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

In the Matter of:	:	
	:	
JAY S. WEISS,	:	
	:	Board Docket No. 14-BD-089
Respondent.	:	Bar Docket No. 2012-D437
	:	
A Member of the Bar of the	:	
District of Columbia Court of Appeals	:	
(Bar Registration No. 29652)	:	

REPORT AND RECOMMENDATION OF THE
AD HOC HEARING COMMITTEE

I. INTRODUCTION

This matter came on for a hearing before the Ad Hoc Hearing Committee (the "Hearing Committee") pursuant to Rule XI of the District of Columbia Court of Appeals Rules Governing the Bar. Having heard the testimony of the witnesses at the hearing, reviewed the exhibits admitted into evidence, and considered the briefs and arguments of the parties, the Hearing Committee issues its Findings of Fact, Conclusions of Law, and Recommended Sanction as set forth below.

II. BACKGROUND

Romeo Morgan, the owner of Morgan's Seafood on Georgia Avenue, N.W., retained Respondent to represent him in a civil case against two officers of the Washington Metropolitan Transportation Authority ("WMATA"), WMATA itself, and any other appropriate entity, for injuries that resulted from an incident that

occurred outside of his restaurant. Respondent agreed to represent Mr. Morgan's interests. Respondent did not file suit within either the one-year statute of limitations for potential intentional torts or within the three-year statute of limitations for all other forms of tortious conduct. Mr. Morgan was a client who frequently called and spoke to Respondent not only about his case but also about other unrelated matters. Respondent assured Mr. Morgan that his matter was progressing properly. Respondent led Mr. Morgan to believe that a lawsuit had been filed by Respondent on his behalf and that settlement offers had been made by WMATA. At some point, Mr. Morgan asked an attorney who represented him in another matter, Jennifer Bezdicek, Esquire, to check on the case. Ms. Bezdicek learned that no suit had ever been filed by Respondent and that the three-year statute of limitations had expired. Further, she learned that there had been no offer of settlement from WMATA. Instead, Respondent had given the impression that Mr. Morgan could have a sum of money from WMATA, in an attempt by Respondent to avoid responsibility for failing to actually seek recovery from WMATA.

III. PROCEDURAL HISTORY

Disciplinary Counsel[1] filed its Specification of Charges alleging violations of the following Rules of Professional Conduct: 1) failure to provide competent representation to a client and failure to serve a client with skill and care (Rules 1.1(a) and 1.1(b)); 2) failure to represent a client zealously and diligently within the bounds

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

of the law (Rule 1.3(a)); 3) intentional failure to seek a client's lawful objectives and intentional prejudice or damage to a client during the course of professional representation (Rules 1.3(b)(1) and 1.3(b)(2)); 4) failure to act with reasonable promptness (Rule 1.3(c)); 5) failure to communicate with a client (Rules 1.4(a) and 1.4(b)); and 6) conduct involving dishonesty, fraud, deceit, or misrepresentation (Rule 8.4(c)).

The Ad Hoc Hearing Committee was composed of John Soroka, Esquire, Chair; David Berstein, Public Member; and Edward Baldwin, Esquire. Disciplinary Counsel was represented by Deputy Disciplinary Counsel Elizabeth Herman, Esquire. Respondent was represented by Justin Flint, Esquire, and Channing Shor, Esquire. The hearing was held on July 27-28 and August 3-4, 2015.[2] Respondent denied all Rule violations. Disciplinary Counsel presented the testimony of three witnesses: Mr. Morgan; Ms. Bezdicek, Mr. Morgan's business attorney; and Patrick Regan, Esquire, an expert witness in civil litigation and, specifically, civil litigation against WMATA. Respondent presented three witnesses in his case in chief: Dr. Marianne Schuelein, a medical expert in the field of neurology; Charles Key, an expert witness in police use of force; and Respondent.

Disciplinary Counsel offered Bar Exhibits A-D and 1-12, all of which were admitted into evidence. Tr. 620, 623. (These exhibits are referred to with the designation "BX.") Respondent's Exhibits 300-305, 307, 309, 311, 315-318, 321-

[2] Respondent filed a motion for deferral of the proceedings on November 18, 2014, citing a pending malpractice suit against him. The Board Chair denied Respondent's motion on January 9, 2015.

324, 326, and 332-333 were admitted into evidence. Tr. 621-622. (These exhibits are referred to with the designation "RX.")

After the conclusion of the first phase of the hearing, the Hearing Committee made a preliminary non-binding determination that Disciplinary Counsel had proven at least one Rule violation as set forth in the Specification of Charges. Tr. 618; *see* Board Rule 11.11. In the second phase, Disciplinary Counsel introduced evidence of a prior disciplinary action against Respondent (BX 12) as evidence in aggravation of sanction. Respondent presented six witnesses in mitigation of sanction: five former clients and his wife, Linda Weiss.

IV. FINDINGS OF FACT

1. Respondent is a member of the Bar of the District of Columbia Court of Appeals. He was admitted on May 15, 1967 and assigned Bar Number 29652. BX A; Stip. ¶1.

2. Respondent's practice has consisted of a range of 80% to 85% personal injury cases. BX 9 at 299, 301; Tr. 396 ("primarily personal injury trial work") (Respondent).

Facts Concerning the Representation of Romeo Morgan by Respondent

3. On October 22, 2008, Romeo Morgan, the owner of Morgan's Seafood Restaurant in the District of Columbia, had an encounter with two WMATA law enforcement officers. The encounter centered around an allegation that Mr. Morgan was in possession of an open container of beer on the street outside of his restaurant. Tr. 29-30, 40, 52 (Morgan). The encounter turned into a physical altercation. As a

result, Mr. Morgan was taken to the hospital and subsequently charged with criminal offenses: disorderly conduct, two counts of assault on a police officer, and unlawful possession of an open container of alcohol. BX 3; BX 8 at 42; Tr. 40, 107 (Morgan).

4. In the criminal matter, Mr. Morgan was represented by Reginald Addison, Esquire, and was satisfied with that representation. Tr. 40-41 (Morgan); BX 8 at 29.

5. Mr. Morgan was interested in pursuing a civil claim against the WMATA police officers who had arrested him, WMATA, and any other appropriate entity. As a result, Mr. Morgan sought the legal advice of Respondent on October 31, 2008, approximately one week after the altercation. Tr. 41 (Morgan); Tr. 399-400 (Respondent).

6. After a face-to-face discussion with Respondent in his office, Mr. Morgan and Respondent agreed that they would not initiate a civil action against the police officers, WMATA, or any other entity, until after the conclusion of the criminal case. Tr. 42-43 (Morgan); Tr. 400-401 (Respondent). Respondent told Mr. Morgan to return after the conclusion of the criminal matter. *Id.* At this meeting, Respondent did not inform Mr. Morgan of the concept of intentional torts or that any suit arising from such torts had to be filed within one year of the altercation with the WMATA officers. Tr. 72 (Morgan); Tr. 437 (Respondent). Respondent did not inform Mr. Morgan that the one-year statute of limitations would expire on October 22, 2009. Respondent had no discussion with Mr. Morgan about the advantages and

disadvantages of delaying the civil action until the resolution of the criminal case. Tr. 43 (Morgan); Tr. 437 (Respondent).

7. There was no execution of a retainer agreement at the meeting on October 31, 2008. However, Respondent did get Mr. Morgan to sign a medical release form that would permit Respondent to obtain medical records concerning Mr. Morgan's initial injuries. Tr. 401 (Respondent). After Mr. Morgan executed the release, Respondent set about securing medical records from the hospital and doctors who had treated Mr. Morgan after the altercation. BX 5E; Tr. 401-402 (Respondent).

8. Respondent opened a file for Mr. Morgan immediately after their office consultation and interview. That file contained notes of the initial interview, a copy of a follow-up letter to Mr. Morgan, and, after they were received, the hospital records for Mr. Morgan. Tr. 402-403 (Respondent); BX 5F. Respondent paid Howard University Hospital $39.82 to cover the cost of these records. Tr. 441 (Respondent).

9. On November 11, 2008, Respondent wrote a letter to Mr. Morgan reflecting Respondent's memory of their initial meeting. This letter specifically showed that Respondent understood that Mr. Morgan wanted to pursue a civil action against WMATA. BX 5F. However, the letter was sent to the wrong address for Mr. Morgan, and he never received it. Tr. 548; BX 5F; BX 8 at 83.

10. In a bench trial before the Honorable Herbert Dixon in the District of Columbia Superior Court that concluded on February 25, 2009, Mr. Morgan was found not guilty of all charges except for the charge of Possession of an Open

Container of Alcohol. On that charge, Mr. Morgan was fined $25.00 by the court. BX 3; BX 8 at 90; Tr. 44 (Morgan).

11. Subsequent to the verdict in the criminal case, Mr. Morgan signed a retainer with the law firm of Richie Rich, Esquire. This retainer was to cover representation of Mr. Morgan in a civil case against WMATA. Tr. 44 (Morgan). However, at some point, Mr. Morgan became dissatisfied with Attorney Rich and ended his relationship with him. He retrieved his file from Mr. Rich's office and returned to Respondent's office with the file. Tr. 45-47 (Morgan); BX 8 at 97, 103. Mr. Morgan ended his relationship with Mr. Rich because Mr. Rich had discouraged him from calling him frequently to check on the status of his case. Tr. 68-69 (Morgan).

12. On October 22, 2009, the day the one-year statute of limitations for intentional torts expired, Mr. Morgan returned to Respondent's office and met with him. Tr. 47, 108-109 (Morgan); Tr. 450-451 (Respondent). Respondent inquired as to whether Mr. Morgan was represented by another attorney, Larry Williams, Esquire, because Mr. Morgan had previously provided Respondent with copies of medical records that had been sent to Mr. Williams. Respondent made this inquiry before Mr. Morgan signed a retainer agreement with Respondent. Tr. 47-49 (Morgan); Tr. 449-450, 516-517 (Respondent).

13. Mr. Morgan assured Respondent that he was not represented by any other attorney, that he would stay with Respondent as counsel, and that he understood he would be responsible for paying for whatever work Respondent did

on the case even if he subsequently went to another attorney. Tr. 47-49 (Morgan); Tr. 607 (Respondent); BX 8 at 97, 103. Respondent presented Mr. Morgan with a retainer agreement that he signed. Respondent agreed to represent Mr. Morgan in a civil suit against WMATA. Tr. 48-50; BX 5D; BX 8 at 31-32.

14. At no time, either on October 22, 2009 or subsequently, did Respondent inform Mr. Morgan of the significance of the statute of limitations on intentional torts. Respondent did not inform Mr. Morgan that intentional torts carry a one-year statute of limitations. Respondent did not tell Mr. Morgan on the date he signed the retainer agreement that the statute of limitations for intentional torts expired that day. Tr. 50-51 (Morgan); BX 8 at 51-52. Respondent told Mr. Morgan that the statute of limitations was three years. Tr. 53. This is the statute of limitations for negligence actions.

15. Mr. Morgan made it clear to Respondent that he wanted "everybody sued." This included the officers, their supervisors, and "whoever was on the scene." BX 8 at 72-73; Tr. 49, 51-52 (Morgan). Respondent told Mr. Morgan that he had a good case. Tr. 52-53 (Morgan).

16. Mr. Morgan left his file with Respondent at the time of the retainer signing on October 22, 2009. The file contained: relevant police forms; a transcript of the criminal trial; an aerial photo of the scene; and dreadlocks that were torn from Mr. Morgan's head at the time of the incident. Tr. 45-47, 53 (Morgan).

17. At no time after the office visit and signing of the retainer on October 22, 2009, did Respondent send a letter to WMATA informing it that he represented

Mr. Morgan. He testified that the letter of representation is the first thing that he does upon accepting a case regardless of whether it is a criminal or civil matter. Tr. 536-537, 610 (Respondent).

18. After the meeting between Respondent and Mr. Morgan on October 22, 2009, nothing else was done concerning Mr. Morgan's case. The file remained in a completely "stagnant state" and was not seen again by Respondent until December 2011. Tr. 450, 453-455 (Respondent).

19. Respondent testified that his secretary marked Mr. Morgan's file as a criminal matter by writing "criminal" on the front of the folder. Tr. 414 (Respondent). Because of this designation, Respondent did not receive alerts on his computer that would have given him notice that the statute of limitations was approaching. Tr. 416, 418 (Respondent).

20. In the time period between the October 22, 2009 meeting and September 2012, Mr. Morgan frequently and regularly called Respondent and visited his office. Tr. 54-55 (Morgan); Tr. 443, 538, 540 (Respondent); BX C (Answer, "numerous conversations"). Mr. Morgan expressed a strong interest in his case and wished to know its status. Tr. 55 (Morgan); BX 8 at 51-52. Mr. Morgan was a "high maintenance" client who "wanted to be part of the process" and wanted to "know on a regular basis what was going on." Tr. 383-384 (Bezdicek). Mr. Morgan was also aware of the three-year statute of limitations in a civil case. Tr. 55-56 (Morgan).

21. During these numerous telephone conversations, Respondent always reassured Mr. Morgan that he was advancing Mr. Morgan's interests. Tr. 54-56

(Morgan); Tr. 544 (Respondent); BX 8 at 52, 111. However, despite repeated contacts by telephone and in person, Respondent did not review Mr. Morgan's file, nor did he take any steps to advance Mr. Morgan's interests in the civil matter.

22. In December 2011, Respondent pulled Mr. Morgan file, which had "remained in [Respondent's] criminal drawer," and discovered that the three-year statute of limitations applicable to Mr. Morgan's cause of action for negligence, had expired. Tr. 454-455 (Respondent). Respondent did not disclose his discovery to Mr. Morgan at this time or at any other time until he disclosed it to Ms. Bezdicek, Mr. Morgan's business lawyer, in September 2012. Tr. 532 (Respondent).

23. In early 2012, Respondent talked with Mr. Morgan by telephone concerning a different matter allegedly involving the F.B.I. Tr. 455-456 (Respondent).

24. Respondent knew that he had not filed suit on Mr. Morgan's behalf, but did not tell him because "the issue did not come up." Tr. 532 (Respondent).

25. Sometime in 2011, Respondent had told Mr. Morgan that "the case had been filed." Tr. 55-56 (Morgan); BX 1 at 3. Mr. Morgan remembered the conversation because he had been worried about the expiration of the statute of limitations. Tr. 57 (Morgan).

26. In or around the summer of 2012, Respondent telephoned Mr. Morgan and told him that "WMATA wanted to settle the case and they offered $10,000 for the case." Tr. 57 (Morgan); BX 1 at 3. Mr. Morgan vehemently rejected this offer. Tr. 58 (Morgan); BX 8 at 35, 104.

27. Respondent admitted that he was aware that the statute of limitations had expired when he informed Mr. Morgan of the proposed $10,000 offer. Tr. 535 (Respondent).

28. Respondent was intentionally vague about the source of the funds offered in the settlement when he spoke to Mr. Morgan. In his response to the disciplinary complaint, Respondent asserted that he told Mr. Morgan that he "had made a preliminary evaluation of the case, presuming the merits of it, in the range of $10,000.00 on a compromise settlement basis," but did not tell him that WMATA or any other entity would pay that amount. BX 2 at 10; Tr. 454 (Respondent). The fact that Respondent informed Mr. Morgan of this $10,000 offer at a time when not only had the statute of limitations expired, but there had been absolutely no contact with WMATA, and Mr. Morgan was totally unaware of the real status of the case, leads us to conclude that Respondent intentionally attempted to mislead Mr. Morgan about the source of the offer. Tr. 57 (Morgan); Tr. 535 (Respondent).

29. Respondent failed to inform Mr. Morgan that there was no longer any possibility that WMATA would pay him damages, nor would WMATA police officers be held accountable because the statute of limitations had expired. Tr. 532, 547, 449-550 (Respondent).

30. Mr. Morgan was upset and disappointed with the offer conveyed to him by Respondent. Tr. 57 (Morgan). Subsequently, he contacted his business lawyer, Ms. Bezdicek, and asked her to look into the status of his case against WMATA. Tr. 59-60 (Morgan); Tr. 348, 380 (Bezdicek). Mr. Morgan felt that he was not getting

answers that he wanted from Respondent. Tr. 348-349 (Bezdicek). Ms. Bezdicek checked the court's electronic docketing system and found that no case had been filed on Mr. Morgan's behalf and told this to Mr. Morgan. Tr. 59 (Morgan); Tr. 349-350 (Bezdicek); BX 1 at 6; BX 7 at 79.

31. On September 6, 2012, Ms. Bezdicek reached Respondent by telephone and sent him an email with her contact information that same day. BX 5B; BX 7 at 45. Although Ms. Bezdicek had "cold called" Respondent, he remembered the case and Mr. Morgan. BX 7 at 51; Tr. 351-352, 385 (Bezdicek).

32. Respondent told Ms. Bezdicek: 1) that Mr. Morgan's claim was an intentional tort claim with a one-year statute of limitations, which had expired years ago; 2) that he never intended to file a lawsuit, but planned to handle it administratively; and 3) that the offer of $5,000 to $10,000 previously conveyed to Mr. Morgan was not authorized by WMATA yet and "just what I think I can get." BX 7 at 52, 69; Tr. 352-353 (Bezdicek).

33. During the course of this call, Respondent attempted to cast Mr. Morgan in a negative light by saying that he "thought he was the Mayor of Georgia Avenue," and that all Mr. Morgan cared about was money. Tr. 59-60 (Morgan); Tr. 353-354 (Bezdicek); BX 1 at 4; BX 7 at 53.

34. The telephone call between Ms. Bezdicek and Respondent ended with Respondent asking to set up a meeting with Mr. Morgan. Respondent told Ms. Bezdicek that he would "make [Mr. Morgan] happy." Tr. 356 (Bezdicek). Shortly after the telephone conversation, Ms. Bezdicek informed Mr. Morgan of the

conversation and a meeting with Respondent at his office was scheduled. Tr. 356 (Bezdicek); BX 5B.

35. Before the telephone call between Respondent and Ms. Bezdicek, which took place on September 6, 2012, Respondent had never communicated to Mr. Morgan directly that he had not filed a lawsuit on Mr. Morgan's behalf against WMATA. BX 9 at 360; Tr. 531-532, 548-550 (Respondent).

36. Respondent had initially opened Mr. Morgan's file in October 2008 and received hospital records. He secured the written retainer agreement as well as other criminal case documents from Mr. Morgan in October 2009. That file with those documents remained in Respondent's possession continuously until sometime shortly after the September 6, 2012 phone call. BX at 47; Tr. 358 (Bezdicek).

37. In a few weeks to a month after the September 6, 2012, telephone conversation, Ms. Bezdicek, Mr. Morgan and Respondent met in Respondent's office. Tr. 457-458 (Respondent). During that meeting, Respondent admitted that he was wrong in not filing a lawsuit in Mr. Morgan's case and called it an oversight caused by somebody in his office. Tr. 359 (Bezdicek); BX 7 at 58. Respondent stated that his secretary "dropped the ball." Tr. 62 (Morgan).

38. When Respondent offered to pay Mr. Morgan money to compensate him, Mr. Morgan became upset, began to cry, yelled at Respondent, and left the room. BX 2 at 62; Tr. 360-363 (Bezdicek). Mr. Morgan believed that Respondent intentionally ignored his claim because Respondent did not like him. Tr. 63

(Morgan). We find no evidence that Respondent's neglect of the case was motivated by any personal animus toward Mr. Morgan.

39. Respondent made statements in the meeting that contradicted statements he had made to Ms. Bezdicek in their earlier telephone conversation. Tr. 361-362; 382-383 (Bezdicek); BX 7 at 57. On the telephone call, Respondent told Ms. Bezdicek that the case had a one-year statute of limitations that had long expired. Tr. 352 (Bezdicek). In the meeting, Respondent said the statute of limitations was in fact three years. Tr. 359 (Bezdicek); BX 7 at 59, 81.[3] Respondent acknowledged in the meeting that he should have filed suit for Mr. Morgan, but he had maintained in the telephone conversation that he never intended to file suit in the case. Tr. 352, 359 (Bezdicek); BX 7 at 73 (Bezdicek). Respondent was defensive and attempted to blame Mr. Morgan by saying that Respondent thought that Larry Williams, Esquire, was the attorney in the case. Tr. 357-358 (Bezdicek).

Findings of Fact Concerning Prejudice to Mr. Morgan

40. Prior to the meeting Ms. Bezdicek attended, Respondent did not tell Mr. Morgan that he did not wish to file a civil matter for him or that he did not believe Mr. Morgan had a meritorious case. If Respondent had done so, Mr. Morgan would have sought the assistance of another attorney. Tr. 66-67 (Morgan).

41. Patrick Regan, Esquire, the president and senior partner at Regan, Zambri and Long, P.L.L.C., was qualified as an expert in civil litigation, and

[3] As noted above, an intentional tort claim was governed by a one-year statute of limitations, and a negligence claim was governed by a three-year statute of limitations. Both had expired by the time Ms. Bezdicek contacted Respondent.

Respondent stipulated to Mr. Regan's qualifications as an expert in civil litigation. Tr. 171 (Regan).

42. Mr. Regan testified that he had personally represented 40-50 clients in lawsuits against WMATA, and that his law firm continued to represent numerous complainants in civil actions against WMATA. Tr. 169-170 (Regan).

43. At the hearing, Mr. Regan disputed an assertion in Respondent's pre-hearing brief regarding the relevancy of expert testimony from Charles J. Key (Respondent's expert), that WMATA's "immunity from lawsuit" (a form of sovereign immunity) was applicable to Mr. Morgan's case and would have precluded a civil suit against WMATA. Mr. Regan's expert opinion was that Mr. Morgan had viable and actionable intentional tort claims (assault and battery, intentional tort, false arrest, constitutional violations), as well as negligent tort claims (negligent hiring, training, and supervision). Tr. 183, 210-212, 214-215, 220 (Regan).

44. Mr. Regan's expert opinion was that WMATA did not have immunity in Mr. Morgan's case. There is no immunity for constitutional claims, and sovereign immunity for WMATA and WMATA police officers did not apply because it is limited to governmental functions that have an impact on public policy. Tr. 201-202, 225-226 (Regan).

45. Mr. Regan testified that, even after the one-year intentional tort statute of limitations had expired, Mr. Morgan had viable negligence-based causes of action that could have been pursued. Tr. 241 (Regan).

46 Mr. Regan testified that, at a time before formally accepting Mr. Morgan's case, Respondent should have advised Mr. Morgan of the one-year statute of limitations for intentional torts and discussed the pros and cons of waiting until the resolution of the criminal case to file the civil claim. Tr. 179-181 (Regan).

47. Mr. Regan testified that, having accepted the case at the time the retainer was executed (October 22, 2009), Respondent should have, at a minimum: sent a letter of representation to the WMATA Office of Risk Assessment; assembled medical records and bills; gathered reports from doctors and therapists; looked for possible evidence such as CCTV videos; interviewed witnesses; and started negotiations with WMATA. Tr. 183-191, 242, 245 (Regan).

48. Mr. Regan testified that attorneys who undertake the representation of a client have the obligation to ensure that there is a system in place within the attorney's office to prevent cases and information from falling through the cracks and becoming lost. Tr. 254-255 (Regan).

49. Mr. Regan testified that, even in the absence of a signed retainer agreement, there are certain instances where an attorney still has a duty to a client after an initial meeting and even before determining the viability of a case. Tr. 256-258 (Regan).

50. Mr. Regan's expert opinion was that Respondent did not serve Mr. Morgan with the skill and care commensurate with that generally afforded to clients by other lawyers in similar matters. Tr. 196-197 (Regan).

51. Charles Key was qualified as an expert in police procedures and testified that in his opinion, based on reading portions of the criminal trial transcript and depositions, the arrest of Mr. Morgan was "objectively reasonable and consistent with accepted standards of police practices and training." Tr. 286, 293, 320-321 (Key).

52. Mr. Key could not say whether or not certain claims made by Mr. Morgan in the criminal case, such as the officers' failure to properly identify themselves, would support recovery in a civil case. Mr. Key testified that such a strategy "normally" has not been effective, but it could be. Tr. 336-337 (Key).

53. Dr. Marianne Schuelein was qualified as an expert in neurology. She testified that she evaluated Mr. Morgan and reviewed the medical records concerning the events of October 22, 2008 and subsequent medical records. She testified that Mr. Morgan did not suffer any permanent neurological damage from the incident with WMATA police. Tr. 124-132 (Schuelein). She could not testify as to any emotional or psychological damage incurred by Mr. Morgan. Tr. 133 (Schuelein).

Findings of Fact Concerning Respondent's Credibility

54. At the hearing, Respondent attempted to deceive the Hearing Committee concerning his conversations with Mr. Morgan. Tr. 541-546 (Respondent). Respondent was unwilling to admit that he had specifically told Mr. Morgan at any time that he was advancing his legal interests. *Id.* Respondent also claimed, incredibly, that in his numerous phone conversations with Mr. Morgan over

a two-year period, they never discussed the WMATA case—the case for which Mr. Morgan had hired him—and that his conversations with Mr. Morgan never caused Respondent to review the case file. Tr. 546-547 (Respondent).

55. While Respondent admitted that Mr. Morgan had the right to know that the statute of limitations had run on his cause of action, he did not think that his failure to inform Mr. Morgan that the statute had expired was dishonest. Tr. 547 (Respondent).

56. Respondent signed an affidavit affirming that he "always assured Mr. Morgan that [he] was advancing his legal interests." Tr. 542-544 (Respondent). Respondent tried to walk back his statement in the affidavit, testifying that his conversations with Mr. Morgan were "always toward trying to advance, like all clients of mine, their best interests." Tr. 544 (Respondent).[4]

57. Respondent gave conflicting accounts of his meeting with Mr. Morgan when the retainer was signed in October 2009. Respondent testified in his deposition that "I had him sign the fee agreement" when Mr. Morgan came to his office. BX 9 at 318.[5] At the same time, Respondent testified at the hearing that he had no recollection of meeting Mr. Morgan on the date the retainer was signed and went so far as to recall that he was not then in his office. Tr. 515 (Respondent).

[4] Respondent signed an affidavit in support of a Petition for Negotiated Discipline. D.C. Bar R. XI, § 12.1(e) and Board Rule 17.10 allow Disciplinary Counsel to use the affidavit for the limited purpose of impeaching Respondent's hearing testimony.

[5] Respondent gave his deposition in connection with a civil malpractice action Mr. Morgan filed against him. *See* Tr. 465-466 (discussing malpractice case).

58. Respondent denied leading Mr. Morgan to believe that he had filed a case on his behalf. Tr. 550-552 (Respondent). However, Respondent admitted to signing an affidavit in which he attested that: "At some point in 2011 [Respondent] and Mr. Morgan had conversations that led Mr. Morgan to believe that respondent had filed a case on his behalf." *Id.*

59. Respondent alternately claimed that his secretary opened Mr. Morgan's file as a criminal case and not a civil case. Tr. 415, 434 (Respondent). Respondent previously testified at his deposition: "I marked the file down as being a criminal case." BX 9 at 351-353.

60. Respondent tried to deflect blame for his failure to file a case on to some "confusion" as to whether or not Mr. Morgan was represented by Larry Williams. Respondent had no reason to believe that Mr. Williams was ever an attorney in this case after October 22, 2009. Once Mr. Morgan signed the retainer agreement, it was made clear to Mr. Morgan that Respondent represented him and it was clear to Respondent that it was his case. Tr. 607-608 (Respondent).

61. Respondent acknowledged that Mr. Morgan "never said that he was discharging [Respondent] or hiring Mr. Williams." BX 2 at 9.

62. Respondent somehow discovered that Mr. Morgan's case had been "misfiled" in December of 2011 after the expiration of the statute of limitations. Although he had occasion to talk to Mr. Morgan several times in the nine-month period between the discovery and the eventual disclosure in 2012, Respondent never told Mr. Morgan that he had failed to file his case. Tr. 599-600 (Respondent).

63. Respondent denied having any disciplinary record. Tr. 466, 554 (Respondent). When confronted with an informal admonition issued against him in 1987, Respondent tried to explain by saying that he meant to say that he had a minimal disciplinary history. Tr. 555 (Respondent).

Facts Concerning Mr. Morgan's Credibility

64. Mr. Morgan overstated his credentials and background in his written complaint to Disciplinary Counsel. BX 1 at 4. He was never a United States Marine, and he had been only a volunteer police officer. Tr. 35-37 (Morgan).

65. Mr. Morgan's account of certain aspects of his disciplinary complaint against Respondent was corroborated by the testimony of Ms. Bezdicek. She confirmed that it was Mr. Morgan's "M.O." to frequently check in on the status of his cases for updates. BX 7 at 64; Tr. 349, 381, 384 (Bezdicek). She confirmed that after Mr. Morgan had asked her to check on his civil case and was informed that it had never been filed, Mr. Morgan appeared "shocked, upset and felt very wronged." BX 7 at 84; Tr. 350 (Bezdicek).

66. Ms. Bezdicek confirmed that Respondent created the impression with her, as he had with Mr. Morgan, that the money he had discussed with Mr. Morgan would come from WMATA. Tr. 353 (Bezdicek).

67. Ms. Bezdicek had no discernable bias in favor of Mr. Morgan or against Respondent. By the time of the disciplinary hearing, she no longer represented Mr. Morgan. Tr. 355 (Bezdicek).

Evidence in Aggravation and Mitigation

68. Respondent is a very experienced attorney who has practiced law in the District of Columbia for over forty years with a concentration in the area of personal injury cases. BX 9 at 299, 301; Tr. 396 (Respondent).

69. In the summer of 2012, after Respondent knew that the statute of limitations had expired, he called Mr. Morgan and told him that WMATA wanted to settle the case and had offered $10,000. Tr. 57 (Morgan). Respondent was seeking to create the impression that the money was a settlement from WMATA. The offer was an attempt to deflect responsibility for blame rather than an offer of restitution. Tr. 601-602 (Respondent).

70. Respondent testified that he attempted to make Mr. Morgan "satisfied" by offering him a net of $10,000. Tr. 458, 462-463 (Respondent). While this figure may or may not be an accurate evaluation of the value of Mr. Morgan's claim, it was an attempt to mitigate Respondent's exposure for his negligence and not to fairly compensate Mr. Morgan.

71. In his conversation with Ms. Bezdicek, Respondent referred to Mr. Morgan in pejorative terms by stating that Mr. Morgan thought he was the "Mayor of Georgia Avenue," Tr. 354 (Bezdicek), and in the meeting with Mr. Morgan and Ms. Bezdicek, Respondent sought to overplay the value of his offer in terms of covering possibly unpaid medical bills. Tr. 360 (Bezdicek) (noting that attorneys representing personal injury plaintiffs typically negotiate reductions in medical bills,

and thus, the plaintiff will likely owe something less than the face value of the medical bill).

72. Before and during the hearing, Respondent characterized his own negligence as a "misfortune" that had happened *to him*, and he stated that he neglected the case to *his own* detriment (emphasis added). Tr. 469, 612 (Respondent). Respondent reluctantly acknowledged that it was arguable that his failure to act "could give rise to the implication" that he violated Rule 1.1. Tr. 520-521 (Respondent).

73. Respondent failed to fully and completely comply with Disciplinary Counsel's subpoena for his file that was issued in January 2013 because the documents produced did not contain "sticky notes," the front page of the file, and a copy of the file cover. Tr. 526-530 (Respondent).

74. Respondent presented five previous clients and his wife as character witnesses. Prior clients were all well-satisfied with the level of Respondent's representation. Tr. 625-646. Their testimony also emphasized their belief in Respondent's honesty and level of concern for his clients. None knew anything of the events relating to Mr. Morgan's case.

V. CONCLUSIONS OF LAW

A. Respondent Violated Rules 1.1(a) and 1.1(b) by Failing to Provide Competent Representation to Mr. Morgan and Failing to Serve Him with Skill and Care

Rule 1.1(a) provides that "[a] lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill,

thoroughness, and preparation reasonably necessary for the representation." Rule 1.1(b) requires that "[a] lawyer serve a client with skill and care commensurate with that generally afforded to clients by other lawyers in similar matters." Competent representation requires a continuing level of attention and action. The failure to provide continuing attention and preparation required by Rule 1.1(a) or the failure to provide the skill and care required by Rule 1.1(b) constitutes a violation of those rules. *In re Outlaw*, 917 A.2d 684, 687 (D.C. 2007); *In re Douglass*, 859 A.2d 1069, 1080 (D.C. 2004) (per curiam) (appended Board Report); *In re Sumner*, 665 A.2d 986, 988-989 (D.C. 1995) (per curiam) (appended Board Report) ("dropping of the ball" violates Rules 1.1(a) and 1.1(b)).

Disciplinary Counsel has proven by clear and convincing evidence that Respondent "dropped the ball" by allowing the statute of limitations to expire without filing suit or informing his client of an intent not to do so. In fact, Respondent didn't just "drop the ball," he never even got in the game. In *Douglass*, the Court adopted the Board's conclusion that "two years of sustained inattention crosse[d] the line to incompetence and neglect." 849 A.2d at 1081.

Respondent's effort to blame his secretary for misfiling Mr. Morgan's file is not a defense. An attorney is responsible for his client's case despite any errors by subordinates. *Outlaw*, 917 A.2d at 685 (attorney blamed her case manager); *In re Cohen*, 847 A.2d 1162, 1166 (D.C. 2004) (attorney blamed a subordinate); *In re Joyner*, 670 A.2d 1367, 1369 (D.C. 1996) (attorney blamed his secretary); *In re Banks*, 577 A.2d 316, 317 (D.C. 1990) (attorney blamed his law clerk). Attempting

to shift responsibility to others as a defense in disciplinary matters is not uncommon, but it is unsuccessful.

Respondent cannot excuse his failures by blaming his secretary for several reasons: 1) he had the case for two years before the statute of limitations for negligence actions expired; 2) during that time he was in frequent contact with Mr. Morgan; 3) Respondent never put any notes, information, or evidence in the file during that time; and 4) the whereabouts of Mr. Morgan's file were easily discoverable. It should be noted that Respondent discovered, in December 2011, without any particular difficulty, that the case had been misfiled. All that it required was the desire to look for it. Respondent was not the victim of a set of bad circumstances. He did nothing during a time when his basic duties as a lawyer required him to act. Returning Mr. Morgan's phone calls was not enough. Lip service does not translate into legal service.

The expert testimony of Patrick Regan clearly explained the minimum standard of skill and care. Respondent's representation fell far short of that standard. First, Respondent never informed Mr. Morgan of the relevant statutes of limitation. Second, there was no discussion of possible claims. Third, there was no discussion of the pros and cons of waiting for the results of the criminal trial. Fourth, Respondent did not send a letter of representation to WMATA. Fifth, Respondent did not attempt to interview witnesses, even by telephone. Sixth, Respondent did not seek to preserve anything in the way of evidence, such as CCTV footage.

In sum, Respondent failed to file suit on Mr. Morgan's behalf without any valid explanation or mitigating excuse. The only cause was Respondent's negligent failure to attend to the case, a failure that could have been easily rectified. Disciplinary Counsel has proven, by clear and convincing evidence, that Respondent violated Rules 1.1(a) and 1.1(b).

B. Respondent Violated Rules 1.3(a) and 1.3(c) by Failing to Represent His Client Zealously and Diligently Within the Bounds of the Law and with Reasonable Promptness

Rule 1.3(a) requires that "[a] lawyer shall represent a client zealously and diligently within the bounds of the law." Comment [1] to Rule 1.3(a) instructs lawyers to act "with commitment and dedication to the interests of the client." Rule 1.3(c) addresses delay and requires a lawyer to "act with reasonable promptness in representing a client." Neglect occurs when an attorney exhibits an "indifference and a consistent failure to carry out the obligations which the lawyer has assumed to his client or a conscious disregard for the responsibility owed to the client." *In re Reback*, 487 A.2d 235, 238-41 (D.C. 1985), *adopted in relevant part*, 513 A.2d 226 (D.C. 1986) (en banc). In *Chapman*, the respondent violated Rule 1.3(a) by failing to perform any work on the client's case during the eight-month term of the representation. *In re Chapman*, 962 A.2d 922 (D.C. 2009) (per curiam). A violation of Rule 1.3(a) may also result from an attorney's failure to keep clients informed on the status of their cases. *See In re Ukwu*, 926 A.2d 1106, 1136 (D.C. 2007) (appended Board Report) (finding a violation of Rule 1.3(a) where the respondent repeatedly failed to inform his clients on the status of their case).

Respondent's violations of Rules 1.3(a) and 1.3(c) are clear. Respondent's lack of action or attention to Mr. Morgan's claim was for a significant length of time, two years. That long period of inaction establishes the indifference and consistent failure to pursue a client's lawful objectives that epitomizes neglect. Disciplinary Counsel has proven by clear and convincing evidence that Respondent violated Rules 1.3(a) and 1.3(c).

C. Respondent Did Not Violate Rules 1.3(b)(1) and 1.3(b)(2)

Rule 1.3(b) directs that "[a] lawyer shall not intentionally (1) [f]ail to seek the lawful objectives of a client through reasonably available means permitted by law and the disciplinary rules; or (2) [p]rejudice or damage a client during the course of the professional relationship." Intentional neglect in violation of Rule 1.3(b)(1) is established by proof that the respondent was (1) "demonstrably aware of their neglect," or (2) "their neglect was so pervasive that they must have been aware of it." *Reback*, 487 A.2d at 240, *adopted in relevant part*, 513 A.2d at 226. "Neglect of a client's matter, often through procrastination, can 'ripen into . . . intentional' neglect in violation of Rule 1.3(b) 'when the lawyer is aware of his neglect' but nonetheless continues to neglect the client's matter." *In re Vohra*, 68 A.3d 766, 781 (D.C. 2013) (appended Board Report) (quoting *In re Mance*, 869 A.2d 339, 341 n.2 (D.C. 2005) (per curiam)).

While it is clear on the testimony that Respondent's system for handling cases was inadequate based on the expert testimony of Mr. Regan, the question is whether that inadequacy is sufficient to be so neglectful that it ripens into an intentional

failing. Respondent's system of doing virtually nothing on a case until he received a "tickler" three months before the expiration of the statute of limitations was a bit like playing Russian Roulette. However, the case law does not go as far as to say that the use of such a system is sufficient to violate Rules 1.3(b)(1) and (2). Stated differently, an intentional violation will be found "when a lawyer's inaction coexists with an awareness of his obligations to his client." *Ukwu*, 926 A.2d at 1116 (quoting *In re O'Donnell*, 517 A.2d 1069, 1072 (D.C. 1986)).

There are is no such evidence of intent here. While Respondent employed a poor system and probably should have checked the file of a client who was calling him regularly, he did not act with such negligence as to cause that neglect to ripen into an intentional failure.

Disciplinary Counsel has not proved by clear and convincing evidence that Respondent violated Rules 1.3(b)(1) and 1.3(b)(2).

D. Respondent Violated Rules 1.4(a) and 1.4(b) by Failing to Communicate with Mr. Morgan

Rules 1.4(a) and 1.4(b) state:

> (a) A lawyer shall keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information.
>
> (b) A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

Communication between the attorney and the client are the cornerstone of the professional relationship. Without communication there is no representation. Comment [2] to Rule 1.4 states that "[t]he lawyer must initiate and maintain the

consultative and decision-making process if the client does not do so and must ensure that the ongoing process is thorough and complete."

Respondent did not initiate communication with Mr. Morgan. However, Mr. Morgan was something of a "high maintenance client" who called his attorney regularly. Respondent somewhat proudly testified that he always returned Mr. Morgan's calls. However, Respondent never once, as a result of these calls, checked on the status of the case. Returning a call is not the equivalent of professional communication. Despite all of the conversation, Respondent failed to provide Mr. Morgan with any information about the status of his case. Placating the client with meaningless small talk and false assurances did not fulfill Respondent's obligation under Rule 1.4.

The most dramatic evidence of Respondent's failure came after December 2011. Somewhere in the middle of December, Mr. Morgan's file was discovered in the "criminal drawer" in Respondent's office. Despite the fact that he had subsequent conversations with Mr. Morgan, he *never* informed him that the statute of limitations had expired in October 2011 and that Mr. Morgan's cause of action was dead. Respondent admitted his failure during this point when, in response to a question as to why he did not tell Mr. Morgan of his failure in December 2011, he stated: "[I]t wasn't a situation where I was trying to be deceitful. I knew that I was facing a situation where I had liability because of this. I wanted to try as best I could to fairly and reasonably compensate Mr. Morgan within the bounds of the law for what I did by way of my mistake." Tr. 600 (Respondent). Respondent went on to say that he

never informed Mr. Morgan about his failure until confronted by Ms. Bezdicek. Tr. 530-533 (Respondent).

From October 2009 until September 2011, Respondent failed to accurately and truthfully inform his client about the status of his case. He failed explain the issues to Mr. Morgan in a way that he could make informed decisions about his case. There was no possible excuse or explanation for this failure. In should be noted that the explanation that Respondent thought Mr. Morgan was represented by Larry Williams is totally rejected. It is clear that Respondent knew that he represented Mr. Morgan and that no other attorney had that responsibility.

Disciplinary Counsel has proved by clear and convincing evidence that Respondent violated Rules 1.4(a) and 1.4(b).

E. Respondent Violated Rule 8.4(c) by Engaging in Conduct Involving Dishonesty, Fraud, Deceit, or Misrepresentation.

Rule 8.4(c) states that it is professional misconduct for a lawyer to "[e]ngage in conduct involving dishonesty, fraud, deceit, or misrepresentation." The Court elaborated on the type of conduct that strikes at the trustworthiness that is the basis of a lawyer's professional duty:

> The encyclopedia definitions of fraud, deceit and misrepresentation demonstrate their more specific meanings. Fraud is a generic term which 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. 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 for want of communication of that fact, and is thus a subcategory of fraud. Misrepresentation is the statement made by a party that a thing is in fact a particular way, when it is not so; untrue representation; false or incorrect statements or account.

In re Shorter, 570 A.2d 760, 768 n.12 (D.C. 1990) (internal quotations and citations omitted).

The Court has cautioned that Rule 8.4(c) is not to be accorded a "hyper-technical or unduly restrictive construction." *Ukwu*, 926 A.2d at 1113. Dishonesty is not limited to an affirmative untruth. Rather, it includes "conduct evincing 'a lack of honesty, probity or integrity in principle; [a] lack of fairness and straightforwardness.'" *In re Hager*, 812 A.2d 904, 916 (D.C. 2002) (quoting *Shorter*, 570 A.2d at 767-68) (citations omitted). Conduct "that may not be legally characterized as an act of fraud, deceit or misrepresentation may still evince dishonesty." *Shorter*, 570 A.2d at 768. Dishonesty extends to the failure to disclose when the attorney has an obligation to do so. "Concealment or suppression of a material fact is as fraudulent as a positive direct misrepresentation." *Reback*, 487 A.2d at 239-40, *adopted in relevant part*, 513 A.2d at 226; *see also Outlaw*, 917 A.2d at 688 (attorney violated Rules 8.4(c) and 1.4 by failing to inform client that the statute of limitation had lapsed).

For a period of almost three years, Respondent misled Mr. Morgan into thinking that he was vigorously pursuing Mr. Morgan's cause of action, even though he was not pursuing the claim. Respondent ignored the case despite a steady stream of questions from Mr. Morgan. However, even more disturbing than Respondent's placating "we're on top of it" pronouncements was what occurred after December 2011. At that point, Respondent knew that Mr. Morgan's case was dead, but he still kept up the pretense of representation. Respondent had every opportunity to tell Mr.

Morgan the truth, but he chose not to do so. During his testimony, Respondent did not explain why he kept silent. We can only infer that Respondent was trying to limit the amount of damage done, not to Mr. Morgan, but rather to himself. Proof of Respondent's continuing dishonesty can be found in the fact that Mr. Morgan (a "high maintenance client") continued to have discussions with Respondent even after the statute of limitations expired. Had Respondent been honest, Mr. Morgan would have known something in December 2011. Instead, the pretense that Respondent was prosecuting the case continued until Mr. Morgan finally involved Ms. Bezdicek.

Ms. Bezdicek's testimony is fully credited and clearly marks the culmination of Respondent's strategy of obfuscation. Respondent's conversations with Ms. Bezdicek were an attempt to misdirect and mislead her and Mr. Morgan into thinking that the money offered to Mr. Morgan was from WMATA as a settlement. Respondent was evasive and insulted Mr. Morgan's motive until he was finally cornered. Clearly, all of Respondent's actions after he realized that the statute of limitations had expired were aimed at limiting his liability in a possible malpractice suit against him. *See In re Sheehy*, 454 A.2d 1360, 1365 (D.C. 1983) (The "so-called 'settlement' was a disguised payment designed to finish the matter and placate [the client]. Such deceit strikes to the heart of the relationship between attorney and client, and is a clear violation of the Code.").

Disciplinary Counsel has proved by clear and convincing evidence that Respondent violated Rule 8.4(c) through affirmative misrepresentations and deceit.

VI. THE RECOMMENDED SANCTION

The standard for imposing discipline in a contested disciplinary case is set forth in D.C. Bar R. XI, § 9(h), which requires the imposition of a consistent sanction for comparable misconduct that is not otherwise unwarranted.

There are several factors used to determine the appropriate sanction for a violation of the disciplinary rules: 1) the seriousness of the conduct at issue; 2) the prejudice, if any, to the client which resulted from the conduct; 3) whether the conduct involved dishonesty and/or misrepresentation; 4) the presence or absence of violations of other disciplinary rules; 5) whether the attorney had a previous disciplinary history; 6) whether or not the attorney acknowledged his or her wrongful conduct; and 7) circumstances in mitigation of the misconduct. *In re Cole*, 967 A.2d 1264, 1267 (D.C. 2009).

1. The seriousness of the conduct at issue. While it might be argued that this case only involved the neglect of one client, that really is not the point. The gravity of the misconduct is what must be considered. In this case, Respondent did not simply "drop the ball" on a matter that was dormant. This case did not "slip through the cracks." Mr. Morgan actively sought information about his case and was in consistent contact with Respondent. Respondent spoke to Mr. Morgan regularly, but simply ignored the representation. After Respondent became aware of his neglect, his only thoughts were of limiting his own economic exposure. He sought to do this by his silence at time and his misrepresentations at other times.

2. The prejudice that resulted to the client. The neglectful inaction by Respondent seriously prejudiced Mr. Morgan. His claim was dead. Respondent's actions and inactions prevented Mr. Morgan from having his case investigated, researched, and presented. Had Respondent informed Mr. Morgan that he was not interested in his case, Mr. Morgan could have sought other counsel, which Mr. Morgan almost certainly would have done. The arguments that Mr. Morgan: 1) did not have a particularly good case (the import of the testimony of Mr. Key); 2) that Mr. Morgan did not have serious injury (the import of the testimony Dr. Schuelein); or Respondent's opinion that the case was worth in the neighborhood of $10,000, are of no avail in Respondent's defense. Mr. Morgan was denied the opportunity to test any of these arguments. He could not dispute the actions of WMATA police. He could not demonstrate the extent of his injuries. He could not test Respondent's opinion of the "value" of his case. These rights belonged to the client, Mr. Morgan, and Respondent's action extinguished those rights.

3. Whether the conduct involved dishonesty and/or misrepresentation. It is difficult to understand how Respondent could have regular conversations with Mr. Morgan and never do *anything* about his case. How could Respondent honestly tell Mr. Morgan his case was progressing when he had no idea what was going on with the case? Respondent did not tell Mr. Morgan that he was simply doing nothing but waiting for some sort of "tickler" notification when the case got to within three months of the lapse of the statute of limitations. Respondent lied about the possibility of a payment from WMATA after he knew that he had allowed the statute of

limitations to lapse. Respondent knew for certain that he had neglected Mr. Morgan's claim at least ten months before he finally admitted it to Mr. Morgan. Clearly, there is a distinction between trying to allay the fears of an anxious client and attempting to placate a neglected one. In *Outlaw* and *Sumner*, the Court enhanced the sanction because the dishonesty toward the client was protracted and aimed at avoiding professional liability. *Outlaw*, 917 A.2d at 689; *Sumner*, 665 A.2d at 991. These factors are present in the Respondent's case.

4. The presence or absence of violations of other provisions of the disciplinary rules. Respondent has been found to have violated seven disciplinary rules in this case.

5. Whether the attorney had a previous disciplinary history. Respondent received an informal admonition for threatening an opposing party with criminal prosecution in violation of DR 7-105(A) in 1987. BX 12. Respondent testified that he had no previous disciplinary record. He then tried to backtrack and say that it was a "minimal" history. Tr. 466, 554-555 (Respondent).

6. Whether the attorney acknowledged his or her wrongful conduct. Certainly, Respondent has the right to put the evidence of Disciplinary Counsel to the test on its burden of proof. Such action is not counted against Respondent in any way. However, what is counted against Respondent is his attitude toward his misconduct. First, while blaming his secretary for misfiling, he "acknowledges" that the case was his responsibility. What Respondent fails to realize is that it was not the filing of the case folder in the wrong drawer that is the issue. Rather, it is everything

he did and did not do after the case jacket was sent to the "Never Never Land" of the criminal filing drawer. He sat on a case doing absolutely nothing while assuring Mr. Morgan that he was looking after his interests. He did not even know where the file was. What happened is Respondent's fault and not his secretary's. After the discovery of his failure to file the case before the lapse of the statute of limitations, Respondent played a coy game with Mr. Morgan while he tried to figure a way to limit his own liability. When discovered by another attorney, he continued to try to bluff his way out without facing responsibility. He insulted the client to Ms. Bezdicek by saying that all he (Mr. Morgan) was interested in was money. He gratuitously insulted Mr. Morgan by referring to him as "the Mayor of Georgia Avenue." This was clearly an insult implying that Mr. Morgan had an inflated sense of his own importance. It is uncertain what would have happened to Mr. Morgan if he had not had Ms. Bezdicek follow up on the case. It was her diligence alone that finally brought Respondent's conduct to light. Respondent has never truly acknowledged his misconduct in any way.

7. Circumstances in mitigation of the misconduct. Prior satisfied clients testified for Respondent, as did his wife. Respondent has the ability to act competently, and his prior competence is considered in deciding the proper sanction. There were no mitigating factors in this case that go to the circumstance of the violations themselves.

8. The mandate to achieve consistency. In determining the appropriate sanction, the case that is closest to the fact of this case is *Outlaw*, 917 A.2d 684. Like

the instant case, *Outlaw* involved a failure to file a case before the lapse of the statute of limitations. In that case, the sanction was a sixty-day suspension. Certainly, this case is different from similar cases where suspensions of less than sixty days were imposed. In *In re Lewis* 689 A.2d 561, 566-67 (D.C. 1997), the respondent received a suspension of thirty days with a fitness requirement for neglect and failure to communicate with a client. However, there were the mitigating circumstances in that there was no claim of dishonesty and there were additional mitigating factors (mental exhaustion and self-suspension). The presence of mitigating circumstances was also the major factor for the imposition of the ninety-day suspension with all but thirty days suspended in the case of *In re Ontell*, 724 A.2d 1204, 1205 (D.C. 1999) (lawyer suffered from physical and mental health issues).

In *Outlaw*, the Court closed with the following discussion:

> In this instance, Bar Counsel urges that the sanction should be greater than the sixty days recommended by the Board because, in addition to the neglect of the client's cause, respondent's misleading conduct was protracted and occurred over an extended period of time. Given respondent's position of trust, counsel suggests that her interaction with her client was repeatedly evasive, significantly lacking in candor, and intended to avoid professional responsibility. Accordingly, it urges a greater sanction. This argument carries some persuasion. Because we conclude that the Board's recommended sanction of sixty (60) days is not inconsistent with comparable conduct under our case law, we are constrained to accept it.

917 A.2d at 689. While there are significant similarities between *Outlaw* and this case, namely, the lapse of the statute of limitations and a pattern of evasion and silence to the client about the lapse, there are significant aggravating circumstances that require a greater sanction. Outlaw had sought a settlement from insurance

carriers in furtherance of the client's cause. Respondent did nothing for two years while assuring Mr. Morgan that he was pursuing his case. Where Outlaw avoided contact with the client, Respondent attempted to limit his liability by blowing smoke at Mr. Morgan and then attempting to pass off his own money as a WMATA settlement. He might have gotten away with his deceit in the absence of an aggressive client and the representation of that client by Ms. Bezdicek. It is that dishonesty and Respondent's attitude about it that makes the case more egregious than *Outlaw*. Accordingly, it is the conclusion of this Committee that a suspension of ninety (90) days is warranted and is consistent with other matters involving similar facts and judgments of violations.

VII. CONCLUSION

For the foregoing reasons, the Ad Hoc Hearing Committee finds that Respondent violated Rules 1.1(a), 1.1(b), 1.3(a), 1.3(c), 1.4(a), 1.4(b), and 8.4(c) and should be suspended for ninety days.

AD HOC HEARING COMMITTEE

/JJS/
John J. Soroka, Esquire
Chair

/DB/
David Bernstein
Public Member

/EB/
Edward Baldwin, Esquire
Attorney Member

Dated: April 12, 2017