

Loan Amount Listed on DOT: $1,100,000

Recordation Tax:
(as reflected in FP 7/C form): **$15,950** ($1,100,000 x 1.45%)

DCX 202 (original deed of trust tax form) at 014-015 (emphasis added).

93. The deed of trust tax form after Ms. Carter altered it resulted in the below calculation:

Loan Amount Listed on DOT
Less Consideration Listed on Deed $650,000
($1,100,000-**$450,000**)

Recordation Tax:

(as reflected in FP 7/C form): **$9,425**
($650,000) x 1.45%

*S*ee DCX 147 (altered deed of trust tax form) at 003 (emphasis added).

94. On March 12 and 13, 2013, Respondent corresponded by email with Ms. Williams about difficultly obtaining the letters of administration. Tr. 784-89 (Respondent); DCX 135, DCX136. Ultimately, Premium Title was able to obtain a copy of the letters sometime after April 1, 2013. *See* Tr. 1329 (Carter), DCX 144. The deed, deed of trust, tax forms and related documents were not recorded until April 3, 2013, over a month after settlement, because Respondent was waiting for the letters of administration. *See* DCX 144, DCX 145 at 002 (Recorder of Deeds stamp), DCX 146 at 001 (received stamp), DCX 147 at 001 (same); Stip. ¶ 29.

95. Respondent was unaware that the purchase money exemption had been applied and Premium Title paid the reduced amount of taxes ($9,425) associated with the mistaken application of the purchase money exemption to the deed of trust, despite Respondent certifying on the HUD-1 indicating that $15,950 would be paid. *See* Tr. 1337-1340 (Carter), Stip. ¶¶ 30, 32.

96. Premium Title retained the excess monies from paying the reduced amount in connection with the deed of trust in its account for nearly two years. *See* Audit and Retention of Funds discussion, *infra*.

G. <u>The Probate Proceedings and Auditor-Master Proceedings</u>

97. After the documents were recorded, the probate division of the District of Columbia Superior Court requested a copy of the recorded deed in connection with the closing of the Littlejohn Estate. Tr. 97-98 (Washington).

98. On September 13, 2013, Ms. Blackwell sent Ms. Washington a copy of the recorded deed (with the consideration changed to $450,000 and the language about Coles Farm foreclosing on the property removed). DCX 150. However, because Ms. Carter had not made copies of the recorded documents (which contained her handwritten changes), the attached tax form was different from the form actually filed with the Recorder of Deeds. Tr. 1339-1340 (Carter). While it showed a change in consideration amount to $450,000 on the second page (DCX 150 at 005), it did not show that the original amounts ($12,426.36 in each box) had been crossed out on the page that Ms. Washington's client signed. *Compare* DCX 150 at 006, *with* DCX 146 (filed tax form) at 003. The form Ms. Blackwell sent also contained the signature page from Lenjeswil that was countersigned by Homer Littlejohn on February 22, 2013, but the reduced tax amounts on that page had been redacted or obscured. *Compare* DCX 150 at 007, *with* DCX 120 at 100.

99. Ms. Washington's understanding that the Property was to be transferred via a deed in lieu of foreclosure was based on the language in the deed her client, Homer Littlejohn, had signed, about Coles Farm foreclosing on the Property, and her understanding of why she was hired to reopen the Littlejohn Estate. Tr. 117-18, 122-23 (Washington).

100. After receiving the recorded deed from Ms. Blackwell, Ms. Washington noticed that "the reference to the deed in lieu, to it being in lieu of the foreclosure had been removed[.]" Tr. 99 (Washington). She also noticed the change in consideration amount. *Id.*

101. Ms. Washington confronted Respondent about the changes. Tr. 102-06 (Washington); DCX 151, DCX 152. On October 1, 2013, she wrote Respondent about the "discrepancy in the documents filed with the Recorder of Deeds" and asked that he provide her "with a copy of the draft or wire transfer showing my client, Homer Littlejohn, received $460+k for the sale of this property." DCX 152 at 003. When Respondent replied that he did not know what she meant by discrepancy ("What discrepancy?") and if her message was joking about a wire transfer, Ms. Washington replied that same day:

> Ben,
>
> I wish I was joking. The deed my client signed s[t]ated "Whereas, the Substitute Trustee, Richard S. Basile filed a Notice of Foreclosure recorded February 10, 2003 as Instrument No. 2003019292 foreclosing on the Estate of Jack Littlejohn (who died on or about May 14, 1993) and the Grantors desire to convey their interest to the Grantee.
>
> Witnesseth, that in consideration of the sum of No and 00/100 Dollars ($.00), the party of the first part does hereby grant unto the party of the second part . . . "
>
> The recorded deed removed the paragraph regarding the foreclosure and lists consideration in the amount of Four Hundred Fifty Thousand Dollars. That is the discrepancy that I'm talking about and I need to see proof of the consideration that's listed in the recorded deed.
>
> Ara

Id. at 002.

102. At no point did Respondent, in any interaction he had with Ms. Washington, ever state or suggest to her that Mr. Duggan or any other party obtained her consent for the changes in the consideration amount or removing the language

related to Coles Farm. Tr. 105-06; 115-16 (Washington); *see also* DCX 151, DCX152. Respondent only mentioned the changes to her when he received Ms. Washington's email message asking about the discrepancy between the filed deed and tax form and the executed documents in early October 2013. *See* DCX 151, DCX 152.

103. On January 15, 2014, a Probate Court auditor sent a requirements letter to Ms. Washington (and Homer Littlejohn) asking for additional information about the recorded deed. Tr. 106-08 (Washington); DCX 249. The letter requested she 1) "submit a copy of the settlement agreement with respect to the deed in lieu of foreclosure," and 2) advise as to "the disposition of the $450,000.00 as reflected on the deed" and as to "the reason the funds were not reported in the estate." DCX 249 at 002.

104. On or around March 14, 2014, Ms. Washington sent a response to the auditor explaining what Respondent had told her and attaching their email correspondence, as well as the original deed and tax form that she witnessed her client, Homer Littlejohn, sign. Tr. 107-08 (Washington); DCX 250. Ms. Washington's March 14, 2014 response did not satisfy the court. Tr. 108 (Washington); DCX 251. The auditor sent another letter on May 14, 2014, asking for "an explanation of action taken by the personal representative to rectify the deed situation as indicated in the e-mails submitted by counsel." DCX 251.

105. Both Ms. Washington and Homer Littlejohn went to the Recorder of Deeds office to try to explain "that the deed that was filed was *not* the deed that was

signed by Mr. Littlejohn." Tr. 109 (Washington) (emphasis added); *see also* Tr. 349-350 (Williams describing a male individual who complained to the recorder's office that a deed that was filed for the Property (2461 18th Street) was incorrect, and that he or the estate was incorrectly being held responsible for estate taxes or incomes taxes because of the consideration in the deed); DCX 253 at 003-004. Ms. Washington was told by the Recorder of Deeds office that there was nothing she could do to change the deed. Tr. 109-111 (Washington).

106. Ms. Washington also attempted to contact Respondent after their initial email exchange about the alterations. Tr. 110 (Washington). She called Respondent "several times . . . . [t]o get the situation corrected" because she "needed for there to be a deed recorded that said that there was no consideration and it was, in fact, a deed in lieu as the original request to reopen the estate said[,]" but Respondent never responded to her phone calls. *Id*.

107. Ms. Washington attended a November 5, 2014 summary hearing including an auditing branch manager and legal branch manager before Associate Judge Cambell of the Probate Division. DCX 253 at 001-008. She explained that the consideration amount of $450,000 had not been added by her client, Homer Littlejohn, and that the "deed that was recorded was not the deed that was executed by Mr. Littlejohn." DCX 253 at 003. After the close of the hearing, the auditing branch manager recommended referral to the Auditor-Master due to concerns about fraud. DCX 253 at 009; *see also* DCX 253 at 010 (court indicating it will enter a separate order of referral to the Auditor-Master); DCX 254.

108. The Auditor-Master then held a February 2, 2015 status hearing, for which both Ms. Washington and Homer Littlejohn were ordered to appear. Tr. 114 (Washington); *see also* DCX 257 at 001-015 (February 2, 2015 Transcript of Probate Division hearing before the Auditor-Master). Ms. Washington testified under oath that Homer Littlejohn was not responsible for changing the consideration to $450,000; she also explained that neither Homer Littlejohn nor the estate had received any consideration, and that court records for the estate had shown a foreclosure on the property on March 10, 1995. *See* DCX 257 at 005-009. When Homer Littlejohn was asked by the Auditor-Master why he had agreed to reopen the estate which required the cost of hiring an attorney, Homer Littlejohn testified that Mr. Duggan had contacted him about reopening the estate and had represented he would pay the attorney fees, but he himself had now incurred additional attorney fees beyond what Mr. Duggan had agreed to pay—which Ms. Washington confirmed—due to the complexity of the case. DCX 257 at 013-014. The Auditor-Master had Homer Littlejohn confirm under oath that he had not received "any money from [Respondent] for this property," and that the estate had not received funds when it was closed in the early 1990s. DCX 257 at 007-010. The Auditor-Master advised Homer Littlejohn that "as far as your case is concerned at least it appears that we had adequate documentation that you received no funds, that the estate did not receive any funds. So we can file the accounting report . . . ." DCX 257 at 011; *see also* Tr. 114-15 (Ms. Washington testifying that the Auditor-Master permitted the closing of the estate only after he found that "there was no

consideration that had been exchanged during that transaction").

109. On February 27, 2015, the Auditor-Master filed his report. DCX 157 at 004. On March 11, 2015, he referred the matter to Disciplinary Counsel. *Id*. at 003.

H. Respondent's Estimation of the Consideration

110. Under Respondent's view, Lenjeswil received a deed in lieu of foreclosure after Lenjeswil was assigned the loan from the 2461 Corporation, and after the 2461 Corporation was assigned a loan from Coles Farm. Tr. 607 (Respondent); *see also* Tr. 608 ("So Lenjeswil stepped into the shoes of the lender by way of an assignment"); Tr. 611 ("So Lenjeswil has the same rights as Solomon once had with Coles Farm[] and as 2461 [Corporation] had. It's an assignment of rights."). Respondent explained that he was neither Coles Farm's nor Mr. Duggan's counsel when the Three Defaulted Notes were purchased, but if he had been, he would have told them to document their assignments properly. Tr. 628-29 (Respondent).

> But parties can informally assign their rights. You can have oral agreements in the District of Columbia. So if Solomon and Duggan are good friends and that's how they choose to do business, to operate informally, they have the right to do that. If Mr. Duggan comes into my office and says he purchased the notes, I have no reason to not believe him.
>
> And as we all know, as the facts show, that, in fact happened.

Tr. 629 (Respondent). It is undisputed that the oral assignment of the Three Defaulted Notes from Coles Farm to the 2461 Corporation was never recorded, Tr. 708 (Respondent); Respondent conceded that at least through 2004, Coles Farm

was still the legal owner of the Three Defaulted Notes. Tr. 709 (because no assignment was ever recorded between Coles Farm and 2461 Corporation, "Mr. Solomon still had the right to foreclose" in 2004). Tr. 709; *see also* Tr. 710-11; Tr. 741 (Respondent). Based on his conversations with Mr. Duggan, however, Respondent asserted at the hearing that Mr. Duggan (through the 2461 Corporation) had bought the Three Defaulted Notes in 1996. *See* Tr. 713 (Respondent). Respondent recognized that Mr. Solomon was the record owner of the deeds of trust and land records, given that he and Mr. Duggan had not taken the formal step of recording an assignment. Tr. 901-02 (Respondent). As a result, Respondent ultimately sought releases from Coles Farm and 2461 Corporation to make sure City First Bank, which was the lender for the refinancing, is in the "first lien position and that Lenjeswil has the title free and clear of any outstanding notes or loan." Tr. 742 (Respondent). Respondent acknowledged that he never determined what amount was still due on the 1996 Note prior to the closing, but, instead, mistakenly relied on Mr. Duggan's representation that he had paid off the moneys owed to Coles Farm. *See* Tr. 824 (Respondent testifying that he had since learned that Respondent used proceeds from the $1.1 million loan to pay off a portion of the 1996 Note).[27]

111. It is undisputed that Lenjeswil needed to own the Three Defaulted Notes to be in a position to take title via a deed in lieu of foreclosure. *See* Tr. 811-

[27] Although it may have been a mistake for Respondent to rely on Mr. Duggan's and Mr. Solomon's recollection of an unrecorded assignment, we do not find Respondent's hearing testimony to be intentionally false regarding his belief that Mr. Duggan purchased the Three

12, 883-84 (Respondent); Tr. 1749, 1752-53 (Bregman) (if grantee is not secured holder of debt, it is not a deed in lieu of foreclosure).[28] According to land records, Coles Farm owned the Three Defaulted Notes at least until 2012. *See* Tr. 1732 (Bregman) (agreeing that Coles Farm was the entity attempting to foreclose on the Property in 2003 and possessed the Three Defaulted Notes); Tr. 194, 196-97, 201-06 (Bianco).

112. The Hearing Committee credits Respondent's assertion that Mr. Duggan told him the notes were "informally" assigned from 2461 Corporation to Lenjeswil once Mr. Duggan decided to transfer his ownership of the notes (as assigned by Coles Farm) to the newly-formed Lenjeswil. Tr. 777 (Respondent). The Hearing Committee also finds that Mr. Duggan and Mr. Solomon had a pre-existing relationship and understanding that Mr. Solomon was never going to contest Mr. Duggan's use or possession of the property. *See* 1803-05, 1811 (Duggan).

113. Documentation in Respondent's file, which he had before changing the consideration to $450,000, however, showed property tax payments totaling approximately $103,781.00 had been made on the Property just since 2005. *See,*

Defaulted Notes. Accordingly, we do not adopt Disciplinary Counsel's proposed factual finding that "Respondent testified falsely and repeatedly that Mr. Duggan or his entity 2461 Corporation purchased the notes from Coles Farm, and then assigned them to Lenjeswil, so that Lenjeswil would be in a position to take title to the Property via a deed in lieu of foreclosure." ODC Br. at 44, ¶ 164. As explained *supra*, we credit Respondent's testimony in that he had and continues to have a good faith belief that Mr. Solomon and Mr. Duggan had an informal understanding that the 1996 Note for $350,000 was made for the purpose of 2461 Corporation's purchase of the Three Defaulted Notes from Coles Farm.

[28] The Hearing Committee takes no position regarding the validity of changing title of the Property through a deed in lieu of foreclosure.

e.g., DCX 165 at 344 (January 28, 2013 print out). Accordingly, $450,000 was most likely too low a figure for an estimated consideration given that only a portion of the years for which Mr. Duggan paid taxes were included. Respondent's expert, Mr. Bregman, did not testify that $450,000 was the appropriate figure for the consideration, but he felt it was more in the ballpark than a zero consideration. Tr. 1676-77, 1749-1752 (Bregman).

114. Mr. Bregman described the calculation of consideration for this particular property as a "judgment call on the part of the lawyer who is trying to make the transaction fair and appropriate and reasonable under the circumstances." Tr. 1678 (Bregman). Mr. Bregman explained, in large part, that was because the circumstances of the un-foreclosed Property were "really an aberrant, abnormal situation, at least in my 45-, 46-year career, I've never seen anything like this before." Tr. 1678 (Bregman). In most deeds in lieu of foreclosure, the deed occurs soon after the loan is in default, but, "here we had . . . the 16 years that intervened." Tr. 1683 (Bregman). Typically, consideration for a deed in lieu of foreclosure is the total amount of debt forgiven by the lender. Tr. 1727 (Bregman). Mr. Bregman credibly testified that, in his review of the record in this case, he did not conclude that $450,000 was the actual consideration, but only that it was "an appropriate estimate and an appropriate number to be used in this attenuated, convoluted transaction." Tr. 1749-1750 (Bregman).

115. Disciplinary Counsel's expert, Mr. Kass, opined that an attorney should not determine consideration and that "it's up to the parties to have an agreement as

to what the consideration is, and that's transferred to [the attorney] and that's what [the attorney] put[s] on the – on the forms." Tr. 574 (Kass describing best practices). When asked what authority or definition of consideration he was using, Mr. Kass testified that "I don't know that I have a basis, other than my common practice that – and again, I guess it depends on what aspect of consideration you're referring to." Tr. 573 (Kass).

116. In a communication with Disciplinary Counsel, Respondent wrote that "the adjustment of consideration was made to reflect the actual consideration for the Deed, the loan forgiveness and other monies owed." DCX 163 at 001 (emphasis added); *see also id.* at 002 ("[t]he actual consideration for the Deed was $450,000 and was based on the loan the buyer provided to the decedent, which was never paid back and forgiven by the Deed, and all of the buyer's costs to upgrade the property and pay property taxes over the years."). We find that Respondent's explanation of his estimation of the consideration to Disciplinary Counsel in May 2015 is consistent with his testimony at the hearing. *See, e.g.*, Tr. 783-84, 815-18, 905-06 (Respondent).

117. In a later response to Disciplinary Counsel in 2016, Respondent referenced his call with Ms. Williams. *See* DCX 186 at 002, 010, 016 (October 6, 2016 Statement of Respondent Benjamin M. Soto). He stated that "[g]iven the unusual circumstances related to determining consideration, I contacted Ms. Ida Williams, the Recorder of Deeds, with whom I speak to from time to time when

questions arise, to make sure that the theory behind the calculation of the consideration was sound." *Id.* at 010.

118. Respondent asserted in his response that the $350,000 promissory note represented $270,000 that Mr. Duggan paid for the Three Defaulted Notes. *See id*. at 004, ¶ 3. The remaining $80,000 were additional funds lent to Mr. Duggan by Mr. Solomon, unrelated to the cost of the Three Defaulted Notes. *See id.* ("$70,000 as additional consideration for funds lent by Mr. Solomon to Mr. Duggan prior to 1996 . . . [and] additional $10,000 lent by Mr. Solomon to Mr. Duggan for closing costs incurred at the 1996 closing."); *see also id.* at 010, ¶ 17(a).

119. In his 2016 response, Respondent described his calculation of consideration as follows: "The $340,000 and $110,000 were added together to arrive at $450,000 as stated consideration that Duggan paid for the Property." DCX 186 at 010. Respondent also explained that Mr. Duggan had "acquired his interest in the Property" and that the "acquisition price on December 31, 1996 was $340,000." *Id.* at 003, 010.

120. As both Ms. Williams and Respondent affirmed at the hearing, an LLC is a separate taxable entity. Tr. 364-66 (Williams); Tr. 779 (Respondent); *see also* DCX 207 at 124 (Respondent discussing taxability of transfer from individual to her solely owned LLC). A real property transfer first to a member of the LLC, then to the LLC itself, would be two taxable events. Tr. 364-66.

I. Erroneous Retention of the Purchase Money Exemption Funds

121. A report from Premium Title's monthly reconciliations for April 1, 2013, through April 30, 2013, showed an excess of $7,318, of which $6,525 came from an incorrect purchase money exemption. Tr. 644-45 (Respondent); DCX 263 at 011 (account no. 12-0520); Stip. ¶ 50. Respondent was reviewing monthly reconciliations at the time. Tr. 643-44 (Respondent).

122. Fidelity, Premium Title's underwriter, conducted audits of Premium Title's files and escrow accounts in 2013, 2014, and 2015. DCX 264, DCX 265; Tr. 1390-91 (Donovan). Fidelity's audits are graded on a pass-fail basis, and Premium Title failed all three audits. DCX 264, 265; Tr. 1365-67, 1390-91 (Donovan). In May of 2013, Fidelity auditor Andre Sims raised concerns to Respondent about dormant balances in 471 files. DCX 264. Documentation Mr. Sims provided Respondent referred to Premium's dormant balance situation as an "excessive" case. *Id.*; Tr. 640-42 (Respondent). Mr. Sims's 2013 audit also raised concerns that Premium Title management was not critically reviewing monthly reconciliations. Tr. 1380-81 (Donovan); *see* DCX 264.

123. Premium Title failed the 2013 audit and was placed on the Most Significant Agent Findings ("MSAF") list. Tr. 1360, 1365 (Donovan). When agents are placed on the MSAF list, a Fidelity agency representative works with them to implement better procedures. Tr. 1359-1361 (Donovan).

124. In April 2014, eight months after the conclusion of the 2013 Fidelity audit, Premium Title was removed from the MSAF list. *See* Tr. 1366-67 (Donovan);

DCX 264. However, from May to June 2014, Mr. Sims conducted another audit of Premium Title. DCX 265. The dormant balance problem had become worse. *Id*.; Tr. 647 (Respondent). Mr. Sims again referred to Premium's dormant balances as "excessive." DCX 265. The 2014 audit again raised concerns about failing to critically review monthly reconciliations. Tr. 1387-88 (Donovan).

125. Premium Title failed the May-June 2014 audit and was again placed on the MSAF list. Tr. 1367-68 (Donovan).

126. Alaine Donovan, Esquire, an agency representative for Fidelity, worked with Respondent personally to address the issues exposed by the audit conducted on Premium Title, including the dormant balance issues and the failure to critically review monthly reconciliations. Tr. 1358, 1382-1390 (Donovan). Ms. Donovan explained that, while Premium Title certainly failed multiple audits and had numerous issues to address, its problems were not wholly uncommon for large volume title insurance agents. *See* Tr. 1368 ("It's quite common for large agents to fail audits because of the volume, the sheer volume."). Premium Title ultimately made improvements addressing Fidelity's concerns. *See* Tr. 1369-1370, 1389 (Donovan); RX 107 at 107.3-.4 (¶¶ 6, 8, 9, 11).

127. In September 2014, Premium Title was removed from the MSAF list. Tr. 1367-68 (Donovan). Premium Title, however, failed the next Fidelity audit, which was conducted by a new auditor, sometime in 2015. Tr. 1390-91 (Donovan).

128. On March 20, 2015, without Respondent's knowledge, a Premium Title employee responsible for eliminating the backlog of dormant balances at Premium

Title, issued a $6,588 check payable to Lenjeswil-–the difference between what Respondent had certified he would pay for recordation taxes in connection with the Property's deed of trust and what was actually paid. Tr. 1409-1410, 1418 (Kebede); DCX 202 at 041, DCX 277; RX 86. As he was not aware of the $6,588 check's issuance, Respondent never prepared a new HUD-1 settlement sheet reflecting that a lower amount of taxes had been paid. Tr. 935, 958-960 (Respondent).

129. On December 22, 2016, the Recorder of Deeds office placed a lien on the Property based on an audit that determined that the purchase money exemption had been improvidently granted. Tr. 372-73 (Williams); DCX 238. The Recorder of Deeds audit had focused on whether money from Mr. Duggan's loan of $1.1 million from the refinancing "was ever used to pay the $450,000 that was claimed as consideration." Tr. 375 (Williams).

130. Respondent first learned about Premium Title's improper exemption claim in November of 2016. Tr. 959 (Respondent). On February 21, 2017, Respondent emailed Mr. Duggan, memorializing their phone conversation about the impropriety of the purchase money exemption claim. DCX 199.

J. Respondent's Productions to Disciplinary Counsel

131. On March 25, 2015, Disciplinary Counsel sent Respondent a letter of inquiry, which attached the Referral and Report of the Auditor-Master. Tr. 601 (Respondent); DCX 157. Respondent responded by letter dated May 15, 2015.

DCX 163. He certified that his response was true and correct to the best of his knowledge. Tr. 605 (Respondent); DCX 163 at 005.[29]

132. Respondent's May 15, 2015 letter identified Lenjeswil (the grantee under the deed), as both the "lender" and the "buyer." DCX 163 at 002 (first paragraph, last sentence: "The lender was the grantee under the Deed and is also referred to herein as the 'buyer'"). Respondent further stated that "the lender," meaning Lenjeswil, "did not record a Substitute Trustee's Deed transferring title to the lender following the foreclosure." DCX 163 at 002 (first paragraph, second sentence). Having also identified Lenjeswil as the buyer, Respondent's letter asserts that "the buyer" loaned money to Mr. Littlejohn and that the $450,000 consideration was based on that loan. DCX 163 at 002 (second paragraph, last sentence). But, again, Lenjeswil never loaned money to Jack Littlejohn. Tr. 611 (Respondent).

133. On March 3, 2016, Disciplinary Counsel subpoenaed records from Respondent. DCX 164. Respondent understood that he was obligated to provide "complete records" as defined in the attachment to Disciplinary Counsel's subpoena. Tr. 613 (Respondent); *see* DCX 164 at 003. "Complete records" included "each and every document and item you and/or your agent provided, obtained, or created associated with the 2461 18th Street property, whether stored electronically or in hard copy . . . ." DCX 164 at 003.

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[29] The letter was signed by Respondent's counsel at the time, Ashley E. Wiggins, Esquire, and the following signed statement by Respondent was attached: "The undersigned hereby certifies to the Office of [Disciplinary] Counsel that the statements in the foregoing response are true and correct to the best of my knowledge." DCX 163 at 005.

134. On March 24, 2016, Respondent sent the entire case file that had been scanned and uploaded by the scanning company Premium Title uses to store their files. DCX 165; Tr. 667-68 (Respondent). The produced file did not include a copy of the $6,588 refund check issued to Lenjeswil in 2015 because of a scanning error made by the scanning company, of which Respondent was unaware until just before the hearing in this matter; the omission was not brought to his staff's attention until 2018. Tr. 957-59 (Respondent); Tr. 1419-1421 (Kebede); Tr. 1431-1451 (Garrison). To comply with the subpoena, Respondent also used an IT vendor to search through his emails. Tr. 956-57, 1047-49 (Respondent). The IT vendor unintentionally missed three emails that contained the 2004 deed and 2003 foreclosure documents, and Disciplinary Counsel has now identified were not produced. Tr. 1047-1050 (Respondent). *Compare* DCX 33, DCX 34, *and* DCX 45, *with* DCX 165, DCX 204, DCX 205, DCX 206, *and* DCX 207. Respondent produced two Disbursement Statements with his March 2016 production, both dated before April 2013. *See* DCX 165 at 303-04, 321-22.

135. Respondent could access Title Express, his escrow accounting software, at any time regarding the status of the Property matter. Tr. 643-44, 691 (Respondent). A "Disbursement Statement" or "History Disbursement Statement" (*see supra* FF 91) from any time after April 2013 would have shown that monies in excess of $7,000 were still being held in connection with the Property transaction. *See* DCX 202 (Respondent's May 2017 Supplemental Statement to Disciplinary Counsel) at 024 (printed after March 2015 refund check issued to Lenjeswil, but

showing (1) the voiding of check 23732 on March 5, 2013, (2) the clearing of check 23763 on April 30, 2013 for an amount $6,525 less than check 23732, and (3) $500 held); DCX 276 ($500 returned to Lenjeswil in 2019). Respondent was advised by counsel at the time not to disburse the $500, however, until the disciplinary matter was resolved. Tr. 691-92 (Respondent). A ledger provided to Disciplinary Counsel showed the $500 that had been held by Premium Title. Tr. 692 (Respondent); *see* DCX 202 at 024. However, it is not uncommon for high-volume settlement companies like Premium Title to carry some dormant balances and to take time to complete the difficult and time-consuming task of resolving potentially long lists of dormant balances in its system. Tr. 1369-1370, 1383-84 (Donovan).

136. Respondent initially did not provide copies of the recorded tax forms for the deed and the DOT to Disciplinary Counsel. *Compare* DCX 165 at 384-88, 398-401 (versions provided without hand-written alterations), *with* DCX 146, *and* DCX 147. Both the recorded tax forms for the deed and the DOT contained hand-written alterations; as to the tax form for the deed, these alterations were made on the same page that Homer Littlejohn signed in December 2012. DCX 146 at 003, DCX 147 at 003. The final page of the FP 7/C Tax form for the deed, signed by Ms. Bien, also contained Homer Littlejohn's signature, dated February 22, 2013. DCX 146 at 004; Tr. 1156 (Puente, notary on the signatures dated February 22, 2013).

137. The FP 7/C tax form for the deed that Respondent provided to Disciplinary Counsel omitted the altered signature page, and the other signature page he provided, which was signed by Ms. Bien and Homer Littlejohn on February 22,

2013, had the reduced tax amounts redacted or obscured, despite Respondent having in his possession a copy with the reduced amounts ($6,525) visible. *See* DCX 165 at 387-88. *Compare* DCX 165 (March 2016 production to Disciplinary Counsel) at 388, *with* DCX 120 at 100 (unsigned copy attached to email from Blackwell to Duggan, copying Respondent, sent February 20, 2013). Ms. Carter, the Premium Title employee who filed the documents with the Recorder of Deeds, *see supra* FF 90-91, testified that she whited out the tax amounts before handwriting in new values for the Recorder of Deeds's office, *see* Tr. 1337-39, 1342 (Carter), and the redactions in DCX 165 are consistent with that testimony. (In contrast, the documents sent to Mr. Duggan, DCX 120 at 100, were not whited out and presumably were not used to make the documents eventually filed with the Recorder of Deeds' office.) Nothing in the record, however, establishes that Respondent was aware that the copy with the reduced amounts ($6,525) had *not* been provided to Disciplinary Counsel.

138. On October 7, 2016, Respondent provided a signed statement, dated October 6, 2016, about his handling of the Property transaction in further response to Disciplinary Counsel. Tr. 764-65; DCX 186 at 002-016. It included an 11-page section entitled "Basic Sequence of Events," which described the history of the Property and Respondent's involvement in settling the transaction, leading up to his decision to change the consideration to $450,000. DCX 186 at 002-012. It also included a section titled "Corroboration as to History as to the Property and the Consideration Paid for It" and attached Exhibits A-L. *Id*. at 013-014, 017.

139. Paragraph 18 of the "Basic Sequence of Events" stated that Respondent contacted Ms. Williams, the Recorder of Deeds, about how he calculated the consideration, and that "based on *this scenario*" she "agreed" his calculation of the consideration was appropriate. DCX 186 at 010 (emphasis added). The preceding 17 paragraphs (a 7-page history of the Property and Respondent's communications with Mr. Duggan), could not, however, have been covered in a two-minute phone conversation. *See supra* FF 72.

140. Ms. Williams previously had communicated with Respondent via email and phone in the past regarding questions of taxability. Tr. 348-49 (Williams); *see also* DCX 204, DCX 207 (Packet C) at 008-009, 013-016, 026-032 (2011 discussion about two sets of recordation and transfer taxes required for trustee's deed involving foreclosure). Ms. Williams did not recall any specific conversation with Respondent about consideration in relation to the Property involved in this disciplinary proceeding. Tr. 354 (Williams). Ms. Williams credibly testified that Respondent's October 2016 statement contained "background information that definitely the recorder's office was not [made] aware of[.]" *See* Tr. 363-66 (Williams) (discussing information found in DCX 186).

141. Respondent's October 2016 submission also included an affidavit signed by Mr. Duggan, which Respondent's former counsel, Roy Kaufmann, Esquire, had assisted in preparing. *See* DCX 186 at 038-041 (Affidavit of Mr. Duggan, signed and notarized on October 6, 2016); Tr. 1533-1542 (Kaufmann). Mr.

Duggan subsequently requested to withdraw certain parts of his declaration. Tr. 1552 (Kaufmann).[30]

142. On April 27, 2017, Disciplinary Counsel sent Respondent another letter of inquiry. DCX 201. It concerned the alteration of the tax form for the DOT and the disparity between what was listed on the HUD-1 for recordation taxes on the DOT and the amount that was actually paid to the D.C. government. *Id*. On June 13, 2017, Disciplinary Counsel advised Respondent's counsel of its concern that it had not yet obtained full compliance with its March 2016 subpoena. Tr. 666-67 (Respondent); *See* DCX 208 at 001. As a result, Respondent had his email archives searched for additional emails that might be responsive. Tr. 668-670 (Respondent); *see also* DCX 203 (June 15, 2017 email from Arthur Burger, former counsel for Respondent, to Assistant Disciplinary Counsel Perry and DeBoer). Respondent retained an IT firm and "provided them the property address, names of relevant parties, just anything that could help them locate and identify e-mails." Tr. 956-57 (Respondent); *see also* Tr. 1048-49 (Respondent).

143. Respondent produced additional materials on July 12, 2017. *See* DCX 204, DCX 205, DCX 206, DCX 207. In his cover letter, Respondent's counsel, Roy L. Kauffman, explained that Respondent had "hired an IT consultant to recover archived emails" and that while "many or most of the emails were previously

[30] Mr. Duggan's repudiation of parts of his declaration occurred after he had worked on at least nine drafts of the declaration with Respondent's prior counsel and after being incredibly angry about how Respondent handled the transaction. *See* Tr. 1536-1553 (Kaufmann), 282-84 (Bianco).

provided, out of an abundance of caution, I enclosed herewith a thumb drive with the email versions thereof in response to the subpoena you issued." DCX 204 at 001. The three files on the produced thumb drive included emails to and from Mr. Duggan or Ms. Williams (or copied to one) concerning the transaction; emails to and from Ms. Parker (Washington), and emails to and from Ms. Williams corroborating Respondent's "common practice of communicating with Ms. Ida Williams." *Id*.

144. Neither of Respondent's document productions in March 2016 or July 2017 contained a copy of (1) the 2004 deed or (2) the 2003 foreclosure materials. *See* DCX 165, DCX 204, DCX 205, DCX 206, DCX 207, despite those materials being attached to at least three emails. *Compare* DCX 33, DCX 34, *and* DCX 45, *with* DCX 165, DCX 204, DCX 205, DCX 206, *and* DCX 207. However, the testimony at the hearing established that these gaps in his production resulted from errors by the two IT vendors Respondent hired to scan and process his documents, one vendor to scan documents and the other to process emails. Tr. 957-59, 1047-50 (Respondent); Tr. 1419-21 (Kebede); Tr. 1431-51 (Garrison); *see also* DCX 204 at 001.

III. CONCLUSIONS OF LAW

Disciplinary Counsel asserts that Respondent's decision to change the consideration on the deed (and corresponding tax form) from zero to $450,000, and his failure to notify the probate attorney, Ms. Washington, "lies at the heart" of this disciplinary case. *See* ODC Br. at 51. Disciplinary Counsel contends that Respondent knowingly altered the consideration and did so, knowing that it would

result in the D.C. Government being paid thousands of dollars less than it was entitled to in transfer and recordation taxes. *Id.* Disciplinary Counsel charges that, as a result, Respondent's conduct violated Rules 8.4(b) and 8.4(c). *Id.* Disciplinary Counsel further charges violations of Rules 8.1(a), 8.1(b), and 8.4(d) based on subsequent events, including Respondent's conduct during Disciplinary Counsel's investigation. *Id.* at 54-57, 58-59. In aggravation of sanction, Disciplinary Counsel alleges that Respondent gave false testimony during the hearing. *Id.* at 59-62.

In contrast, Respondent responds that while "it would have been preferable" to inform Ms. Washington of the change in the deed and tax form, he was acting in good faith in correcting the amount of consideration based on his understanding of District of Columbia law and facts communicated to him by Mr. Duggan, and that he did not intend to defraud the District of Columbia. Resp. Br. at 13-14. Respondent explains his failure to obtain approval from Ms. Washington to change the deed and forms was the result of his good faith belief that Homer Littlejohn had authorized the change and any failure to contact Ms. Washington about the change was "the result of an oversight." *Id*. at 13. Respondent further denies any misconduct during subsequent events and the investigation and denies that he testified falsely before this Hearing Committee. *Id.* at 8-11, 20-21, 39 (Appendix ¶ 176), 40 (Appendix ¶ 179).

The Hearing Committee finds that Respondent violated Rules 8.4(c) by disregarding his obligation to file accurate, non-altered, documents with the Recorder of Deeds. As a result of his dishonesty, Respondent also violated Rule

8.4(d) because the filing of the altered deed and tax forms seriously interfered with the administration of justice by delaying Ms. Washington's ability to close the Littlejohn Estate, causing a referral to the auditing branch manager, and resulting in a hearing before the Auditor-Master of the D.C. Superior Court Probate Division where both Ms. Washington and Homer Littlejohn were ordered to attend and provide sworn testimony. As explained below, we also find that Respondent violated Rule 8.1(a) but not Rule 8.1(b) in connection with his conduct during the disciplinary investigation.

For the Rule 8.4(b) charge, however, the Hearing Committee finds insufficient evidence to prove an intent to defraud (a necessary element of D.C. Code § 22-3241); specifically, the evidence is not clear and convincing that Respondent knew that his modification of the consideration amount was inappropriate or inconsistent with the D.C. Code's definition of "consideration." Without such evidence, Disciplinary Counsel failed to clearly and convincingly establish that Respondent intended to deprive the District of Columbia of tax revenue to which it was entitled.

A. Disciplinary Counsel Did Prove that Respondent Violated Rule 8.1(a) by Knowingly Making a False Statement of Fact in the Disciplinary Investigation.

Rule 8.1(a) provides that "a lawyer . . . in connection with a disciplinary matter, shall not . . . knowingly make a false statement of fact[.]" The Rule requires Disciplinary Counsel to prove by clear and convincing evidence that Respondent "knowingly" made a false statement. The Terminology section of the Rules defines "knowingly" as "actual knowledge of the fact in question" which "may be inferred

from the circumstances." Rule 1.0(f). Note that Comment [1] to Rule 8.1 provides that "it is a separate professional offense for a lawyer knowingly to make a misrepresentation or omission in connection with a disciplinary investigation of the lawyer's own conduct." Moreover, the "[l]ack of materiality does not excuse a knowingly false statement of fact." Rule 8.1 cmt. [1].

Here, Disciplinary Counsel alleges that Respondent violated Rule 8.1(a) on two occasions. First, Disciplinary Counsel argues that Respondent falsely asserted in his May 2015 letter to Disciplinary Counsel (DCX 163 at 001-005) that Lenjeswil had provided a loan to Jack Littlejohn and had foreclosed on the Property. ODC Br. at 55. In Disciplinary Counsel's view, this statement is plainly false because Lenjeswil was created in 2012 and therefore could not possibly have provided a loan to Jack Littlejohn before he passed or foreclosed on the Property before. *Id.*; *see also* DCX 163 at 002 ("The lender was the grantee under the Deed and is also referred to herein as the 'buyer.'"). Second, Disciplinary Counsel argues that Respondent violated Rule 8.1(a) when he represented in his 2016 response to Disciplinary Counsel (DCX 186) that Ms. Williams, the Recorder of Deeds, had "agreed" that his calculation of $450,000 consideration was appropriate. ODC Br. at 56. Disciplinary Counsel focuses on Respondent's written statement that "Ms. Williams agreed that, based on *this scenario*, the calculation of the consideration was appropriate." DCX 186 at 10 (¶ 18) (emphasis added). Disciplinary Counsel claims that by stating that Ms. Williams understood the "scenario," Respondent knowingly and falsely asserted to Disciplinary Counsel that Ms. Williams' assent to

his calculation of consideration was based on a detailed, factual understanding of the underlying real estate transaction. ODC Br at 56; *see also* ODC Reply at 10.

Respondent denies any violation of Rule 8.1(a). First, he claims that his description of Lenjeswil as participating in events that clearly pre-date its existence was neither false nor knowingly false. Resp. Br. at 8-9. Respondent claims that he was imputing conduct of the "original lenders" to Lenjeswil because, as the assignee of the notes, Lenjewsil "stepped into the shoes" of the prior note holders and, therefore, was properly identified in Respondent's letter as the "lender" that made a loan to Jack Littlejohn. *Id.* at 8-9. We are not persuaded by this argument. Respondent knew that Lenjeswil had been only recently created as a vehicle for refinancing a loan and his lack of disclosure to Disciplinary Counsel was a knowing misrepresentation in connection with Disciplinary Counsel's investigation into his matter. Respondent never included in his statement the argument (or qualification) that Lenjeswil "stood in the shoes" of Coles Farm or the 2461 Corporation, and, in fact, neither Coles Farm nor the 2461 Corporation were mentioned in the letter. Respondent also did not reference the existence of any assignments or releases related to the transaction. As noted by Disciplinary Counsel, Respondent falsely stated that Lenjeswil had unsuccessfully attempted to foreclose on the property, thereby necessitating the deed in lieu of foreclosure. *See* ODC Reply at 9; DCX 163 at 002 ("[T]he lender did not record a Substitute Trustee's Deed transferring title to the lender following the foreclosure."). On its face, Respondent's May 2015 response to Disciplinary Counsel was knowingly false and deliberately misleading.

Second, Respondent denies he knowingly made a false statement to Disciplinary Counsel in violation of Rule 8.1(a) by making the following assertion in his October 2016 Statement: "Ms. Williams agreed that, based on this scenario, the calculation of the consideration was appropriate." DCX 186 at 010 (¶ 18 of "Basic Sequence of Events"). Respondent argues that his "theory for calculating consideration for a deed in lieu of foreclosure could easily be covered in a brief phone call." Resp. Br. at 10.

We, however, find that this second alleged violation of Rule 8.1(a) is also supported by clear and convincing evidence. Ms. Williams, herself, credibly testified that "the recorder's office was not aware of" the relevant context of how Respondent calculated the consideration. *See* Tr. 363-66 (Williams). Additionally, we find that a roughly two-minute call would not have adequately described Respondent's methodology for calculating the consideration in this matter. The duration of the call could not have provided Ms. Williams with a reasonable understanding of the underlying 16-year history of the Property which included the two incomplete foreclosures in 1996 and 2003, the fact that the $350,000 1996 Note also included a $70,000 prior loan and a $10,000 reimbursement for closing costs, the unclear record of what remained to be paid on the 1996 Note, or the unrecorded informal assignments. Further, we agree with Disciplinary Counsel that Respondent's claim that Ms. Williams approved the consideration amount under "this scenario" in paragraph 18 of his October 2016 Statement was both deliberately misleading and false, as it was made after 17 preceding paragraphs which provided

specific details (covering more than 7 pages of text) which were not provided to Ms. Williams.

On these facts, the Hearing Committee finds that Respondent knowingly made a false statement of fact in these two responses to Disciplinary Counsel during the investigation. Accordingly, Disciplinary Counsel has proven a violation of Rule 8.1(a) by clear and convincing evidence.

B. Disciplinary Counsel Did Not Prove that Respondent Violated Rule 8.1(b) by Failing to Respond to Disciplinary Counsel.

Rule 8.1(b) provides that "a lawyer . . . in connection with a disciplinary matter, shall not . . . [f]ail to disclose a fact necessary to correct a misapprehension known by the lawyer . . . to have arisen in the matter, or knowingly fail to respond reasonably to a lawful demand for information from . . . [a] disciplinary authority . . . ." Thus, a knowing failure to respond to a request from Disciplinary Counsel regarding an ethical complaint constitutes a violation of Rule 8.1(b). *See, e.g.*, *In re Lea*, 969 A.2d 881, 888 (D.C. 2009). "Rule 8.1(b) specifically addresses the requirement of responding to [Disciplinary] Counsel as opposed to the more general requirements of Rule 8.4(d)." *In re Rivlin*, Bar Docket Nos. 436-96 et al., at 38 n.20 (BPR Oct. 28, 2002), recommendation adopted on other grounds, 856 A.2d 1086 (D.C. 2004).

Disciplinary Counsel contends that Respondent violated Rule 8.1(b) when, in his March 2016 production of documents, he knowingly failed to "provide the altered signature page of the deed tax form showing that numbers had been crossed out and reduced." ODC Br. at 56 (Disciplinary Counsel also suggests that in his

May 2015 letter, Respondent "made no mention of any change to a tax form— only the deed." *Id.* at 56-57.) Disciplinary Counsel views Respondent's failure to produce and disclose the revised tax form as a knowing failure to respond reasonably to a lawful demand for information.

Respondent, however, has explained that he could not have provided the altered signature page of the deed tax form because he did not have a copy to produce. *See* Resp. Br. at 11. Respondent further points to numerous documents in his production that included the tax forms incorporating the revised $450,000 consideration amount. *Id.* (citing DCX 165 at 4, 58, 96, 386, 396); *see also* DCX 165 at 384. We find that Disciplinary Counsel has failed to adduce sufficient evidence to prove this charge. Respondent's failure to produce the revised tax form is reasonably explained by the fact he did not have one to produce. *See* FF 91, 98.

Disciplinary Counsel's second basis for this Rule 8.1(b) charge is similarly unsupported by clear and convincing evidence. Respondent's May 15, 2015 letter, *see* DCX 163, was a response to a March 25, 2015 letter from Disciplinary Counsel, DCX 157. Disciplinary Counsel's letter requested that Respondent provide a "substantive, written response . . . to each allegation of misconduct" in the attached materials. DCX 157 at 001-002. Attached to Disciplinary Counsel's letter was a "Referral to Bar Counsel" that appears to recite the relevant allegations. DCX 157 at 003. That referral letter from the Office of the Auditor-Master alleged that Respondent was potentially culpable for acts related to "the recording of a deed" and asserted that "information" received by the Superior Court "shows that

[Respondent]'s office changed the deed and never contacted counsel for the personal representative" of the Littlejohn Estate. *Id.* The referral letter alleged that the deed might be a "forgery." *Id.*

Respondent was on notice that Disciplinary Counsel expected "a written response . . . to each allegation" and we believe that it was reasonable and appropriate for Respondent's response to focus on the facts related to the deed. *See* DCX 157. Accordingly, the Hearing Committee finds that Respondent's May 15, 2015 letter in response understandably focused on the deed, and not the tax forms, because the allegations appended to Disciplinary Counsel's letter only concerned the deed. *See* DCX 157; DCX 163. At such an early point in the disciplinary investigation, it was not clear that Respondent should have included information about the tax forms in his response.

Accordingly, Disciplinary Counsel has not proven a violation of Rule 8.1(b) by clear and convincing evidence.

C. Disciplinary Counsel Did Not Prove that Respondent Violated Rule 8.4(b) (Criminal Act) Because It Did Not Prove an Intent to Defraud, a Necessary Element of D.C. Code § 22-3241.

Under Rule 8.4(b), "[i]t is professional misconduct for a lawyer to . . . [c]ommit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects." Thus, "an attorney may be disciplined for having engaged in conduct that constitutes a criminal act." *In re Slattery*, 767 A.2d 203, 207 (D.C. 2001). "[A] respondent does not have to be charged criminally or convicted to violate the rule. . . . It is sufficient if his conduct

violated a criminal statute and the crime reflects adversely on his honesty, trustworthiness, or fitness." *In re Silva*, 29 A.3d 924, 937 (D.C. 2011) (appended Board Report) (citing *Slattery*, 767 A.2d at 207; *In re Pierson*, 690 A.2d 941 (D.C. 1997); *In re Gil*, 656 A.2d 303 (D.C. 1995)). Not all criminal conduct violates Rule 8.4(b); rather, "the rule is designed to professionally sanction only those criminal acts that implicate and call into question the fundamental characteristics we wish attorneys to possess." *In re Harkins*, 899 A.2d 755, 759 (D.C. 2006). To establish a Rule 8.4(b) violation, Disciplinary Counsel must identify and establish the elements of the alleged criminal offense. *See Slattery*, 767 A.2d at 212-13.

Here, Disciplinary Counsel has charged Respondent with forgery in violation of D.C. Code § 22-3241. Under the Court's ruling in *Gil*, the Committee may look to the law of any jurisdiction that could have prosecuted Respondent for the misconduct to determine whether the lawyer's conduct is a "criminal act" under Rule 8.4(b). 656 A.2d at 305.

D.C. Code § 22-3241 (emphasis added) provides that:

> (a) For the purposes of this subchapter, the term:
> (1) "Forged written instrument" means any written instrument that purports to be genuine but which is not because it:
> (A) Has been falsely made, altered, signed, or endorsed;
> (B) Contains a false addition or insertion; or
> (C) Is a combination of parts of 2 or more genuine written instruments.
> (2) "Utter" means to issue, authenticate, transfer, publish, sell, deliver, transmit, present, display, use, or certify.
> (3) "Written instrument" includes, but is not limited to, any:
> (A) Security, bill of lading, document of title, draft, check, certificate of deposit, and letter of credit, as defined in Title 28;

(B) Stamp, legal tender, or other obligation of any domestic or foreign governmental entity;
(C) Stock certificate, money order, money order blank, traveler's check, evidence of indebtedness, certificate of interest or participation in any profitsharing agreement, transferable share, investment contract, voting trust certificate, certification of interest in any tangible or intangible property, and any certificate or receipt for or warrant or right to subscribe to or purchase any of the foregoing items;
(D) Commercial paper or document, or any other commercial instrument containing written or printed matter or the equivalent; or
(E) Other instrument commonly known as a security or so defined by an Act of Congress or a provision of the District of Columbia Official Code.

(b) A person commits the offense of forgery if that person makes, draws, or utters a forged written instrument *with intent to defraud or injure another*.

Disciplinary Counsel has the burden of establishing by clear and convincing evidence that Respondent committed an act which violates the elements of the forgery statute. *See* Board Rule 11.6. Disciplinary Counsel argues that Respondent committed four acts of forgery (directing the alteration of notarized deed and corresponding tax form and then causing the two documents to be filed with the Recorder of Deeds), and in doing so, violated both Rules 8.4(b) and 8.4(c). *See* ODC Br. at 52 (citing *Silva*, 29 A.3d at 938 n.20 (appended Board Report)). Disciplinary Counsel acknowledges that an "intent to defraud" is an element of D.C. Code § 22-3241 and that it has the burden of establishing Respondent's fraudulent intent. *See* ODC Br. at 52-54.

Here, the record establishes, and Respondent admits, that Respondent was responsible for filing a deed with the District of Columbia's Recorder of Deeds that had been altered after it had been signed and notarized by Homer Littlejohn and Ms. Washington. *See* FF 74-76, 100-102. The Hearing Committee finds that Respondent's filing of the altered documents without Ms. Washington's consent constitutes making, drawing, or uttering a forged written instrument.[31]

Forgery in the District of Columbia, however, also requires a *mens rea*, and specifically a finding of "intent to defraud or injure another." *See* D.C. Code § 22-3241(b). Disciplinary Counsel contends that evidence of Respondent's knowledge that appeasing Mr. Duggan by increasing the consideration and thus lowering Mr. Duggan's tax liability would fraudulently deprive the District of Columbia of its due taxable revenue proves Respondent's intent. ODC Br. at 53-54. Disciplinary Counsel cites circumstantial evidence including Respondent's apparent failure to document his consideration calculations and Respondent's alleged pattern of "constantly changing, false explanations for his conduct" as additional evidence of intent. *Id.* at 54. Further, Disciplinary Counsel contends that, because Lenjeswil was a new corporation, Respondent must have known that it "held no interest in the Property" and "did not provide the estate any consideration." *Id*.

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[31] Respondent argues that Disciplinary Counsel failed to prove that Respondent lacked authority to file the altered deed and papers because there was evidence that Mr. Littlejohn had given verbal assent to the changes. Resp. Br. at 12-13. The Hearing Committee finds that Disciplinary Counsel has shown by clear and convincing evidence that Respondent lacked authority to file the altered documents because Respondent failed to notify the Littlejohn Estate's attorney (Ms. Washington). FF 74, 100-102.

Respondent's response is straightforward: that he "did not intend to defraud the District [of Columbia]" and "[c]orrecting the deed and tax form with the actual consideration cannot form the basis of forgery." Resp. Br. at 13-14.

The Hearing Committee finds insufficient evidence to find that Respondent intended to defraud or injure the District of Columbia when he filed the altered deed and tax form. There is a high bar to prove intent to defraud; and here, Disciplinary Counsel had to establish Respondent's specific intent to defraud or injure the D.C. government, which is a higher burden than showing a knowing or reckless disregard of the truth. *See, e.g.*, *Johnson v. District of Columbia*, 144 A.3d 1120, 1125 (D.C. 2016). "An intent to deceive or cheat is not to be presumed from the mere making of a false instrument." Criminal Jury Instructions for the District of Columbia, No. 5.210 (Forgery and Uttering, D.C. Code § 22-3241) (5th ed. 2020). We credit Respondent's testimony that he believed that calculating $450,000 as the consideration was not inconsistent with D.C. Code § 42-1101.[32]

Our evaluation of Respondent's good faith was influenced by the fact that neither expert was able to clearly articulate how the District of Columbia's definition of "consideration," pursuant to D.C. Code § 42-1101, is understood and applied by

[32] The Hearing Committee finds that Respondent's reliance on a "guesstimate" of Mr. Duggan's expenses ultimately resulted in an inaccurate calculation of the consideration. However, an inaccurate calculation does not establish an intent to defraud. We find that Respondent had a good faith belief that his estimation of the consideration was appropriate under the D.C. Code.

legal professionals in the relevant field.[33] Ultimately, Mr. Kass provided what appears to be an intuitive method for determining consideration for a deed in lieu of foreclosure: "[T]he consideration is still what the benefit is to the property owner, and that is the forgiveness of the note." Tr. 579 (Kass).[34] However, there is insufficient evidence to find that this method is the *only* way to calculate consideration under D.C. Code § 42-1101. At the same time, the Hearing Committee agrees with Respondent that there is also insufficient evidence to find that Respondent's method of reaching $450,000 of consideration for the Property was improper under D.C. Code § 42-1101. Without that determination, it cannot be found that Respondent intended to defraud or injure the District of Columbia by depriving it of tax revenue.

Accordingly, Disciplinary Counsel has not proven a violation of Rule 8.4(b) by the crime of forgery as defined in D.C. Code § 22-3241 by clear and convincing evidence.

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[33] Both experts came across as candid and forthcoming with their expert opinions. Neither expert appeared evasive or unreliable. Together, though, their testimony left the Hearing Committee under the impression that "consideration" as defined under D.C. Code § 42-1101 appears to be unsettled for complicated real estate transactions.

[34] While we recognize that in 2012, the balance due on the Three Defaulted Notes may not have been $450,000, as explained by Mr. Bregman, that calculation would be next to impossible to calculate given the amount of time that had passed and the fact that the records from Perpetual Bank, the original lender of at least the $205,000 loan from 1989 (*see* FF 8), no longer exist. Tr. 1664-67 (Bregman).

D. Disciplinary Counsel Proved that Respondent Violated Rule 8.4(c) by Engaging in Conduct Involving Dishonesty, Fraud, Deceit, and Misrepresentation.

Disciplinary Counsel charges Respondent with engaging in conduct involving dishonesty, fraud, deceit, and misrepresentation in violation of Rule 8.4(c). The Court has held that each of these terms encompassed within Rule 8.4(c) "should be understood as separate categories, denoting differences in meaning or degree." *In re Shorter*, 570 A.2d 760, 767 (D.C. 1990) (per curiam). Each category requires proof of different elements. *See In re Romansky*, 825 A.2d 311, 315 (D.C. 2003).

Dishonesty is the most general of these categories. It includes "not only fraudulent, deceitful or misrepresentative conduct, but also 'conduct evincing a lack of honesty, probity or integrity in principle; a lack of fairness and straightforwardness.'" *In re Samad*, 51 A.3d 486, 496 (D.C. 2012) (per curiam) (quoting *In re Shorter*, 570 A.2d at 767-68). The Court holds lawyers to a "high standard of honesty, no matter what role the lawyer is filling," *In re Jackson*, 650 A.2d 675, 677 (D.C. 1994) (per curiam) (appended Board Report), because "[l]awyers have a greater duty than ordinary citizens to be scrupulously honest at all times, for honesty is 'basic' to the practice of law," *In re Hutchinson*, 534 A.2d 919, 924 (D.C. 1987) (en banc).

Dishonesty in violation of Rule 8.4(c) does not require proof of deceptive or fraudulent intent. *See In re Romansky*, 825 A.2d at 315. If the conduct is "obviously wrongful and intentionally done, the performing of the act itself is sufficient to show the requisite intent for a violation." *Id.* Conversely, "when the act itself is not of a

kind that is clearly wrongful, or not intentional, [Disciplinary] Counsel has the additional burden of showing the requisite dishonest intent." *Id.* Dishonest intent can be established by proof of recklessness. *See id.* at 315-17. To prove recklessness, Disciplinary Counsel must establish by clear and convincing evidence that the respondent "consciously disregarded the risk" created by his actions. *Id.* at 316-17; *see, e.g.*, *In re Boykins*, 999 A.2d 166, 171-72 (D.C. 2010) (finding reckless dishonesty where the respondent falsely represented to Disciplinary Counsel that medical provider bills had been paid, without attempting to verify his memory of events from more than four years prior, and despite the fact that he had recently received notice of non-payment from one of the providers). The entire context of the respondent's actions, including his or her credibility at the hearing, is relevant to a determination of intent. *See In re Ekekwe-Kauffman*, 210 A.3d 775, 796-97 (D.C. 2019) (per curiam).

Fraud is defined in Rule 1.0 as "conduct that is fraudulent under the substantive or procedural law of the applicable jurisdiction and has a purpose to deceive." Rule 1.0(d). The Court has held that fraud "embraces all the multifarious means . . . resorted to by one individual to gain an advantage over another by false suggestions or by suppression of the truth." *Shorter*, 570 A.2d at 767 n.12 (citation omitted). Fraud requires a showing of intent to deceive or to defraud. *See Romansky*, 825 A.2d at 315; *In re Hutchinson*, 534 A.2d at 923 (finding no violation of Rule 8.4(c) where the respondent committed misdemeanor violation of Securities

Exchange Act of 1934 and crime did not require proof of specific intent to defraud or deceive).

Deceit is the "suppression of a fact by one who is bound to disclose it, or who gives information of other facts which are likely to mislead . . . ." *Shorter*, 570 A.2d at 767 n.12 (citation omitted). To establish deceit, the respondent must have knowledge of the falsity, but it is not necessary that the respondent have intent to deceive or defraud. *In re Schneider*, 553 A.2d 206, 209 (D.C. 1989) (finding deceit where attorney submitted false travel expense forms but did not intend to deceive the client or law firm and there was no personal gain); *see also Shorter*, 570 A.2d at 767 n.12.

Misrepresentation is a "statement . . . that a thing is in fact a particular way, when it is not so." *Shorter*, 570 A.2d at 767 n.12 (citation omitted); *see also Schneider*, 553 A.2d at 209 n.8 (misrepresentation is element of deceit). The failure to disclose a material fact also constitutes a misrepresentation. *In re Outlaw*, 917 A.2d 684, 688 (D.C. 2007) (per curiam) ("Concealment or suppression of a material fact is as fraudulent as a positive direct misrepresentation.") (citations omitted); *see, e.g.*, *In re Scanio*, 919 A.2d 1137, 1139-1141, 1142-44 (D.C. 2007) (respondent failed to disclose that he was salaried employee when he made a claim for lost income to insurance company measured by lost hours multiplied by billing rate). Disciplinary Counsel does not need to establish that a respondent acted with "deliberateness" in making a misrepresentation in order to prove a violation of Rule 8.4(c). *In re Rosen*, 570 A.2d 728, 728-730 (D.C. 1989) (per curiam). Rather, as

with dishonesty, establishing a violation of Rule 8.4(c) based on a misrepresentation only requires proof that the respondent "acted in reckless disregard of the truth." *Id.* (finding material misrepresentation in bar application where the respondent acted in reckless disregard of the truth).

Disciplinary Counsel alleges that Respondent violated Rule 8.4(c) by changing the consideration amount on the deed and tax forms before filing them with the Recorder of Deeds without obtaining Homer Littlejohn's, Ms. Washington's, and Ms. Brooks' (the notary) consents. ODC Br. at 51-54. Disciplinary Counsel succinctly asserts, "creation of the false documents and passing them off as originals nevertheless violated Rule 8.4(c)." ODC Reply at 13 n.4. According to Disciplinary Counsel, "Respondent chose a consideration amount that was above nominal and utilized false documents to satisfy a business client with whom he had another pending transaction." ODC Br. at 54.

The record shows that Respondent violated Rule 8.4(c) when he failed to obtain proper authorization to file the altered deed and tax forms. FF 74. When an attorney is in receipt of signed and notarized documents, like a deed and related tax forms, making alterations without proper authorization demonstrates dishonesty in violation of Rule 8.4(c). Respondent did not have the documents re-executed but, instead, directed that the alterations be made without probate counsel's or the notary's knowledge. It is undisputed that the changes to the deed and tax form were not obvious to the Recorder of Deeds; no reviewer of the legal documents would have been able to detect that they were not the original signed and notarized deed

and tax form. Any licensed attorney understands that such conduct is "obviously wrongful." *Romansky*, 825 A.2d at 315. As the Court explained in *Romansky*, if the conduct is "obviously wrong and intentionally done, the performing of the act itself is sufficient to show the requisite intent for a [Rule 8.4(c)] violation." *Id.* Respondent intentionally filed documents that purported to be something which they were not. The altering of legal documents and treating them as originals violates Rule 8.4(c). *See also In re Reback*, 513 A.2d 226, 229-231 (D.C. 1986) (en banc).

Even if directing the alteration of a previously signed and notarized legal document and causing the altered deed and tax form to be recorded were not so "obviously wrongful," *Romansky*, 825 A.2d at 315, Respondent was additionally dishonest in his dealings with Ms. Washington. He put Ms. Washington in a precarious position before the probate court and potentially caused problems for her client by making it appear that the estate owed unpaid taxes for $450,000 in consideration it had purportedly received. His explanation to the Hearing Committee that he assumed non-legal staff had reached out to Ms. Washington and his after-the-fact justification for not re-executing the documents (that Homer Littlejohn was impossibly difficult to reach), reinforces our view that Respondent consciously disregarded the risk that the alterations would prejudice Homer Littlejohn and Ms. Washington. Establishing a violation of Rule 8.4(c) based on dishonesty or misrepresentation only requires proof that the respondent "acted in reckless disregard of the truth." *In re Rosen*, 570 A.2d at 728-730; *see In re Lattimer*, 223 A.3d 437, 451 (D.C. 2020) (per curiam).

Disciplinary Counsel advances a second basis to find that Respondent violated Rule 8.4(c); Disciplinary Counsel asserts that Respondent violated Rule 8.4(c) by certifying he would pay the appropriate recordation taxes in connection with the deed of trust, and otherwise disburse all funds related to the refinancing of the Property, and failing to do so. ODC Br. at 57. ODC argues that it was recklessly dishonest for Respondent to sign the HUD-1 certification when he knew Premium Title was having "problems managing dormant funds." *Id*. We find this argument less persuasive.

The facts show that the "purchase money exemption" had been erroneously applied and monies had therefore been erroneously withheld as dormant funds. FF 91, 95, 129; *see also* Resp. Br. at 19 (admitting that the Recorder of Deeds mistakenly applied the purchase money exemption). It is undisputed that Premium Title was subject to multiple audits, several of which Premium Title failed or was notified of non-trivial problems concerning its dormant balances. However, Ms. Donovan, an agency representative for Fidelity, convincingly explained that title companies like Premium Title commonly fail their audits because of the sheer volume of their work. *See* FF 126. Had Respondent been more diligent in his role of settlement agent, his staff's erroneous application of the purchase money exemption perhaps may have been discovered sooner, but we note that Disciplinary Counsel did not charge violations of Rule 1.3(a) (diligence and zeal) or Rule 5.3(b) (reasonable efforts in supervising non-lawyer staff). While we certainly do not endorse the delinquent return of dormant funds, Respondent did not violate Rule

8.4(c) in his review and disbursement of Premium Title's dormant funds. We do not have before us clear and convincing evidence to find that Respondent's failure to notice either the dormant balances or the mistaken application of the purchase money exemption constitutes dishonesty, fraud, deceit, or misrepresentation in violation of Rule 8.4(c).

E. Disciplinary Counsel Proved that Respondent Violated Rule 8.4(d) by Engaging in Conduct that Seriously Interfered with the Administration of Justice.

Rule 8.4(d) provides that it is professional misconduct for a lawyer to "[e]ngage in conduct that seriously interferes with the administration of justice." To establish a violation of Rule 8.4(d), Disciplinary Counsel must demonstrate by clear and convincing evidence that: (i) Respondent's conduct was improper, *i.e.*, that Respondent either acted or failed to act when he should have; (ii) Respondent's conduct bore directly upon the judicial process with respect to an identifiable case or tribunal; and (iii) Respondent's conduct 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).

Here, the Hearing Committee agrees with Disciplinary Counsel that Respondent violated Rule 8.4(d) when he changed the consideration amount on the deed and tax forms without telling Ms. Washington, the Littlejohn Estate's attorney. Respondent was aware that Ms. Washington had been hired to reopen the Littlejohn Estate for the purpose of changing the title to the Property and was responsible for subsequently closing the estate. Respondent's conduct, specifically changing the

consideration to $450,000 on the deed and tax form, extended the probate proceedings and affected the judicial process to a serious and adverse degree. The Probate Division of the D.C. Superior Court was forced to expend its time and resources to figure out whether the Littlejohn Estate had violated any laws, including fraud, resulting from the change in consideration; which led to letter exchanges, a summary hearing that included an auditing branch manager, which Ms. Washington attended, and a separate hearing before the Auditor-Master where Homer Littlejohn and Ms. Washington were ordered to attend. Both Homer Littlejohn and Ms. Washington had to defend the Littlejohn Estate from the appearance of impropriety and possible fraud based on the altered consideration amount—which suggested that the estate had received a previously undisclosed $450,000 for the Property.

The Hearing Committee is unpersuaded by Respondent's argument that his conduct was merely "mistake born of momentary inattention," and therefore failed to arise to a Rule 8.4(d) violation. Resp. Br. at 21 (citing *In re Hallmark*, 831 A.2d 366, 375 (D.C. 2003) (internal quotation and additional citation omitted). The misconduct in this matter is clearly much more egregious than the filing of an untimely and inaccurate CJA voucher in *Hallmark*, *see* 831 A.2d at 374, and is more similar to those cases that reflect an "intentional disregard for the effect that an action may have on judicial proceedings." *Id.* at 375 (citing *In re Goffe*, 641 A.2d 458, 459 (D.C. 1994) (per curiam) (respondent's fabrication and alteration of evidence found to have seriously and adversely impacted the judicial process); *In re Sandground*, 542 A.2d 1242 (D.C. 1988) (per curiam) (respondent's assistance in the concealing

of assets violates Rule 8.4(d)); *Reback*, 513 A.2d 226 (forging client's signature on complaint seriously interferes with the administration of justice)).

Accordingly, Disciplinary Counsel has proven a violation of Rule 8.4(d) by clear and convincing evidence.

IV. RECOMMENDED SANCTION

In this case, Disciplinary Counsel has asked the Hearing Committee to recommend the sanction of disbarment. ODC Br. at 59. Respondent has requested that the Hearing Committee exonerate him of all the charges so no sanction would be warranted. In the alternative, Respondent recommends a limited sanction ranging from an informal admonition to a public censure. *See* Resp. Br. at 23-24. Respondent argues that comparable cases involving more serious conduct have sanctions ranging from a public censure to a six-month suspension. *Id*.

For the reasons described below, we recommend the sanction of a six-month suspension from the practice of law in the District of Columbia.

A. Standard of Review

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 at 924; *In re Martin*, 67 A.3d 1032, 1053 (D.C. 2013); *Cater*, 887 A.2d at 17. "In all cases, [the] purpose in imposing discipline is to serve the public and professional interests . . . rather than

to visit punishment upon an attorney." *Reback*, 513 A.2d at 231 (citations omitted); *see also Goffe*, 641 A.2d at 464.

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 seriousness of the conduct at issue; (2) the prejudice, if any, to the client which resulted from the conduct; (3) whether the conduct involved dishonesty; (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)).

B. Application of the Sanction Factors

1. Seriousness of the Misconduct

Respondent's misconduct was serious. Even if his calculation of consideration was correct—or not illegal—filing documents with notarized signatures of individuals that had never approved the substance of the filed document is serious misconduct. Deeds, tax forms, and other financial instruments can have

significant implications on all parties, especially if they have signed and notarized their assent to the terms and conditions therein.

2. Prejudice to the Client

Respondent's conduct did not prejudice a client, *per se*, as he represents the transaction and does not have a client in this matter. However, Respondent's conduct had the potential to prejudice parties to the transaction as well as the District of Columbia. Indeed, the Hearing Committee finds prejudice to the Littlejohn Estate and Ms. Washington. Finally, we emphasize that the judicial process itself was prejudiced by the filing of false documents that appeared to be properly notarized and signed. As explained by the Court of Appeals in *Reback*: "By placing before the Superior Court a falsely signed, notarized and filed pleading, respondent[] violated the processes of justice." 513 A.2d at 232.

3. Dishonesty

The Hearing Committee has found that Respondent engaged in dishonesty in violation of Rule 8.4(c). Respondent consciously and consistently disregarded the risks created by his action in directing the altering of signed and notarized documents. He decided to revise a material term of a deed—the consideration—that he knew had significant implications on tax liability for the parties to the deed and the revenue collected by the District of Columbia. In less than 24 hours, and after speaking with Mr. Duggan—a self-interested non-attorney—and having a superficial "CYA" conversation with Ms. Williams, Respondent directed his staff to change the amount of consideration on the notarized deed and tax forms. He never

consulted with Ms. Washington or Mr. Bianco to discuss this significant change. Further, even after making this decision, he did not subsequently inform Ms. Washington that he had made these changes and interfered with her representation of Homer Littlejohn, who he knew was still represented by Ms. Washington. The Hearing Committee finds that Respondent's $450,000 figure was inaccurate—a fact which he could have realized if he had more carefully reviewed the documents in his possession. While we have found that he lacked an intent to defraud and that he did not intentionally testify falsely, his dishonesty in violation of Rule 8.4(c) and his knowing false statements to Disciplinary Counsel in violation of 8.1(a) warrant a lengthy suspension.

4. Violations of Other Disciplinary Rules

Respondent violated Rule 8.4(d), by seriously interfering with the administration of justice in that his conduct caused significant delay, expense, and confusion as the Littlejohn Estate attempted to close after the transaction had been completed. Respondent's filing of altered legal documents was undertaken with an intentional disregard of their effect on the judicial process.

5. Previous Disciplinary History

In 2004, Respondent was publicly censured in the District of Columbia as reciprocal discipline for Respondent's unauthorized practice of law in Maryland. *In re Soto*, 840 A.2d 1291 (D.C. 2004) (per curiam). Respondent's public censure resulted from his signing instruments affecting title to real property in Maryland without being admitted to practice before the Court of Appeals of Maryland. *In re*

Soto, Bar Docket No. 107-00, at 3 (BPR July 17, 2003). Specifically, by signing the instruments, Respondent certified that the instrument was "prepared by or under the supervision of the undesigned [(Respondent)], an attorney *duly admitted to practice before the Court of Appeals of Maryland*." *Id*. (emphasis added). To his credit, in that matter, Respondent acknowledged that he engaged in the unauthorized practice of law in violation of the Maryland Rules of Professional Conduct. *Id.* at 3-4. However, the Hearing Committee notes that the conduct at issue in this matter *also* relates to the propriety of signed real estate documents, which suggests that Respondent's prior experience, and relatively minor sanction, did not inspire Respondent to conform his conduct and business practices to better conform with Rules of Professional Conduct.

6. Acknowledgement of Wrongful Conduct or Lack of Remorse

Given Respondent's denial that he violated the Rules, Respondent has not meaningfully acknowledged any wrongful conduct. Respondent's very limited expression of remorse is for his failure to obtain Ms. Washington's approval of the revisions made to the deed and tax forms after they had been signed and notarized and before they were filed with the Recorder of Deeds. He, however, surprisingly fails to even acknowledge how his recording of the altered legal documents interfered with the judicial process and prejudiced Ms. Washington and Homer Littlejohn. *See* Resp. Br. at 20-21.

7. Other Circumstances in Aggravation and Mitigation

As discussed above, Disciplinary Counsel asserted that Respondent's false testimony before the Hearing Committee is an aggravating factor, but we have determined that there is not clear and convincing evidence to support this claim. *See supra* n.22. Although we may not agree that Respondent's calculation of the amount of consideration was accurate, we do not find that he intentionally testified falsely. We credit his testimony concerning what he was told regarding the assignments and his explanation of why he obtained releases to satisfy the insurance underwriter; the email communications during the time he decided to change the consideration amount reflect the complicated history of the Property, and we credit his good faith belief that Mr. Duggan's suggestion had merit when it came to estimating an amount of consideration other than zero.

We recognize the following circumstances of minimal mitigation: Respondent is an active member of the community who sits on the board of Eaglebank, the Georgetown Day School, and the D.C. Land Title Association. Tr. 2033 (Horton); Tr. 2038 (Griffin); DCX 262. He also is a founding member of a non-profit organization that is intended to benefit the District's public school system. Tr. 2031-32 (Horton).

C. Sanctions Imposed for Comparable Misconduct

Generally, the Court has disbarred respondents for flagrant dishonesty in connection with the falsification of documents and has ordered a three-year suspension with a fitness requirement for criminal fraud and intentional dishonesty.

See, e.g., *In re Anya*, 871 A.2d 1181 (D.C. 2005) (per curiam) (disbarment for violations of Rules 1.3(c), 1.4(a), 1.16(d), 3.3(a), 4.1(a), 5.5(a), 7.1(a)(1), 8.1(b), 8.4(c), 8.4(d) and D.C. Bar R. XI, § 2(b)(3)); *In re Cleaver-Bascombe*, 986 A.2d 1191, 1200 (D.C. 2010) (per curiam) (disbarment for testifying falsely during disciplinary hearing and submitting a falsified CJA voucher); *In re Kanu*, 5 A.3d 1 (D.C. 2010) (disbarment for violations of Rules 1.16(d), 7.1, 8.4(c), and 8.4(d)); and *Silva*, 29 A.3d 924 (three-year suspension and a fitness requirement for violations of Rules 8.4(b) and 8.4(c), *inter alia*, and intentional false testimony).

Here, Respondent is saved from a disbarment by virtue of insufficient evidence that he has engaged in a pattern of pervasive dishonesty, *see, e.g*., *Cleaver-Bascombe*, 986 A.2d at 1200, and a similar evidentiary deficit to show an intent to defraud resulting from his decision to accept Mr. Duggan's method of calculating consideration and his own understanding of D.C. Code § 42-1101. However, a lengthy suspension is warranted.

In *Reback*, 513 A.2d at 231, the false signing, notarization, and filing of a pleading was found to form "a dishonest course of conduct that is plainly intolerable." In particular, the Court of Appeals noted that of particular concern was that fact that the dishonesty prejudiced the administration of justice: "What looms largest here, therefore, is the fact that respondents' dishonesty prejudiced the administration of justice itself, even though their dishonesty, as such, caused the client little, if any, prejudice." *Id*. at 232-34 (imposing sanction of a six-month suspension for making false statement of law or fact, engaging in dishonesty, fraud,

deceit, or misrepresentation, and conduct prejudicial to the administration of justice, where respondent had no prior discipline). In *Reback*, the en banc Court noted the compelling mitigating factors of the respondents' remorse and their 30 and 15 years of "unblemished records of professional conduct" suggested that a six-month suspension—and not a year suspension—was sufficient for the protection of the public, the courts, and the profession. *Id*. at 233.

Here, we are concerned about Respondent's prior discipline and its similarity to the misconduct in the instant matter. And unlike the respondents in *Reback*, Respondent has not admitted to any wrongdoing in regard to any of the charged rule violations. The minimal mitigating factors, as described above, are not as compelling as those in *Reback*.

Nonetheless, we also recognize that Respondent's misconduct in directing his staff to change the consideration amount instead of re-executing the deed and tax form was a single event. Accordingly, we recommend a six-month suspension for the violations of Rules 8.1(a), 8.4(c), and 8.4(d).

D. Fitness

A fitness showing is a substantial undertaking. *See 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) (internal quotation omitted). 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 not supported in this case. While the Hearing Committee has reservations about Respondent's competence to practice law and ability to avoid similar misconduct in the future, without clear and convincing evidence that Respondent's decision to change the consideration was legally erroneous under D.C. Code § 42-1101, *see* FF 61, 69, 73, the Hearing Committee does not find sufficient evidence to impose a fitness requirement based on the violations found in this matter.

V. CONCLUSION

For the foregoing reasons, the Committee finds that Respondent violated Rules 8.1(a), 8.4(c), and 8.4(d). We recommend that Respondent should receive the sanction of a six-month suspension from the practice of law in the District of Columbia. 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).

AD HOC HEARING COMMITTEE

Seth I. Heller, Chair

Billie LaVerne Smith, Public Member

Aaron Pease, Attorney Member