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:	:	
	:	
SAMUEL BAILEY JR.	:	
	:	
Respondent.	:	Board Docket No. 18-BD-054
	:	Disc. Docket No. 2015-D144
A Member of the Bar of the	:	
District of Columbia Court of Appeals	:	
(Bar Registration No. 384974)	:	

REPORT AND RECOMMENDATION OF AD HOC HEARING COMMITTEE

This matter examines alleged violations of the District of Columbia Rules of Professional Conduct by Samuel Bailey, Jr. ("Respondent") in connection with his representation of Allen Laster in a civil rights case before the U.S. District Court for the District of Columbia, his representation of Mr. Laster in a discrimination claim filed before the District of Columbia Office of Human Rights, and his conduct during the subsequent investigation by the Office of Disciplinary Counsel ("ODC"), which commenced in 2015. Respondent is charged with violating Rules 1.1(a), 1.1(b), 1.4(a), 1.4(b), 1.5(a), 1.5(e), 8.4(c) and 8.4(d) of the District of Columbia Rules of Professional Conduct (the "Rules").

Disciplinary Counsel asserts that clear and convincing evidence supports all charged Rule violations and requests that Respondent be suspended from the practice of law for two years. Disciplinary Counsel further requests that

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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.

Respondent's reinstatement be conditioned on Respondent paying partial restitution to Mr. Laster and proving his fitness to practice law. Respondent denies each violation alleged by Disciplinary Counsel and requests that this Ad Hoc Hearing Committee ("Hearing Committee") absolve him of any wrongdoing.

As set forth below, the Hearing Committee finds that Disciplinary Counsel has proven the violation of Rules 1.1(a), 1.1(b), 1.4(a), 1.4(b), 1.5(a), 1.5(e), 8.4(c), and 8.4(d) by clear and convincing evidence and recommends that Respondent be suspended from the practice of law for one year with a requirement of a showing fitness to practice law and the payment of restitution upon any application for reinstatement.

I. JURISDICTION

Jurisdiction for this disciplinary proceeding is prescribed by D.C. Bar R. XI. Pursuant to D.C. Bar R. XI, § 1(a), jurisdiction exists because Respondent is a member of the Bar of the District of Columbia Court of Appeals admitted to practice on December 18, 1984, and assigned D.C. Bar number 384974. Respondent has not contested jurisdiction.

II. PROCEDURAL HISTORY

Disciplinary Counsel filed its Specification of Charges on May 31, 2018, and properly served Respondent through counsel on June 5, 2018. Respondent answered the Specification of Charges on July 24, 2018, and a multi-day hearing was held on February 4, 5, 6 and May 13, 2019, before the Hearing Committee consisting of the Chair, Seth I. Heller, Esquire; Attorney Member Heidi Murdy-Michael, Esquire; and

Public Member Marcia M. Carter.[1] Respondent, represented by Johnny M. Howard, Esquire, was present each hearing day. Disciplinary Counsel was represented by Assistant Disciplinary Counsel Traci M. Tait, Esquire.

Prior to the hearing, Disciplinary Counsel submitted DX 1, 2, 2A-B, 3, 4, 4A-I, 5, 5A-B, 6-9, 9A-B, 10, 11, 11A, 12, 13, 13A-X, and 14.[2] During the hearing, Disciplinary Counsel submitted additional exhibits DX 15-17. All of these exhibits were admitted into evidence during the hearing. After the hearing, Disciplinary Counsel moved to supplement its exhibits with additional evidence in aggravation of sanction, *see* DX 18, which the Chair admitted into evidence in his Order of May 21, 2019.

Prior to the hearing, Respondent submitted RX 1 through 82. During the hearing dates in February, Respondent submitted exhibit RX 83. By the Chair's order of June 14, 2019, the following (identified as Volume I) were admitted into evidence: RX Volume I 1-4, 8-10, 17-18, 20-22, 26, 28, 30, 33-37, 39-52, 54, 60-63, 74, 76-80, and 82. Prior to the last day of hearing on May 13, 2019, Respondent submitted additional exhibits, entitled Volume II, of which the following were

[1] Mr. Heller was assigned to act as Chair after the prior Chair issued an order recusing himself on January 9, 2019.

[2] "DX" refers to Disciplinary Counsel's exhibits. "RX Volume I" and "RX Volume II" refer to Respondent's exhibits.

admitted into evidence: RX Volume II 7-19, 21-30, 33, 40-44, 46-47, 51-52, 57-59, 61-62, 67, 69, 72-75, 79-80, 84, 93-95, 97, 99, 101-103, 107, 114, and 121-125.[3]

During the hearing, Disciplinary Counsel called four witnesses: ODC Investigator Kevin O'Connell, Mr. Laster, Mark Hanna, Esquire, and Respondent. Respondent testified on his own behalf and called the following witnesses: Sara McDonough, Esquire, Clifford G. Stewart, Esquire, and ODC Investigator O'Connell.

The Specification alleges that Respondent committed the following Rule violations:

- Rule 1.1(a), by failing to provide competent representation to his client on the basis that Respondent did not use the required legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation;
- Rule 1.1(b), by failing to serve his client with the skill and care commensurate with that generally afforded to clients by other lawyers in similar matters;

[3] Pursuant to Disciplinary Counsel's motion and the Board's order of May 29, 2019, the following exhibits were placed under seal: DX 14 and RX Volume I 9 and 29.

- Rule 1.4(a), by failing to keep his client reasonably informed about the status of a matter and failing to promptly comply with reasonable requests for information;
- Rule 1.4(b), by failing to explain the matter to the extent reasonably necessary to permit his client to make informed decisions regarding the representation;
- Rule 1.5(a), by charging an unreasonable fee;
- Rule 1.5(e), by failing to advise his client, in writing, of the contemplated division of fees between Respondent and co-counsel (who were not at the same firm), the contemplated division of responsibility, or the effect of the association of lawyers outside the firm on the fee to be charged;
- Rule 8.4(c), by engaging in conduct involving dishonesty; and
- Rule 8.4(d), by engaging in conduct that seriously interferes with the administration of justice.

Specification ¶ 41.

Upon 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 violation of a disciplinary rule. Tr. 1208[4]; *see* Board Rule 11.11. In the second phase of the hearing, Disciplinary Counsel submitted two exhibits reflecting Respondent's prior discipline, DX 16 and 17, and Respondent's presentation in mitigation of sanction consisted of attorney argument, without additional exhibits or witness testimony. *See* Tr. 1220-21.

Disciplinary Counsel submitted its Proposed Findings of Fact, Conclusions of Law, and Recommendation as to Sanction on June 18, 2019, and a Corrected Proposed Findings of Fact, Conclusions of Law, and Recommendation as to Sanction ("ODC Br.") on July 1, 2019. Despite the Hearing Committee's grant of Respondent's request to extend his filing deadline, Respondent's post-hearing brief ("R. Br.") was filed over two months late on September 30, 2019.[5] Disciplinary Counsel filed its reply brief ("ODC Reply Br.") on November 12, 2019.

III. FINDINGS OF FACT

After thorough, careful, and thoughtful consideration of the record before it, the Hearing Committee finds that the following facts have been established by clear and convincing evidence. *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

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[4] "Tr." refers to the transcript of the hearing held on February 4, 5, 6 and May 13, 2019. The transcript of the first two days of the Hearing—February 4 and 5—misidentifies Attorney Member Heidi Murdy-Michael as "Merril Hirsh."

[5] Respondent's proposed findings of fact and conclusions of law was initially due for filing on July 3, 2019, but the deadline was extended to July 23, 2019 by the Hearing Committee Chair's Order of July 19, 2019. Without explanation to or permission from the Hearing Committee, Respondent delayed until September 30, 2019 to file his proposed findings of fact and conclusions of law—over two months after the extended deadline.

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").

Background

1. Respondent has practiced law for over thirty years and most recently practiced law in the District of Columbia. Tr. 588-89. Respondent is a member of the District of Columbia Bar, having been admitted to practice before the District of Columbia Court of Appeals on December 18, 1984 and assigned D.C. Bar Number 384974.

2. In or around September 2013, Mr. Laster approached Respondent in search of legal representation in an employment discrimination case that Mr. Laster had filed *pro se* in the United States District Court for the District of Columbia on April 9, 2013 (the "Federal Case"). DX 13; Tr. 108-09, 594-96. At the time, Mr. Laster had spent at least three months unsuccessfully seeking pro bono counsel for the matter, and he was concerned that his case was about to be dismissed. Tr. 108-09.

3. Respondent and Mr. Laster had an initial meeting in early September 2013 where they generally discussed both the Federal Case and another similar and related *pro se* discrimination action brought by Mr. Laster before the District of Columbia Office of Human Rights ("OHR"). Tr. 594-96, 608-09. Respondent brought several documents related to his case to the initial meeting at Respondent's office. Tr. 603. Respondent agreed with Mr. Laster's concern that the Federal Case was in jeopardy of imminent dismissal. *See* Tr. 606 (Respondent: "[W]e probably

understood [the case's status] in September [2013] . . . . Judge Sullivan . . . indicated that he didn't understand Mr. Laster's complaints and was on the verge of dismissing it."); Tr. 609-610. Respondent indicated that he lacked sufficient expertise in employment discrimination matters to accept the case alone, but offered to co-counsel with Clifford G. Stewart (a New Jersey attorney with expertise in employment law)[6] with Respondent acting as local counsel in the United States District Court for the District of Columbia and filing a *pro hac vice* motion for Mr. Stewart's participation. *See* Tr. 110-11, 618-19; DX 13 at 1-2. Mr. Laster left that initial meeting with the impression that Respondent could become his attorney and that Respondent would consult with Mr. Stewart to determine whether they would agree to jointly represent Mr. Laster. *See* Tr. 114 (during initial office visit, Respondent "did not say he wasn't going to take the case"). Respondent contacted Mr. Stewart and, by September 11, 2013, he and Mr. Stewart began work on collecting documents, including submitting a request to OHR for copies of all the complaints Mr. Laster had filed. Tr. 608; DX 4H at 103.

4. On October 3, 2013, Mr. Laster met with both Respondent and Mr. Stewart to continue discussing his claims of discrimination. Tr. 77, 115, 594, 602-03, 613; DX 4I at 121. It was Mr. Laster's second meeting with Respondent and his

[6] Mr. Stewart is a not a member of the District of Columbia Bar and is not a party to this proceeding. The Hearing Committee's findings are neither meant to indict nor exculpate Mr. Stewart for his conduct as Mr. Laster's attorney or Respondent's co-counsel during all relevant times. Mr. Stewart's participation in the hearing was as a witness for Respondent.

first meeting with Mr. Stewart. Tr. 594. Respondent and Mr. Stewart required that Mr. Laster pay a $600 consultation fee, which he paid. Tr. 115. Mr. Laster recalled that it was during the meeting that Respondent and Mr. Stewart both agreed to represent him as co-counsel in the Federal Case and OHR matter. Tr. 115-16. However, Respondent testified that he and Mr. Stewart decided to represent Mr. Laster, not during the October meeting, but later in November 2013. Tr. 613-14.

5. Before providing Mr. Laster with a written agreement setting forth the scope of representation or agreed-upon fees, Respondent and Mr. Stewart began recording time spent working on Mr. Laster's case. Tr. 111, 115-17, 128-29, 613, 937; *see* DX 4H. Respondent waited until December 2013 to send Mr. Laster a written agreement, which is further discussed below. Tr. 116-17, 622; DX 4A at 21a. Respondent and Mr. Stewart jointly represented Mr. Laster for about two years in the Federal Case and before the OHR. DX 13; Tr. 610-13. The charges in this case relate to Respondent's billing, work product, dishonesty during his representation of Mr. Laster, and conduct during the subsequent investigation by the Office of Disciplinary Counsel.

The Representation Agreement

6. Mr. Laster received a written representation agreement (the "Agreement") from Respondent by e-mail in December 2013. Tr. 116-17, 622;

DX 4A at 21a. The Agreement[7] is internally inconsistent, poorly written, and objectively unclear. Tr. 353-58; *see* DX 2 at 13-18. Mr. Laster did not understand its terms yet signed the Agreement. *See, e.g.*, Tr. 168-69 (Laster: "I glanced over it. There's a lot of words that I did not understand."). Mr. Laster testified that Respondent told him that he would explain its terms at their next meeting, but that discussion never took place. Tr. 117. According to Mr. Laster, the only term in the Agreement that previously had been discussed was the $30,000 amount and Mr. Laster's obligation to pay for it in increments of $1,000 a month. Tr. 140-41. The Hearing Committee credits Mr. Laster's testimony concerning what terms of the Agreement had been discussed and explained.

7. The Agreement states that it is for "[p]rosecuting the complaint alleging employment discrimination before the United States District Court for the District of Columbia," *i.e.*, the Federal Case. DX 2 at 134. The Agreement states that Respondent will represent Mr. Laster in the allegations against "Local Union 491, Mid Atlantic Regional Counsel of Carpenters and the Labor Management Training Committee Defendant, for labor law violations employment discrimination based on race and disability." *Id*. The Agreement states that it is a "partial contingent fee contract," but does not clearly set forth the terms of the contingency or non-

[7] Disciplinary Counsel's expert, Mr. Hanna, examined and opined on the written Agreement between Respondent and Mr. Laster, filings made by Respondent on behalf of Mr. Laster, and Respondent's billing practices. Mr. Hanna's testimony was reliable and convincing. Mr. Hanna has consistently practiced in the area of employment law since 2000, is a member of the District of Columbia Bar, and has specific expertise in union and plaintiff employment matters. Tr. 323-25.

contingency components of Respondent's and Mr. Stewart's representation of Mr. Laster. *See* DX 2 at 14.

8. The discernible contingency aspect of the Agreement consists of a clause reserving "40% percentage [sic] of Clients [sic] recovery after deduction of costs" for counsel. DX 2 at 15. The term "costs" is not defined in the Agreement, and it is unclear what costs would be deducted from any recovery before 40% was taken as contingency compensation for Respondent and Mr. Stewart. *See* DX 2 at 13-18. Part C of the Agreement describes the non-contingency aspect of the Agreement. DX 2 at 14. Part C establishes a non-contingent $30,000 up-front payment from Mr. Laster to Respondent, payable through $1,000 monthly payments "on the fifteenth day of the month." *Id*. (describing the $30,000 sum as advance "payments [] for costs and expenses anticipated for prosecuting the claims set forth above"). Part C further explains that "Counsel will keep an itemized time sheet of tasks accomplished in this matter for which fees will be based when applicable" using "Counsel's discounted hourly rate of $400.00 per hour." DX 2 at 14-15. The Agreement does not explain when the discounted hourly fees were "applicable" and while Mr. Laster was often billed in 0.25 hour increments, the Agreement does not define the time increments for which Mr. Laster would be billed because Respondent and Mr. Stewart did not think it was necessary to include such information in the Agreement. Tr. 701-03.

9. The Agreement assesses additional fees imposed on Mr. Laster for "payments more than ten (10) days late or past the first of each month." DX 2 at 14.

Because Mr. Laster's non-contingency payments were due on the fifteenth of the month, the Agreement's reference to payments "more than 10 days late or past the first of each month," is confusing because ten days past the fifteenth of the month is the twenty-fifth of the month and it is unclear what relevance the first of the month has to this late payment penalty. *Id.* The financial penalty for late payments is also confusing. The Agreement states that such late payments will "automatically incur a twenty[-]five (15%) [sic] late fee or one hundred and twenty[-]five ($125.00) dollars unless prior arrangements for payment [are] made by Client." DX 2 at 14 (discrepancy of "twenty[-]five" and "15" in original).[8]

10. The Agreement does not identify a single hourly rate that Mr. Laster would pay for legal services. Tr. 703. Instead, the Agreement references hourly rates of $400, $450, or $500 for both lawyers without sufficient explanation of when, or under what circumstances, each rate applies. Tr. 118-120, 124-25, 158-59, 355-57; DX 2 at 14-17. Further, the Agreement states that "[i]f associated counsel [Mr. Stewart] is retained no additional costs will be required of Client," DX 2 at 17, yet Mr. Laster was billed for both attorneys' time, even when Respondent, Mr. Stewart, and Mr. Laster met together. Tr. 72; *see* DX 4H at 98-100, 103-07. Although the Agreement makes clear that Respondent intended to associate with Mr. Stewart, it

[8] It is difficult to understand what the penalty for late payment would be. For example, twenty-five percent (25%) of $1,000 is $250, fifteen percent (15%) of $1,000 is $150, and $125 is twelve-and-one-half percent (12.5%) of $1,000. There is no way for Mr. Laster, or anyone for that matter, to understand the agreed-upon penalty for delinquent payments made by Mr. Laster.

also does not explain the contemplated division of responsibility between Respondent and Mr. Stewart. *See* DX 2 at 17.

11. The Agreement contains a provision outlining legal fees for Mr. Laster should he terminate Respondent. DX 2 at 16. If Mr. Laster discharged Respondent without "just cause," Respondent would be entitled to collect fees "in an amount equal to the greater of: (1) the above agreed percentage or [sic] gross recovery or $500 per hour for services performed to date of discharge." *Id.*

The Federal Case

12. In April 2013, Mr. Laster had filed *pro se* an employment discrimination case in the United States District Court for the District of Columbia (Federal Case) against four defendants: his Local Union 491, the Labor Management Training Committee, the Mid-Atlantic Council of Carpenters, and the Carpenters Local 491 Annuity Fund. Tr. 128-29, 164; DX 13 (docket); DX 13A (initial complaint).

13. Respondent and Mr. Stewart began investigating Mr. Laster's case in early September 2013, almost three months after the Defendants had filed a motion to dismiss or, in the alternative, for a more definite statement on June 28, 2013. Tr. 937; DX 13 at 4; DX 13B.

14. On November 19, 2013, the District Court ordered Mr. Laster to file a more definite statement by December 16, 2013. DX 13 at 7. Respondent first entered his appearance for Mr. Laster on December 11, 2013, and requested an extension of time to file Mr. Laster's more definite statement. DX 13 at 7; DX 13H.

The District Court granted Respondent's motion and extended Mr. Laster's deadline to January 15, 2014. DX 13 at 7. Respondent filed a more definite statement on behalf of Mr. Laster on January 15, 2014. DX 13 at 7; DX 13I. On March 14, 2014, Respondent filed a third amended complaint (*see* DX 13L (third amended complaint); Tr. 338, 345-46; *see also infra* FF 48-49), and, on April 29, 2014, Respondent moved for *pro hac vice* admission for Mr. Stewart. DX 13 at 8-9; DX 13N. The District Court admitted Mr. Stewart to appear *pro hac vice* on July 31, 2014. DX 13 at 10.

15. Unlike Mr. Laster's *pro se* complaints, the third amended complaint filed on March 14, 2014 did not include the Carpenters Local No. 491 Annuity Fund as a named party.[9] *Compare* DX 13A, *and* DX 13D, *with* DX 13L. The Annuity Fund is also not identified in the written Agreement with Mr. Laster concerning the scope of the representation. *See* FF 7. On March 27, 2014, the Annuity Fund filed a motion to dismiss.[10] DX 13M. Respondent did not respond to the Annuity Fund's motion to dismiss on behalf of Mr. Laster, and the District Court subsequently ordered that Mr. Laster show cause for why the Annuity Fund's motion should not be treated as conceded. DX 13 at 10. Respondent did not respond to the court's

[9] Mr. Laster initially did not agree with Respondent and Mr. Stewart that the Annuity Fund should be excused from the case; it was only after Respondent reassured Mr. Laster that the Annuity Fund could be added at a later date that Mr. Laster agreed to remove the Annuity Fund from the complaint. Tr. 138-39, 200-03.

[10] There is no explanation in the record as to why the Carpenters Local No. 491 Annuity Fund filed a motion to dismiss a complaint to which it was not a named party.

order, and the District Court dismissed Mr. Laster's action against the Annuity Fund as conceded. DX 13 at 10; 13Q.

16. On July 14, 2014, Labor Management Training Committee, Local Union 491, and Mid-Atlantic Council of Carpenters (the "Remaining Defendants") filed a motion to dismiss. DX 13 at 9. Respondent's opposition on behalf of Mr. Laster was due on September 15, 2014. DX 13 at 10.

17. On September 18, 2014, three days *past* the September 15, 2014 deadline to oppose the Remaining Defendants' motion to dismiss, Respondent filed Mr. Laster's opposition. DX 13R. The next day, Respondent filed an untimely "Notice to Supplement Exhibits." DX 13S. Respondent did not file a motion for an extension of time to file either submission. *See* DX 13 at 10.

18. At the District Court's invitation, the Remaining Defendants filed a joint motion for mediation on September 23, 2014, which the District Court granted the same day. DX 13 at 10-11; DX 13T. The District Court set a deadline for the parties to settle the case by February 9, 2015. DX 13 at 12.

19. After a mediation session on October 21, 2014, Respondent and co-counsel Stewart advised Mr. Laster to accept a settlement offer of about $50,000 or $60,000. DX 13 at 11; Tr. 144, 691-92. Mr. Laster rejected it as too low. Tr. 144.

20. In late January 2015, Mr. Laster fired Respondent by e-mailed letter. DX 5A at 29-30; Tr. 141.

21. On February 2, 2015, Respondent filed a motion to withdraw himself and Mr. Stewart from the Federal Case. DX 13U. That day, Mr. Laster filed a *pro*

se pleading alerting the court to his decision to change counsel and asking for time to retain successor counsel. DX 13V. The District Court granted the motion to withdraw on February 5 and allowed Mr. Laster until February 25, 2015, to inform the court if he wished to proceed *pro se* or retain a new attorney. DX 13W.

22. Before Mr. Laster was able to retain new counsel, the District Court appointed *pro bono* counsel to represent Mr. Laster in a second attempt to settle the Federal Case through mediation. Tr. 146, 431, 438; DX 13 at 13. The mediation was successful, and the appointed *pro bono* counsel settled the Federal Case for a sum several times higher than the best offer Respondent or Mr. Stewart had obtained. DX 14; *see also* DX 13 at 13-15.

The Office of Human Rights Cases

23. Before retaining Respondent, Mr. Laster filed multiple claims with the OHR alleging that his union had discriminated against him on multiple grounds, including discrimination based on disability and, separately, discrimination based on race. *See* Tr. 782, 812-15, 1090-93; DX 4F. In or around March 2014, Respondent agreed to file a request for reconsideration on the disability matter. Tr. 696, 741-43; *see* DX 4F; DX 5 at 129; *see also* Tr. 129-131, 623.

24. Co-counsel, Mr. Stewart, did the substantive work in the disability matter. *See* Tr. 130-31, 696, 741-43. Respondent did not provide Mr. Laster with a new or separate agreement setting forth the basis or rate of the additional representation, *see* Tr. 130, and did not amend the Agreement to incorporate the disability matter. *See* DX 2 at 13-18.

25. On April 1, 2014, Respondent transmitted electronically the reconsideration request for the disability claim to the OHR. DX 4F; DX 5A at 26.

26. On July 3, 2014, Respondent e-mailed OHR about the status of the disability matter. DX 5A at 27. The OHR general counsel's office replied the same day, informing Respondent that the agency was reviewing his reconsideration request. DX 5A at 28. Respondent never followed up.

27. Mr. Laster had difficulty determining the status of his OHR claim from Respondent. Tr. 134-36. Mr. Laster testified that he became increasingly frustrated when his phone calls to Respondent about the OHR matter were never returned: "'What's the result?' I call, I call, I call, I call . . . to see what the outcome was . . . ." Tr. 135-36. As a result, Mr. Laster retained a law firm, Alan Lescht & Associates, to better assist him with his OHR claim: "Attorney Stewart and Attorney Bailey wasn't [sic] responding to my emails or my phone calls in a responsible way. So I went and sought—sought [an]other attorney at that time." Tr. 136-37.

The Professional Relationship and Post-Termination Interactions

28. Mr. Laster experienced hardship in his life and is not of substantial economic means. *See, e.g.*, Tr. 108, 126-27. Mr. Laster's testimony regarding his

interactions with Respondent was generally consistent with the evidentiary record submitted by the parties.

29. While negotiating the Agreement, Respondent initially proposed that $30,000 be paid upfront. Tr. 620; *see supra* FF 8.[11] Given Mr. Laster's inability to afford the $30,000, Respondent and Mr. Laster agreed that Mr. Laster would pay Respondent $1,000 per month in lieu of the proposed $30,000 advance payment. Tr. 618-620. The record shows that Mr. Laster made at least $12,300 in payments to Respondent between October 2013 and February 2015. DX 9B at 21.

30. Mr. Laster often paid in cash and asked for receipts, but Respondent did not provide receipts upon request. *See* Tr. 128, 258-261. When Mr. Laster paid Respondent by check, the deposited check served as a receipt. *See* Tr. 128, 139; DX 6 at 1, 8-9. Other times, Mr. Laster retained copies of his bank withdrawal slips. DX 6 at 2-7.

31. During his representation of Mr. Laster, Respondent failed to provide invoices for legal services rendered or receipts for payments made by Mr. Laster to Respondent. Tr. 142-43. Only after Mr. Laster fired Respondent, and after Respondent filed his motion to withdraw on February 2, 2015, did Respondent produce an invoice for legal services rendered. DX 4I; *see* DX 13U.

32. Respondent's invoice, seeking a total of $85,270 for 221.75 hours of legal services rendered, included improper charges for work performed between

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[11] As noted previously, *see* FF 8, the proposed $30,000, to be paid upfront, was an advance fee for work yet to have been performed. *See In re Mance*, 980 A.2d 1196, 1202 (D.C. 2009).

October 3, 2013 and February 19, 2015, more than two weeks after Mr. Laster had fired Respondent. DX 9B; DX 5B at 115 (e-mail from Respondent to Mr. Laster informing Mr. Laster that, per e-mails dated January 30 and 31, 2015, a motion to withdraw Respondent and Mr. Stewart had been filed).[12] Respondent alone billed Mr. Laster 1.0 hour, or $400, to prepare an e-mail and motion to withdraw on the day he was fired. DX 4I at 124. From February 3, 2015 through February 19, 2015, Respondent billed Mr. Laster an additional 1.25 hours, or $500, for e-mails and a "letter to withdraw." DX 4I at 124.

33. Because Mr. Laster had made $12,300 in payments to Respondent, Respondent's records credited that amount of fees paid and showed a balance due of $72,970.00. DX 9B at 21. When Mr. Laster picked up his client file, he was given a cover letter in which Respondent informed him that a lien in the amount of $72,970.00 had been filed by Respondent's firm against Mr. Laster, for the uncollected fees. DX 4I at 114. Respondent asked Mr. Laster to sign papers related to the lien when Mr. Laster came to pick up his file from Respondent's office. *See* Tr. 149.

Respondent's Billing for Legal Services Provided

34. Respondent's billing practices for the legal services he and Mr. Stewart provided to Mr. Laster were generally inadequate. Respondent did not always keep

[12] An entry made on February 23, 2015 lists "Services performed by C. Stewart," billing for 65.75 hours, but Mr. Stewart's log of services shows those fees were incurred between August 31, 2014 and January 30, 2015. The last billing entry for services performed by Respondent was dated February 19, 2015. *See* DX 9B.

contemporaneous records of the time he spent providing legal services to Mr. Laster. *See* Tr. 368-69, 646-48. Instead, Respondent largely used a combination of billing software and notes he would make based on a review of his e-mail accounts to estimate how much time he spent working for Mr. Laster. Tr. 631-33, 640-653.

35. Respondent did not submit regular invoices to Mr. Laster to indicate the legal services performed during a particular period of time and how much in legal fees had been incurred. Tr. 356-361, 368-69, 394-98. Respondent, however, after being terminated, submitted an invoice to Mr. Laster. DX 9B.

36. Respondent's invoice dated February 23, 2015 includes totaled fees of $85,270 for his work on the Federal Case and his work on the OHR matter. *See* DX 9B at 17-20 (showing, for example, Respondent's March 13, 2014 entry included 1.0 total hour for "Prep. Opp to Motion to Strike" and Respondent's April 1, 2014 entry included a 0.25 hour charge for "filing w/DHRC"). Respondent's "Client Statement of Account," *see* DX 9B at 21, credits Mr. Laster with $12,300 in payments made throughout the representation and concludes that the "Total Balance Due from Client," was $72,970. DX 9B at 21.

37. Disciplinary Counsel's forensic accountant expert witness, Kevin O'Connell, relying on Respondent's and Mr. Stewart's billing statements,[13] further

[13] Disciplinary Counsel's exhibit DX 4I contains Respondent's statement of services to Mr. Laster. It contains an itemized list ostensibly of Respondent's billings as well as an attachment of Mr. Stewart's itemized time sheet. *See, e.g.*, DX 4I at 121-24, 127-133. Respondent's statement of services would account for Mr. Stewart's billings through periodic entries identified as "Hours for co-counsel Clifford G. Stewart," which would instruct Mr. Laster to "see attachment [Mr. Stewart's itemized time sheet] for details." *See, e.g.*, *id*. at 123.

elucidated Respondent's inconsistent billing practices with Mr. Laster. As mentioned above, the Agreement did not clearly address how Mr. Laster would be billed for legal services performed by both Respondent and Mr. Stewart; in practice, there was no consistent billing practice either. *See* FF 10. Indeed, at times, Mr. Laster was billed a "discounted" rate of $680 per hour for work done by Mr. Stewart and Respondent. Tr. 71-72; *see also* DX 4I at 121-133 (showing instances where Respondent and Mr. Stewart billed at a rate of $280 and $400 per hour, respectively, for joint efforts). However, there were also instances when Mr. Laster was billed a rate of $800 per hour for legal services provided by both attorneys. Tr. 71-72; *see also* DX 4I at 121-133 (showing instances where Respondent and Mr. Stewart *each* billed at a rate of $400 per hour for resulting in charges of $800 per hour). These instances of "double-billing" were not defined in the Agreement, and Mr. Laster was over-billed $7,970 based on such "double-billing" by Respondent. *See* DX 2 at 13-18; Tr. 78-79, 96.

38. The invoice provided by Respondent to Mr. Laster corroborates Mr. O'Connell's testimony and demonstrates two distinct patterns of double-billing, where Mr. Laster was concurrently billed for both Respondent's and Mr. Stewart's time. *See* DX 4I.

39. First, there are numerous entries of time where Respondent billed at a "discounted" rate of $280 per hour "when Bailey and Stewart [met] jointly with [Mr. Laster]" and for which Mr. Stewart billed at his $400 rate. *See* DX 4I at 121-24.[14]

40. Second, there are several instances where Respondent billed at his rate of $400 per hour even though Mr. Stewart submitted the same time sheet entries. *See* DX 4I at 121-124. Respondent's invoice contains time entries and descriptions that are substantially identical to entries in Mr. Stewart's time sheet, many of which refer to Mr. Stewart's discussions with Respondent (*i.e.*, himself), even when already included on Respondent's statement of services. *Compare* DX 4I at 121 (Respondent's November 8, 2013 0.5 hour entry for "Discussion with S. Bailey re: Laster's Case"), *and* DX 4I at 122 (Respondent's March 8, 2014 entry for "Discussions with S. Bailey about drafting Reconsideration to DCHRC on Laster's behalf"), *with* DX 4I at 127 (Mr. Stewart's November 8, 2013 0.5 hour entry for "Discussion with S. Bailey re Laster's case"), *and* DX 4I at 129 (Mr. Stewart's March 8, 2014 entry for "Discussion S Bailey about drafting Reconsideration to DCHRC on Laster's behalf").

41. In addition to the double-billing described above, Respondent's invoice contained numerous mistakes that caused over-charges to Mr. Laster. For example,

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[14] Mr. O'Connell testified that Respondent billed 7.75 hours at a discounted rate, double-billing for a total of $2,170. Tr. 78-79. While not affecting our legal conclusions, we note that the bill appears to list a total of 12.75 hours at a "discounted rate" for October 3, 2013, November 8, 2013, December 30, 2013, February 26, 2014, March 12, 2014, March 20, 2014, May 12, 2014, May 15, 2014, and July 30, 2014. Mr. Stewart appears to have also billed for 8.5 hours on those same dates, though Respondent and Mr. Stewart billed different hours on November 8, 2013 and March 20, 2014, and Mr. Stewart billed nothing on July 30, 2014. *See* DX 4I at 121-24.

the time sheet prepared by Mr. Stewart for his billing between September 9, 2013 and December 3, 2013 over-billed Mr. Laster by five hours (resulting in a $2,000 overcharge). Tr. 79; DX 4I at 127. A similar mistake occurred when Mr. Stewart charged 19 hours for his billings between March 29, 2014 and June 1, 2014, when he overcharged by one hour (a $400 overcharge). Tr. 79-80; DX 4I at 130. These statements were eventually combined by Mr. Stewart as part of a 90.25 hour invoice totaling $36,100 of fees, DX 4I at 131, which was included in Respondent's invoice to Mr. Laster. DX 4I at 123 (billing for 90.25 hours at $400 per hour for "Hours for co-counsel Clifford G. Stewart (see attachment for details)"). At a minimum, Mr. Laster was overbilled $2,400 because of these billing errors.

42. Mr. Stewart's testimony regarding his billing practices and billing statements is compelling corroborative evidence that Respondent's invoice to Mr. Laster is unreliable and inaccurate. Mr. Stewart initially testified that he keeps "an electronic record of every encounter that [he has] with a client or a potential client." Tr. 894. However, while discussing the substance of the log that ostensibly reflects his electronic records, Mr. Stewart testified that he only occasionally noted the time he spent with clients. Tr. 900 ("[Q]: You only occasionally note the time spent with clients[?] [A]: Yes. [Q]: But [] you have that in another place? [A]: No"). As Mr. Stewart reviewed his billing statements and notes, he testified that there were numerous mistakes, including entries for time that should not have been billed and legal services performed but not recorded. *See, e.g.*, Tr. 932, 1110-11.

43. Respondent's bills contained numerous entries that were either erroneously duplicative or intentionally false. For example, on January 15, 2014, as reflected by Respondent's billing records and the court's docket, Respondent filed Mr. Laster's response to the court's order for a more definite statement. DX 13 at 7; DX 4I at 121 (charging $100 for "Review Order for More Definite Statement" on January 13 and $37.50 for filing the response on January 15). However, almost a week later, on January 21, 2014, Respondent again billed Mr. Laster for 0.25 hours ($100) of work for "Review Order for More Definite Statement." DX 4I at 121. This entry was both improper and false because the response to the court's order for a more definite statement was filed on January 15, 2014. DX 13 at 7. Respondent failed to proffer any explanation for billing Mr. Laster an additional $100 for reviewing an order for a more definite statement to which he had already responded. Similarly, while Respondent filed Mr. Stewart's *pro hac vice* motion in the Federal Case on April 29, 2014, DX 13 at 8-9, billing Mr. Laster 1.0 hours for preparation of the motion on April 28 ($400) and $37.50 for filing the motion, Respondent also billed Mr. Laster 0.25 hours ($100) on May 9, 2014, for filing the same *pro hac vice* motion. DX 4I at 122. This entry was both improper and false because the *pro hac vice* motion had already been filed on April 29, 2014. DX 13 at 8-9. According to the docket, no motion for *pro hac vice* was filed in the Federal Case on May 9, 2014. *See* DX 13 at 8-9.

44. There were other discrepancies with Respondent's billing records. For example, Respondent charged 1.5 hours for a phone call with Mr. Laster on July 30,

2014; however, Mr. Laster's cell phone records only reflected a call of two minutes on that same date. Tr. 82-83; *see* DX 9A-3 at 14; DX 4I at 123. Respondent testified that this discrepancy was due to Mr. Laster calling him while commuting to Respondent's office. Tr. 630-31. Respondent testified that they had a two-minute phone conversation before Mr. Laster's arrival, after which they had a 1.5 hour conference call with Mr. Stewart from Respondent's office phone. *Id*. Aside from Respondent's testimony, there is nothing in the record (or documented in Respondent's time records) to support Respondent's explanation of the 1.5 hour phone call charge to Mr. Laster on July 30, 2014, which contradicts Mr. Laster's cellphone records. We find Respondent's testimony on this point to be incredible, particularly when considering his demeanor and absolute certainty in recalling an event that occurred more than four years earlier. Respondent did not offer evidence of his own office telephone records, Mr. Stewart's telephone records, or any notes to support his explanation.

45. Disciplinary Counsel's forensic accountant, Mr. O'Connell, explained that Mr. Laster was overcharged about $23,518.17 by Respondent. *See* Tr. 88-89. The evidence showed that at least $12,618.17 of overcharges were attributable to Respondent's itemized records and $10,900 of overcharges to Mr. Stewart's

itemized billing statements (which Respondent ultimately included in his invoice to Mr. Laster). Tr. 87-88; *see* DX 4I at 121-133.[15]

46. Mr. Laster was also unsatisfied with Respondent's billing practices and disputed Respondent's invoice with the District of Columbia Attorney/Client Arbitration Board (the "ACAB"). DX 10. The ACAB considered a request from Mr. Laster for $13,500 from Respondent, while Respondent requested $72,000 in fees from Mr. Laster. DX 10. The ACAB concluded that Mr. Laster owed Respondent (and Mr. Stewart) a total of $16,500.[16] DX 10.

Respondent's Representation of Mr. Laster

47. The Committee qualified Disciplinary Counsel's witness, Mark Hanna, Esquire, as an expert in (1) the standard of care of lawyers who handle cases involving employment law and labor union law and (2) the customary billing practices with such representations. Tr. 327, 337. Consistent with Respondent's testimony, Tr. 606-07, Disciplinary Counsel's expert, Mr. Mark Hanna, described Mr. Laster's legal situation as a "hair-on-fire moment" at the time he engaged Respondent and Mr. Stewart because the motion to dismiss was pending. Tr. 350-51; *see* DX 13 at 3-7. Mr. Hanna aptly and convincingly testified as an expert on

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[15] Because Respondent's remaining fee request was reduced from $72,970 to $16,500 by the ACAB decision, *see infra* FF 46, we cannot determine if duplicative or erroneous charges were later paid. However, this does not detract from the fact of Respondent's overbilling. *See supra* FF 36.

[16] Neither party has proposed a factual finding as to how Respondent was paid the $16,500 awarded by ACAB, but it appears from the transcript testimony that successor counsel disbursed the ACAB award to Respondent before releasing to Mr. Laster his portion of the award settlement. *See* Tr. 154-55.

the standard of care exercised by labor and employment attorneys who are familiar with causes of action like those asserted by Mr. Laster.

48. As noted earlier, Respondent ultimately filed a third amended complaint on March 14, 2014, *see* FF 14-15, in response to the court's order for a more definite statement. DX 13 at 8; DX 13L. Based on Respondent's billing statement, Mr. Laster was billed for 29.5 hours of legal services described as "drafting"—or over $12,000—between November 29, 2013 and March 14, 2014. *See* DX 4I at 121-22 and 127-29.

49. The third amended complaint filed by Respondent contained numerous errors and did not show that Respondent or Mr. Stewart had thought through or adequately understood Mr. Laster's case. *See* DX 13L; Tr. 345-46. For example, Count I of the third amended complaint was directed towards Mr. Laster's labor union but cited to the general discrimination statute for employers instead of the labor union-specific subclause. *See* Tr. 385-86 (Hanna: "[O]ne example. They cite the statute for discrimination and instead of using the . . . labor union subclause . . . under Title VII, they sue the employer and use the employer allegations. Again, that doesn't fit."); *see also* DX 13O at 362. The third amended complaint was also convoluted and repetitive, *see* Tr. 345-46, and lacked meaningful analysis. Tr. 371-73 (Hanna: "[A]t the third amended complaint stage, this was not good enough. This was . . . not good enough at any stage."); *see* DX 13L. In all, the third amended complaint was of such substandard quality that Mr. Hanna testified it could have been dismissed by the District Court at any time. Tr. 371, 385, 387-88.

50. Respondent's opposition to the defendants' motion to dismiss the third amended complaint was also substandard. For example, the opposition contained a blank space where relevant dates should have been identified and, if included, would have revealed that the allegations were stale. DX 13R at 442; Tr. 380 (Hanna: "So either this is obfuscation or purposeful or—because they didn't want to put how late that date was or it was because they just forgot and that's not acceptable."). The opposition further included citations to stale legal standards for granting motions to dismiss. Tr. 373-77. In total, as testified by Mr. Hanna, Respondent's representation of Mr. Laster was "was more similar to that of a *pro se* plaintiff than a represented client." Tr. 406.

51. The Hearing Committee has independently reviewed the pleadings prepared by Respondent and Mr. Stewart and credits Mr. Hanna's testimony about Respondent and Mr. Stewart's substandard work product. *See* Tr. 345-46, 371-73, 380, 387-391. We agree with Mr. Hanna's assessment that the legal representation provided to Mr. Laster was "similar to that of a *pro se* plaintiff" and therefore, it was not worth the $28,800 that Mr. Laster ultimately paid Respondent. Tr. 406.

Failure to Produce Documents During Disciplinary Counsel's Investigation

52. In May 2015, Mr. Laster filed a disciplinary complaint against Respondent. *See* DX 11 at 1. On October 2, 2015, Disciplinary Counsel subpoenaed Respondent's client files and all documents relating to Mr. Laster. DX 11 at 3-4; Tr. 85. Disciplinary Counsel's subpoena included an attachment identifying the

records being subpoenaed, requesting, among other things: e-mails, time records, and other financial documents from Respondent's representation of Mr. Laster:

> Provide a copy of the client files and **all documents relating to Allen Laster**. By "client files" we mean any and all documents (hard copies and/or documents stored on your computer) associated with your representation and/or dealings with Allen Laster; including, but not limited to, **retainer agreement(s), bills, invoices**, accountings, financial records reflecting your receipt and disbursements of any funds received from or on behalf of Mr. La[s]ter, settlement sheets, **time sheets, time records**, worksheets, **correspondence**, pleadings, notes, and memoranda including those to the file, telephone messages and logs, writing on "post-it" message sheets, **electronic mail**, and audio tapes.

DX 11 at 4 (emphasis added). Respondent's retained counsel, Mr. Howard, on October 14, 2015, sent Disciplinary Counsel a letter disputing Mr. Laster's allegations and attaching a flash drive containing a production of "various electronic mails." DX 11A. Respondent's October 14, 2015 letter did not reference the subpoena, and there is no evidence in the record that Respondent moved to quash the subpoena or otherwise objected to the scope of documents requested by Disciplinary Counsel.

53. Disciplinary Counsel reviewed Respondent's October 14, 2015 electronic production of documents and sent an October 12, 2017 letter identifying specific deficiencies with Respondent's document production and requesting that Respondent either supplement his production or identify records that Disciplinary Counsel might have missed during its review. DX 12 (requesting, among other documents "both Mr. Stewar[t]'s and [Respondent's] time records that support the

billing statements . . . sent to Mr. Laster and provided with [Respondent's] submission").

54. Respondent failed to supplement his document production until making his pre-hearing exhibit submissions before the February 4, 2019 hearing in this case and filing additional voluminous exhibits for the last day of hearing on May 13, 2019. *See generally* RX Volume I and RX Volume II.

55. During the hearing, it became clear that Respondent's document production remained deficient. *See, e.g.*, Tr. 718-720. As emphasized above, the subpoena requested "**all documents relating to Allen Laster**" and specifically identified exemplary categories of potentially responsive documents, including "**bills, invoices**, accountings, financial records reflecting your receipt and disbursements of any funds received from or on behalf of Mr. La[s]ter, settlement sheets, **time sheets, time records**, worksheets, [and] **correspondence**[.]" DX 11 at 4 (emphasis added). At the hearing, during cross-examination, Respondent testified that he had "bank statements and records, which [he] was able to [use to] formulate the billing statement" for Mr. Laster. Tr. 718-19. When asked why he had failed to produce those bank statements and records, Respondent's counsel objected on the basis that there was "no predicate that the bank statements were requested" by Disciplinary Counsel. Tr. 719. When asked whether the subpoena served by Disciplinary Counsel sought "all of your documents associated with [his] representation of Mr. Laster," Respondent answered "No." *Id.*

56. Disciplinary Counsel presented Respondent with a copy of the subpoena, DX 11, and Respondent testified that while he was aware of the existence of the subpoena through his counsel, he had never seen it in person.

> Q: . . . The first sentence [] says "Please provide a copy of the client files and all documents relating to those Allen Laster"?
>
> A: I haven't seen—I hadn't seen this.
>
> Q: You haven't seen the subpoena?
>
> A: No.
>
> . . . .
>
> For some reason I wasn't understanding that the scope of the inquiry for this—was this broad.
>
> . . . .
>
> Q: Were you aware that there was a subpoena issued [in this case]?
>
> A: Yes, I was aware. Yes.

Tr. 720-21.

When further questioned about his document production, Respondent then contradicted himself by testifying that he "had not seen" the document request attached to the subpoena and that he "didn't know there was a subpoena[.]" Tr. 722. The Hearing Committee does not credit Respondent's testimony of February 6, 2019, that he had never seen the subpoena and does not credit his testimony that he "didn't know there was a subpoena." Mr. Stewart himself testified that Respondent had asked him in as early as 2015 for Ms. Laster's entire client file. Tr. 1099-1100

(Stewart: recalling that Respondent mentioned the subpoena when making the request for his records). The Hearing Committee finds that Mr. Stewart testified credibly on this point.

57. Accordingly, despite being in possession of a properly issued subpoena, Respondent failed to provide all non-privileged, or otherwise protected, responsive documents and records to Disciplinary Counsel. By the commencement of the hearing in February 2019, Respondent, who used timekeeping software while representing Mr. Laster, failed to produce complete contemporaneous time records. Tr. 631-32. During the several month recess between the penultimate hearing date and the final hearing day, Respondent belatedly produced over 1,000 pages of records. *See, e.g.*, Tr. 739-740 (Respondent testifying on February 6, 2019 that he "think[s] that everything has been submitted"); RX Volume II 1-125 (filed May 6, 2019). Mr. Stewart testified that he provided Respondent with his file in or around 2015 after Respondent informed him about the disciplinary investigation and requested Mr. Stewart's records. Tr. 1097-1100 (describing computer log of Mr. Stewart's daily professional and personal activities). Respondent, however, failed to forward Mr. Stewart's production to Disciplinary Counsel at that time. *See supra* FF 52, 56; DX 11A.

IV. CONCLUSIONS OF LAW

Disciplinary Counsel and Respondent reach contrary conclusions based on their conflicting views of the facts in this case. Disciplinary Counsel asserts that Respondent failed to competently represent Mr. Laster, failed to adequately

communicate with Mr. Laster, failed to adequately explain legal matters to Mr. Laster, charged Mr. Laster an unreasonable fee, failed to properly effectuate fee splitting with Mr. Stewart at Mr. Laster's expense, and was dishonest in his representation of Mr. Laster. Disciplinary Counsel's view is that Respondent took advantage of Mr. Laster's desperate economic and legal situation by engaging him in an unclear agreement, by failing to provide adequate legal representation, and by charging Mr. Laster an unconscionable amount of money (given the work completed) in a late invoice after Mr. Laster decided to change counsel. Disciplinary Counsel further alleges that Respondent seriously interfered with the administration of justice largely by virtue of his failure to produce documents throughout Disciplinary Counsel's investigation.

In contrast, Respondent asserts that the representation of Mr. Laster was a typical representation, particularly for an attorney taking the risk of representing an unsophisticated client asserting claims with an uncertain likelihood of success. Respondent justifies the mixed-fee agreement on that basis and asserts that Mr. Laster did not have to agree to its terms. Respondent asserts that he should not be held liable for any misconduct by Mr. Stewart and claims that his performance was, at worst, adequate. Further, Respondent denies any interference with the administration of justice.

As an initial matter, we are not persuaded by Respondent's argument that the charges in this case are improperly holding him responsible for Mr. Stewart's conduct and work product. Respondent is mistaken. He is not being held

responsible for Mr. Stewart's conduct, but rather, his own conduct. Respondent's independent ethical obligations to Mr. Laster were not diminished by his role as local counsel and Mr. Stewart's role as the primary employment law expert. As the Court of Appeals has previously explained:

> Like local counsel facilitating the practice of an attorney admitted *pro hac vice*, respondent was responsible for [the client]'s case in the event that [co-counsel] failed to adequately pursue it. *See* Super. Ct. R. Civ. P. 101(a)(3) (requiring local counsel to "at all times be prepared to go forward with the case"); *Brookens v. Committee on Unauthorized Practice of Law*, 538 A.2d 1120, 1124 (D.C.1988) (noting that the pro hac vice rule "'is not a device to circumvent bar membership requirements or rules against unauthorized practice'"). By asserting his bar membership to aid [co-counsel] in presenting [the client]'s claim, respondent, like local counsel, assumed the ethical responsibilities and duties of [the client]'s attorney. *Accord Fla. Bar v. Stein*, 916 So.2d 774, 776-77 (Fla. 2005) (concluding that an attorney undertook ethical responsibility for a case pursued by a disbarred attorney authorizing the disbarred attorney to sign the pleading using her name and bar number).

In re Fay, 111 A.3d 1025, 1030 (D.C. 2015) (per curiam).

The Hearing Committee recommends that the Board find that Disciplinary Counsel has proven violations of Rules 1.1(a), 1.1(b), 1.4(a), 1.4(b), 1.5(a), 1.5(e), 8.4(c), and 8.4(d) by clear and convincing evidence.

A. Respondent's Conduct Violated Rules 1.1(a) (Competence) and 1.1(b) (Skill and Care).

Rule 1.1(a) requires a lawyer to "provide competent representation to a client." The Court has determined that competent representation requires the "legal knowledge, skill, thoroughness, and preparation reasonably necessary for the representation." Rule 1.1(a); *see In re Drew*, 693 A.2d 1127, 1132 (D.C. 1997) (per curiam) (appended Board Report) (lawyer who has requisite skill and knowledge,

but who does not apply it for particular client, violates obligations under Rule 1.1(a)). Rule 1.1(b) mandates that "a lawyer shall serve a client with skill and care commensurate with that generally afforded to clients by other lawyers in similar matters." While merely careless errors do not arise to the level of incompetence required to find a violation of Rules 1.1(a) or (b), *In re Evans*, 902 A.2d 56, 70 (D.C. 2006) (per curiam), these rules address failures that amount to a "serious deficiency" in an attorney's representation of a client. *In re Yelverton*, 105 A.3d 413, 421-22 (D.C. 2014).

To prove a "serious deficiency," Disciplinary Counsel must prove that the conduct "prejudices or could have prejudiced the client." *Id.* at 422. Thus, actual prejudice is not required to prove a serious deficiency in violation of Rules 1.1(a) or (b). *In re Askew*, 225 A.3d 388, 395 (D.C. 2020) (per curiam) (citing *In re Speights*, 173 A.3d 96, 101 (D.C. 2017) (per curiam)).

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

> Competent handling of a particular matter includes inquiry into and analysis of the factual and legal elements of the problem, and use of methods and procedures meeting the standards of competent practitioners. It also includes adequate preparation and continuing attention to the needs of the representation to assure that there is no neglect of such needs. The required attention and preparation are determined in part by what is at stake; major litigation and complex transactions ordinarily require more elaborate treatment than matters of lesser consequence.

Rule 1.1, cmt. [5].

Here, Respondent understood he could not provide Mr. Laster with adequate representation in the relevant area of employment law and recruited co-counsel, Mr. Stewart, to aid in Mr. Laster's case. FF 3. However, the work product created through Mr. Stewart's and Respondent's collaboration was replete with substantive deficiencies. *See, e.g.*, FF 47-50.

From the Agreement to the final invoice, Respondent failed to adequately represent Mr. Laster and consistently positioned Mr. Laster such that he was or could have been prejudiced due to Respondent's lack of competence. *See, e.g.*, FF 6-10, 34-50. In particular, Respondent's substandard third amended complaint, which cited the wrong statutory section in a count and contained numerous legal errors, could have easily been dismissed by the court. FF 49. Further, Respondent filed a substandard opposition to a motion to dismiss with a blank space where relevant dates should have been placed. FF 50. This too could have led to dismissal of Mr. Laster's claims. FF 49-50. The fact Mr. Laster ultimately settled before any prejudice could be realized does not mitigate the seriousness of Respondent's conduct. Because Respondent's conduct cannot fairly be characterized as merely careless, and Mr. Laster could have been prejudiced as a result of Respondent's conduct, the Hearing Committee finds that Disciplinary Counsel has proven violations of Rules 1.1(a) and (b) by clear and convincing evidence.

B. Respondent Violated Rules 1.4(a) (Communication) and 1.4(b) (Failure to Explain Matter to Client) by Failing to Keep Mr. Laster Reasonably Informed About the Status of His OHR Claim and Failing to Explain the Legal Fees and Other Costs He Would Incur Through Respondent's Representation.

Rule 1.4(a) provides that "[a] lawyer shall keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information." Under Rule 1.4(a), an attorney must not only respond to client inquiries, but must also initiate contact to provide information when needed. *See, e.g.*, *In re Bernstein*, 707 A.2d 371, 376 (D.C. 1998). The purpose of this Rule is to enable clients to "participate intelligently in decisions concerning the objectives of the representation and the means by which they are to be pursued." Rule 1.4, cmt. [1]. In determining whether Disciplinary Counsel has established a violation of Rules 1.4(a) and (b), the question is whether Respondent fulfilled his client's reasonable expectations for information. *See In re Schoeneman*, 777 A.2d 259, 264 (D.C. 2001) (citing Rule 1.4, cmt. [3]). In addition to responding to client inquiries, a lawyer must initiate communications when necessary. *See In re Hallmark*, 831 A.2d 366, 374 (D.C. 2003) (citing Rule 1.4, cmt. [1]).

Similarly, Rule 1.4(b) states than an attorney "shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation." This Rule provides that the attorney "must be particularly careful to ensure that decisions of the client are made only after the client has been informed of all relevant considerations." Rule 1.4, cmt. [2]. The Rule places the burden on the attorney to "initiate and maintain the consultative and decision-making process if the client does not do so and [to] ensure that the ongoing

process is thorough and complete." *Id*. Rule 1.4(b) is not limited to substantive aspects of the legal representation but extends to an attorney's obligation to explain legal fees and costs that the client may incur and the terms of the fee agreement itself. *See In re Gonzalez*, Board Docket No. 17-BD-071 (BPR Oct. 24, 2018), appended Hearing Committee Report at 61-62, *recommendation adopted where no exceptions filed*, 207 A.3d 170 (D.C. 2019) (per curiam).

Here, Respondent utterly failed to initiate or maintain any semblance of a consultative and decision-making process. Respondent failed to inform Mr. Laster of the status of the OHR motion for reconsideration, despite Mr. Laster's repeated requests for information. *See* FF 27. In addition, when he did communicate with Mr. Laster, Respondent did not cogently explain the scope of his services or the billing arrangements. FF 6. The Agreement was written such that Mr. Laster was clearly uninformed about the sharing and charging of fees between Mr. Stewart and Respondent. FF 10. Simply put, Mr. Laster was not reasonably informed as to the terms of Respondent's representation of him before the federal court, and his requests for information about his OHR claim were ignored. *See* FF 5, 7, 27.

Once Respondent and Mr. Stewart undertook the representation in October 2013, their substandard work product, sporadic and uninformative communications with Mr. Laster, and careless—at best—billing practices, are clear and convincing evidence that Mr. Laster was not reasonably informed about the legal status of his OHR claim or the financial obligations of his Federal Case. *See, e.g.*, FF 25-27, 31, 35-43, 48-49. The Rules require that Respondent provide Mr. Laster with the

information needed to make informed decisions regarding the representation, and Respondent failed to do that, particularly with regard to Mr. Laster's financial obligations. The Hearing Committee finds that Disciplinary Counsel has proven a violation of Rules 1.4(a) and 1.4(b) by clear and convincing evidence.

C. Respondent Violated Rule 1.5(a) (Unreasonable Fee) by Significantly Over-Charging Mr. Laster for Legal Services Actually Rendered and Erroneous Billings for Legal Services Never Provided.

Rule 1.5(a) provides that:

> A lawyer's fee shall be reasonable. The factors to be considered in determining the reasonableness of a fee include the following:
>
> (1) The time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;
>
> (2) The likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer;
>
> (3) The fee customarily charged in the locality for similar legal services;
>
> (4) The amount involved and the results obtained;
>
> (5) The limitations imposed by the client or by the circumstances;
>
> (6) The nature and length of the professional relationship with the client;
>
> (7) The experience, reputation, and ability of the lawyer or lawyers performing the services; and
>
> (8) Whether the fee is fixed or contingent.

Rule 1.5(a) can be violated "by the act of charging an unreasonable fee without regard to whether the fee is collected." *In re Cleaver-Bascombe*, 892 A.2d 396, 403 (D.C. 2006). While it is clearly unreasonable to charge a fee for work that an attorney has not in fact done, it is also unreasonable to overcharge a client for work actually completed. *Id.* ("The prototypical circumstance of charging an unreasonable fee is undoubtedly one in which an attorney did the work that he or she claimed to have done, but charged the client too much for doing it. . . . [and] [i]t cannot be reasonable to demand payment for work that an attorney has not in fact done."). The reasonableness of a respondent's fee must be considered in light of fees paid to additional counsel in the litigation. *See, e.g*, *In re Martin*, 67 A.3d 1032, 1042-43 (D.C. 2013) (when assessing reasonableness, the combined fees of local counsel and *pro hac vice* counsel are to be considered).

Here, Respondent charged Mr. Laster over $80,000 for a handful of poorly drafted court filings and several months of supposed case workup and communications. *See, e.g.*, FF 32-33, 36, 48-51. As explained in FF 37-42, there is clear and convincing evidence that Respondent over-billed Mr. Laster due to his and Mr. Stewart's sloppy and unprofessional billing practices. *See also* FF 44-46.

Disciplinary Counsel proved by clear and convincing evidence that Mr. Laster was overbilled approximately $23,000 when Respondent charged Mr. Laster for duplicative work, erroneous billings, and false billing entries. *See* FF 45. In addition, there is clear and convincing evidence that the invoice tendered by Respondent was unreasonable in light of the time and labor required, the nature and

length of Respondent's professional relationship with the client, and Respondent's ability in performing the services. *See* Rule 1.5(a); FF 5-10, 12, 15-19, 20, 29, 33, 36-37, 42-43, 49-51. Indeed, the handful of additional filings composed by Respondent and/or Mr. Stewart in this case appears inconsistent with a bill for the equivalent of 200 hours (at $400 an hour)—which constitutes five forty-hour weeks. As reflected by ACAB's conclusion that Respondent was entitled to a mere fraction of his asserted fees, *see* FF 46, as well as Mr. O'Connell's testimony, Respondent overbilled Mr. Laster. FF 37-45. Accordingly, the Hearing Committee finds that Disciplinary Counsel has proven a violation of Rule 1.5(a) by clear and convincing evidence.

D. Respondent Violated Rule 1.5(e) (Limitations on Fee Splitting) by Failing to Adequately Inform Mr. Laster About the Effect of the Association of Mr. Stewart in his Case.

Rule 1.5(e) provides that:

> A division of a fee between lawyers who are not in the same firm may be made only if:
>
> > (1) The division is in proportion to the services performed by each lawyer or each lawyer assumes joint responsibility for the representation;
> >
> > (2) The client is advised, in writing, of the identity of the lawyers who will participate in the representation, of the contemplated division of responsibility, and of the effect of the association of lawyers outside the firm on the fee to be charged;
> >
> > (3) The client gives informed consent to the arrangement; and
> >
> > (4) The total fee is reasonable.

Disciplinary Counsel has charged that Respondent violated Rule 1.5(e) because he failed to comply with subsections (2), (3), and (4). *See* Specification, ¶¶ 3, 17, 26, 33-34, 41E (alleging that Respondent divided his fee with a lawyer not in his firm, and that the client was not advised in writing of the contemplated division of responsibility or the effect of the association of lawyers outside the firm on the fee to be charged).

Because the Agreement was unintelligible and failed to explain any fee-splitting arrangement between Respondent and Mr. Stewart, Mr. Laster was not reasonably informed of the arrangements, or lack thereof, between Mr. Stewart and Respondent. *See, e.g.*, FF 5-10, 37-40. Mr. Laster similarly could not provide informed consent because he did not understand how Respondent and Mr. Stewart were going to bill for their services or divide legal fees collected in the case. *See, e.g.*, FF 5-10. Finally, as discussed above, Respondent charged an unreasonable fee in this case, which further supports the Hearing Committee's finding that Disciplinary Counsel has proven a violation of Rule 1.5(e) by clear and convincing evidence.

E. Respondent Violated Rule 8.4(c) (Dishonesty) by Misrepresenting the Fee Arrangements to Mr. Laster.

Rule 8.4(c) provides that it is professional misconduct for a lawyer to "[e]ngage in conduct involving dishonesty, fraud, deceit, or misrepresentation." Dishonesty is the most general category in Rule 8.4(c), defined as:

> fraudulent, deceitful, or misrepresentative behavior [and] conduct evincing a lack of honesty, probity or integrity in principle; [a] lack of fairness and straightforwardness . . . . Thus, what may not legally be

> characterized as an act of fraud, deceit or misrepresentation may still evince dishonesty.

In re Shorter, 570 A.2d 760, 767-68 (D.C. 1990) (per curiam) (internal quotation marks and citation omitted); *see also In re Scanio*, 919 A.2d 1137, 1142-43 (D.C. 2007). Dishonesty in violation of Rule 8.4(c) does not require proof of deceptive or fraudulent intent. *See In re Romansky*, 825 A.2d 311, 315 (D.C. 2003). Thus, when the dishonest 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.* A violation of Rule 8.4(c) may also be established by sufficient proof of recklessness. *See id*. at 316-17. To prove recklessness, Disciplinary Counsel must prove by clear and convincing evidence that the respondent "consciously disregarded the risk" created by his actions. *Id.* at 316.

Here, Respondent was dishonest with Mr. Laster in his billing practices. FF 34-46. Indeed, evidence exists to suggest that Respondent's and Mr. Stewart's billing errors were obviously wrongful and intentional, and, at a minimum, the errors in billing were recklessly dishonest. *See Romansky*, 825 A.2d at 316 (describing reckless dishonesty); FF 8, 29, 34-46. In addition, as drafted, the Agreement is internally inconsistent to an extent that there was no way for Mr. Laster to understand the expenses he would incur for legal services provided by Respondent and Mr. Stewart. *See, e.g.*, FF 5-10. The Hearing Committee finds that this conduct was in violation of Rule 8.4(c) and Disciplinary Counsel has met its burden on this charge.

F. Respondent Violated Rule 8.4(d) (Serious Interference with the Administration of Justice) by Failing to Respond to Disciplinary Counsel's Investigatory Demands.

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).

Failure to respond to Disciplinary Counsel's inquiries and orders of the Court also constitutes a violation of Rule 8.4(d). Rule 8.4, cmt. [2]; *see, e.g.*, *In re Askew*, Board Docket No. 12-BD-037 (BPR July 31, 2013), appended HC Report at 22-23 (finding a violation of Rule 8.4(d) where the respondent failed to comply with court orders requiring her to file a brief and to turn over client files), *aff'd in relevant part*, 96 A.3d 52 (D.C. 2014) (per curiam).

Here, Respondent demonstrated a remarkable indifference to the disciplinary process. The evidence shows that Respondent did not fully or timely comply with Disciplinary Counsel's requests for information in this case. FF 54-57. First, Respondent was subpoenaed for documents in October 2015 and retained Mr. Howard as his counsel. FF 52. The subpoena requested "all documents relating to

Allen Laster . . . including, but not limited to, retainer agreements(s), bills, [and] invoices." FF 52. Respondent's counsel sent Disciplinary Counsel an incomplete document production on October 14, 2015. FF 52-53. This inadequate October 14, 2015 production shows that Respondent was aware of Disciplinary Counsel's document requests in this matter. In response to Respondent's production, Disciplinary Counsel requested additional records, including time records that support Respondent's billing statements. FF 53. Respondent failed to supplement his production before the February 2019 hearing in this matter and, when questioned on the stand, Respondent falsely testified that he has never seen the subpoena. FF 55-57. Respondent's ultimate supplemental production of over 1,000 pages of documents, *see* FF 54, shows that he had not timely produced the requested documents.

Given the aggravated nature of the failure to respond to the Disciplinary Counsel's request for documents, we find that the improper conduct tainted the disciplinary process in more than a *de minimis* way. Disciplinary Counsel has met its burden and has shown that Respondent violated Rule 8.4(d) by seriously interfering with the administration of justice.

V. RECOMMENDED SANCTION

In this case, Disciplinary Counsel has asked the Hearing Committee to recommend the sanction of a two-year suspension with a fitness requirement and at least partial restitution. ODC Br. at 42-43. For the reasons described below, we find that a one-year suspension with a fitness requirement is appropriate. In addition,

upon an application for reinstatement, Respondent should be required to pay an appropriate amount of restitution.

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 919, 924 (D.C. 1987) (en banc); *Martin*, 67 A.3d at 1053; *In re Cater*, 887 A.2d 1, 17 (D.C. 2005). "In all cases, [the] purpose in imposing discipline is to serve the public and professional interests . . . rather than to visit punishment upon an attorney." *In re Reback*, 513 A.2d 226, 231 (D.C. 1986) (en banc) (citations omitted); *see also In re Goffe*, 641 A.2d 458, 464 (D.C. 1994) (per curiam).

The sanction also must not "foster a tendency toward inconsistent dispositions for comparable conduct or . . . otherwise be unwarranted." D.C. Bar R. XI, § 9(h)(1); *see, e.g.*, *Hutchinson*, 534 A.2d at 923-24; *In re Berryman*, 764 A.2d 760, 766 (D.C. 2000). In determining the appropriate sanction, the Court of Appeals considers a number of factors, including: (1) the 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. The Seriousness of the Misconduct

Respondent's misconduct was serious. Respondent overcharged his client by thousands of dollars and failed to provide competent professional services. Further, Respondent's failure to respond to Disciplinary Counsel's requests in this matter should not be ignored. As an officer of the courts of the District of Columbia, Respondent has set an example of what not to do. Purposeful avoidance of the law and judicial process threatens the foundations of the District of Columbia's legal institutions and our nation's intent to operate as a civilized, law abiding, and democratic society.

2. Prejudice to the Client

Mr. Laster was overcharged thousands of dollars by virtue of invoice and billing errors committed by Respondent. Further, Respondent's substandard and late filings also could have prejudiced Mr. Laster. As discussed above, successor counsel's negotiation of a settlement before the court ruled on the pending motion to dismiss clearly prevented Mr. Laster from suffering substantial prejudice resulting from Respondent's legal services.

3. Dishonesty

Respondent's conduct was dishonest, particularly with regard to Disciplinary Counsel's investigation. Respondent was additionally dishonest in his failure to communicate anticipated billing arrangements to Mr. Laster or to respond to his requests for receipts. Respondent only provided billing records to Mr. Laster once he was fired. Further, Respondent was dishonest in generating and charging for false billing entries. As discussed at *supra* page 43, Respondent's conduct, particularly the Agreement and his billing practices, were, at a minimum, recklessly dishonest.

4. Violations of Other Disciplinary Rules

Respondent's conduct was violative of multiple Disciplinary Rules. Additionally, as discussed below, this is not the first time Respondent has been found in violation of the Rules. Respondent's lack of contrition and his repeated pattern of misconduct are concerning to the Hearing Committee.

5. Previous Disciplinary History

Respondent has previously been suspended for nine months for violations of multiple Rules, including negligent misappropriation and violating Rule 1.8(a) by having his client—who spoke very limited English—sign a promissory note without giving the client a reasonable opportunity to seek the advice of independent counsel. *See In re Bailey*, 883 A.2d 106, 123 (D.C. 2005); *In re Bailey*, Bar Docket Nos. 442-92 & 483-92 (H.C. Rpt. June 7, 2001).

While that matter was pending for the Court's decision, Respondent received an informal admonition in 2004 for violating Rule 8.4(d) for his repeated late filings and failure to correct errors in pleadings when appearing before the U.S. Court of

Appeals for the D.C. Circuit, misconduct for which the Circuit Court had also sanctioned him. *See* DX 16 (*In re Samuel C. Bailey, Jr., Esquire*, Bar Docket No. 495-97 (Letter of Informal Admonition Feb. 6, 2004)).

Respondent received a second Informal Admonition in 2007 for (1) violating Rule 1.4 for failing to keep his client informed about the status of her case despite repeated requests for information and (2) violating Rule 1.16(d) for failing to notify his client in advance that he would not be attending a mediation due to his suspension, therefore preventing her from hiring other counsel to protect her interests. *See* DX 18 (*In re Samuel Bailey, Esquire*, Bar Docket No. 2005-D136 (Letter of informal Admonition Aug. 4, 2007)).

6. Acknowledgement of Wrongful Conduct

Respondent has maintained throughout the investigation and the hearing that he did not do anything wrong. Significantly, he has not expressed remorse about his double billing or inaccurate invoices. Instead, Respondent has attempted to justify his conduct. For example, Respondent asserts that the fees obtained by successor counsel in settlement after only a brief period of representation, *see* R. Br. at 53-55, show that his invoices for months of work are reasonable. Further, Respondent deflects his own improper billing by arguing that the significant fee reduction imposed by ACAB supports a finding that Mr. Laster was not charged an unreasonable fee. *See* R. Br. at 55. Neither of these points are compelling; first, whether successor counsel also charged an unreasonable fee is not before the Hearing Committee and, even if true, would not change the findings in this matter.

Second, the ACAB fee reduction is evidence that Respondent overbilled Mr. Laster.

7. Other Circumstances in Aggravation and Mitigation

To the extent certain facts suggest mitigation of any Rule violations, such facts can, and should, be considered. In *In re Francis*, 137 A.3d 187 (D.C. 2016) (per curiam), a respondent who acted as local counsel suggested that his misconduct could be shielded by the counsel appearing *pro hac vice*, and the Court rejected this notion. The Court did acknowledge, however, that the sanction could be lessened due to most of the misconduct having been derived from the New Jersey-barred co-counsel. *Francis*, 137 A.3d at 192-93.[17] In *Fay*, the Court similarly described the respondent's lack of disciplinary history or dishonest motive, "his belief that [co-counsel] would take responsibility for the case," and the lack of prejudice to the client as justifying mitigation of the sanction. *Fay*, 111 A.3d at 1031. However, here, while Mr. Stewart's contributing role in the misconduct has some mitigating effect, the offsetting aggravating factors of Respondent's lack of remorse, dishonesty, and significant disciplinary history must also be considered.

C. Sanctions Imposed for Comparable Misconduct

Disciplinary Counsel suggests that *In re Bradley*, 70 A.3d 1189, 1195 (D.C. 2013) (per curiam) for which a two-year suspension was imposed, is a comparable case. ODC Br. at 38. *Bradley*, however, involved the intentional neglect of two clients—one for a five-year period and the other for a ten-year period. 70 A.3d at

[17] Coincidentally, it appears that Mr. Stewart was the New Jersey co-counsel in both this representation and the *Francis* case. *See Francis*, 137 A.3d at 189; FF 3.

1195. In contrast, Respondent's misconduct involved one client, for a relatively brief duration (less than 1 ½ years).

The Court has imposed sanctions ranging from suspensions of 30 days to 18 months for conduct involving neglect, failure to communicate, charging an unreasonable fee, dishonesty, or serious interference with the administration of justice, among other Rule violations. *See, e.g.*, *Martin*, 67 A.3d 1032 (D.C. 2013) (18-month suspension with restitution for violations of Rules 1.5(a), 1.15(a) and (c), 1.16(d), 8.4(c), and 8.4(d)); *In re Carter*, 11 A.3d 1219 (D.C. 2011) (per curiam) (18-month suspension with fitness and restitution for violations of Rules 1.1(a) and (b), 1.3(a) and (c), 1.4(a) and (b), 1.16(d), 8.1(b), 8.4(c), 8.4(d), and Rule XI, § 2(b)(3)); *In re Cole*, 967 A.2d 1264 (D.C. 2009) (30-day suspension for violations of Rules 1.1(a) and (b), 1.3(a), (b)(1), and (c), 1.4(a) and (b), 8.4(c), and 8.4(d)); *In re Ifill*, 878 A.2d 465 (D.C. 2005) (one-year suspension with restitution for violations of Rules 1.3(a), (b)(1), and (c), 1.4(a), 1.5(a) and (b), 8.1(a), and 8.4(c)).

We find that Respondent's misconduct was more serious than that described in *Cole*, but less serious than the misconduct in *Carter*, which involved three separate matters, and *Martin*, which involved protracted dishonesty, including a knowingly false statement on a bar application. Based on the facts and circumstances of this case and the specific Rule violations found, we recommend a suspension of one year.

D. Fitness

A fitness showing is a substantial undertaking. *Cater*, 887 A.2d at 20. Thus, in *Cater*, the Court held that "to justify requiring a suspended attorney to prove fitness as a condition of reinstatement, the record in the disciplinary proceeding must contain clear and convincing evidence that casts a serious doubt upon the attorney's continuing fitness to practice law." *Id*. at 6. Proof of a "serious doubt" involves "more than 'no confidence that a Respondent will not engage in similar conduct in the future.'" *In re Guberman*, 978 A.2d 200, 213 (D.C. 2009). It connotes "real skepticism, not just a lack of certainty." *Id.* (quoting *Cater*, 887 A.2d at 24).

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

> The fixed period of suspension is intended to serve as the commensurate response to the attorney's past ethical misconduct. In contrast, the open-ended fitness requirement is intended to be an appropriate response to serious concerns about whether the attorney will act ethically and competently in the future, after the period of suspension has run.
>
> . . . [P]roof of a violation of the Rules that merits even a substantial period of suspension is not necessarily sufficient to justify a fitness requirement . . . .

Cater, 887 A.2d at 22.

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

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

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

We believe that Disciplinary Counsel has established, by clear and convincing evidence, a "serious doubt" of Respondent's continuing fitness to practice law. A practitioner with Respondent's experience should know how to adequately keep time, how to write a clear retainer agreement, and how to file timely and reasonably clear and effective pleadings before a court. Accordingly, we find that Respondent should be required to prove his fitness to practice law before being readmitted to this Bar. As discussed herein, the nature and circumstances of the misconduct here reflects an absence of an ethical compass on behalf of Respondent, substantial laziness and inattention to details and deadlines, and/or wanton disregard of the Rules of Professional Conduct. There is no evidence Respondent appreciated the seriousness of his actions and, until he recognizes what is and is not expected of him

as a member of this Bar, absent a showing that he is fit to practice law, it is an unreasonable risk to the public and Respondent to permit him do so in this jurisdiction.

We do not take the imposition of a fitness requirement upon any application for reinstatement lightly. *See, e.g.*, *Cater*, 887 A.2d at 25 (noting that a fitness requirement can "transform a thirty-day suspension into one that lasts for years"). Even after his fees were severely reduced by the ACAB judgment and even after being informed of his client's complaint to Office of Disciplinary Counsel, Respondent places blame on Mr. Stewart (even though it was Respondent who received the court notices and who prepared and forwarded the invoices) and tries to shift responsibility to successor counsel. Finally, Respondent's prior discipline history also supports a finding that a fitness requirement is warranted as he has shown a pattern of not taking responsibility for his actions despite being disciplined and his prior discipline involves issues similar to the problems that arose during his representation of Mr. Laster. Finally, during the hearing, it was clear that Respondent continues to not understand the seriousness of his actions and their potential impact on his clients. As the Court explained in *Guberman*,

> What may "tip[ ] the balance in favor of" a fitness requirement is "evidence of circumstances surrounding and contributing to the misconduct." . . . One such circumstance is an attorney's lack of remorse, failure to cooperate during the disciplinary process, or other evidence of questionable conduct in the course of disciplinary proceedings. Another circumstance that warrants imposing a condition on the resumption or continuation of practice is repeated neglect of client matters or a repeat of misconduct of the type for which a respondent was previously disciplined.

Guberman, 978 A.2d at 211 (quoting *Cater*, 887 A.2d at 22) (internal citation omitted).

Accordingly, the Hearing Committee has a serious doubt as to Respondent's ability to improve his professional conduct. That is, we lack confidence that Respondent will not engage in similar conduct in the future. We certainly hope that Respondent will have time to reflect on implementing improvements to his practice to allow him to fairly, honestly, honorably, faithfully, and ethically provide legal services to any future clients he might have.

E. Restitution

As a result of the ACAB proceedings, Mr. Laster was awarded "zero dollars," and Respondent was awarded $16,500. FF 46; *see* DX 10. Accordingly, Mr. Laster ultimately paid a total of $28,800 for Respondent's and Mr. Stewart's joint representation. *See* FF 29, 46. Disciplinary Counsel's forensic accountant, Mr. O'Connell, estimated that he found $23,518.17 in duplicate or incorrect charges from his review of the original $85,270 invoice, but the record does not show which or what portion of those improper $23,518.17 charges were later removed in the ACAB fee reduction. *See* FF 45-46; DX 4I at 126. While we agree with Disciplinary Counsel that partial restitution is appropriate for any paid fees that were not earned, we do not agree with Disciplinary Counsel that restitution in the amount of $23,516.17 would be appropriate in light of ACAB's reduction of the fees actually paid. *See* ODC Reply Br. at 25 (suggesting that entire $28,800 should be disgorged,

or at least $23,516.17).[18] We, however, credit Mr. Hanna's expert testimony that the representation that was provided was substandard and conclude it therefore was not worth the $28,800 that was ultimately received. *See* FF 51.

The appropriate amount of restitution will be determined at the time of Respondent's application for reinstatement. *See, e.g.*, *In re Omwenga*, 49 A.3d 1235, 1240 (D.C. 2012) (per curiam) (deferring estimation of the precise amount of restitution until respondent applies for reinstatement).

CONCLUSION

For the foregoing reasons, the Committee finds that Respondent violated Rules 1.1(a), 1.1(b), 1.4(a), 1.4(b), 1.5(a), 1.5(e), 8.4(c), and 8.4(d). We recommend a sanction of a one-year suspension, after which Respondent would be required to establish his fitness to practice law and make restitution upon any application for reinstatement. We further recommend that Respondent's attention be directed to the

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[18] The only evidence in this record concerning ACAB's decision is a single-page order stating that Mr. Laster had claimed he was due $13,500 from Respondent, and Respondent had claimed he was due $72,000 from Mr. Laster. *See* DX 10; FF 46. Disciplinary Counsel asserts that the $72,000 Respondent requested in the ACAB proceeding was in addition to the $12,300 Mr. Laster had already paid, *see* ODC Br. at 13 (Proposed Factual Finding ¶ 36), which closely approximates the total original invoice.

While precedent exists to order disgorgement of an ACAB award as part of the sanction in a disciplinary case, *see, e.g.*, *Martin*, 67 A.3d at 1054-56, the factual record before us does not support such an extreme sanction.

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

Chair Seth I. Heller

Marcia M. Carter, Public Member

Heidi Murdy-Michael, Attorney Member