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

In the Matter of:	:	
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SHERLOCK V. GRIGSBY,	:	Board Docket Nos. 14-BD-103,
	:	14-BD-105, 14-BD-106 &
Respondent.	:	14-BD-107
	:	Bar Docket Nos. 2013-D240,
A Member of the Bar of the	:	2013-D100, 2013-D064 &
District of Columbia Court of Appeals	:	2013-D439
(Bar Registration No. 494432)	:	

REPORT AND RECOMENDATION OF AD HOC HEARING COMMITTEE

I. PROCEDURAL BACKGROUND/SUMMARY OF ALLEGATIONS AND RECOMMENDATIONS

This case involves four separate client representations: Mark Evans ("Evans"), Bar Docket No. 2013-D100 (Board Docket No. 14-BD-107); Chantay and Damon Franklin,[1] Bar Docket No. 2013-D240 (Board Docket No. 14-BD-106); James K. Chambers ("Chambers"), Bar Docket No. 2013-D064 (Board Docket No. 14-BD-103); and Krystal Owens ("Owens"), Bar Docket No. 2013-D439 (Board Docket No. 14-BD-105). Each of these matters is the subject of a separate Petition Instituting Formal Disciplinary Proceedings and a separate Specification of

[1] Respondent was paid by Chantay Franklin to represent her son, Damon Franklin, in connection with proceedings for post-conviction relief in a criminal case. Chantay Franklin is hereinafter referred to as "Ms. Franklin," and her son as "Mr. Franklin." The overall representation is referred to herein as the "Franklin" matter.

Charges filed by Bar Counsel;[2] on January 16, 2015, the Board on Professional Responsibility ("Board") ordered them consolidated for all purposes.[3]

In the Evans matter, Respondent agreed to represent Evans as the defendant in a divorce action in the Commonwealth of Virginia. In the Franklin matter, after Mr. Franklin was convicted in a criminal proceeding (which was affirmed on appeal), Respondent was paid by Ms. Franklin for the purpose of obtaining various types of possible post-appeal relief for Mr. Franklin. In the Chambers matter, Respondent was retained principally to collect a $3,400 debt and recover possession of an automobile from Elizabeth Letourneau, to obtain a "stay-away" order against her, and to resolve a discrepancy in the birth certificate of Chambers' deceased father so that Chambers could collect the proceeds of insurance on his father's life. In the Owens matter, Respondent filed suit on behalf of Owens in the Landlord-Tenant Branch of the District of Columbia Superior Court for possession and non-payment of rent regarding certain rental premises in the District of Columbia.

The Specifications of Charges allege that Respondent committed multiple violations of the District of Columbia Rules of Professional Conduct ("Rules"), summarized as follows:

Evans
Rule 1.1(a)--competent representation;
Rule 1.1 (b)--representing the client with appropriate skill;
Rule 1.3(a)--representing the client zealously and diligently;
Rule 1.3(c)--acting with reasonable promptness in representing the client;
Rule 1.4(a)--keeping the client reasonably informed about the matter;
Rule 1.4(b)--properly explaining the matter to the client;

[2] By Order No. M-245-14 filed on October 20, 2015, and effective December 19, 2015, the District of Columbia Court of Appeals adopted amendments to D.C. Bar Rule XI that changed the title of Bar Counsel to "Disciplinary Counsel." However, because all documents and filings in this case refer to "Bar Counsel" rather than to Disciplinary Counsel, the former title is used throughout this Report and Recommendation.

[3] On January 22, 2015, the Board entered an Amended Order to correct a typographical error in the caption of its prior order of consolidation.

Rule 1.5(b)--failing to communicate in writing the basis or rate of legal fees;
Rule 1.9--engaging in a conflict of interest;
Rule 1.16(d)--failing to protect the client's interests on termination of the representation;
Rule 5.5(a)--practicing law in a jurisdiction where Respondent was not licensed to do so;
Rule 8.4(d)--conduct seriously interfering with the administration of justice; and
D.C. Bar Rule XI, § 2(b)--failing to comply with an order of the District of Columbia Court of Appeals ("Court") in a pending disciplinary matter.

Franklin
Rule 1.1(a)--competent representation;
Rule 1.1 (b)--representing the client with appropriate skill;
Rule 1.3(a)--representing the client zealously and diligently;
Rule 1.3(b)(1)--intentional failure to seek the lawful objectives of the client;
Rule 1.3(c)--acting with reasonable promptness in representing the client;
Rule 1.4(a)--keeping the client reasonably informed about the matter;
Rule 1.4(b)--properly explaining the matter to the client;
Rule 1.5(a)--charging an unreasonable fee;
Rules 1.15(a) and (e)--intentional or reckless misappropriation of entrusted funds;
Rule 1.16(d)--failing to return unearned fees on termination of the representation;
Rule 8.1(a)--knowingly making false statements of fact in a disciplinary matter;
Rule 8.4(c)--conduct involving dishonesty, fraud, deceit, or misrepresentation;
Rule 8.4(d)--conduct seriously interfering with the administration of justice; and
D.C. Bar Rule XI, § 2(b)--failing to comply with orders of the Board and the Court in a pending disciplinary matter.

Chambers
Rule 1.1(a)--competent representation;
Rule 1.1 (b)--representing the client with appropriate skill;
Rule 1.3(a)--representing the client zealously and diligently;
Rule 1.3(b)(1)--intentional failure to seek the lawful objectives of the client;
Rule 1.3(c)--acting with reasonable promptness in representing the client;
Rule 1.4(a)--keeping the client reasonably informed about the matter;
Rule 1.4(b)--properly explaining the matter to the client;
Rule 1.5(b)--failing to communicate in writing the basis or rate of legal fees;
Rule 1.16(d)--failing to return unearned fees on termination of the representation;
Rule 8.4(d)--conduct seriously interfering with the administration of justice; and
D.C. Bar Rule XI, § 2(b)--failing to comply with an order of the Court in a pending disciplinary matter.

Owens
Rule 1.3(a)--representing the client zealously and diligently;
Rule 1.4(a)--keeping the client reasonably informed about the matter;
Rule 1.4(b)--properly explaining the matter to the client;
Rule 1.16(d)--failing to protect the client's interests on termination of the representation;
Rule 3.4(c)--knowingly disobeying the rules of a tribunal;
Rule 8.4(d)--conduct seriously interfering with the administration of justice; and

D.C. Bar Rule XI, § 2(b)--failing to comply with an order of the Board in a pending disciplinary matter.

During the hearing of this case, the Office of Bar Counsel was represented by Julia L. Porter, Esq., Senior Assistant Bar Counsel, and Respondent was represented by Leonard L. Long, Jr., Esq. The hearing was held on August 18-20, 2015. Bar Counsel called nine witnesses,[4] none of whom testified as an expert witness, and submitted 98 documentary exhibits, all of which were admitted into evidence.[5] Respondent testified on his own behalf and called one additional witness (his wife), but did not submit any documentary exhibits.

After the conclusion of all testimony, the Hearing Committee recessed in executive session pursuant to Board Rule 11.11 to determine on a preliminary, non-binding basis, whether Bar Counsel had proved a violation of at least one disciplinary rule. Upon resuming proceedings, the Chair announced that the Hearing Committee had made such an affirmative determination. Upon inquiry by the Chair, Bar Counsel stated that there was no prior disciplinary record of Respondent to be introduced into evidence in aggravation of sanction, but that various matters in the record of the proceeding were aggravating factors and would be discussed in Bar Counsel's post-hearing brief. Tr. 756:1-4.[6] Respondent presented no evidence in mitigation of sanction, other than a short statement by his counsel. Tr. 756:13-757:3.

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[4] Chambers; Kevin O'Connell (an investigator employed by the Office of Bar Counsel); Evans; William Robinson, Esq.; Stephen J. Salwierak, Esq.; Ms. Franklin; Mr. Franklin (who, being incarcerated, testified by remote means, pursuant to a May 29, 2015, Order entered by of the Chair of the Hearing Committee); Stephen Clark, Esq.; and Owens.

[5] Bar Counsel exhibits nos. 26, 45, 49, and 75 were admitted into evidence over Respondent's objection. For the reasons stated in Section III(A) of this Report and Recommendation, the Hearing Committee recommends that all of those exhibits should remain in evidence.

[6] References herein the transcript of the hearing are designated with the prefix "Tr. ___"; references to documents introduced into evidence by Bar Counsel are designated with the prefix "BX ___." Because the transcript of the second pre-hearing conference in this matter ends with

Asserting that Respondent either intentionally or recklessly misappropriated fees he received in the Franklin matter, Bar Counsel contends that Respondent should be disbarred pursuant to *In re Addams*, 579 A.2d 190 (D.C. 1990) (en banc), and that even without a finding of misappropriation Respondent should be disbarred because of multiple violations of the Rules, as well as various aggravating factors. BC Br. at 2, 76-78.[7] Respondent contends that no misappropriation occurred, and that Respondent did not violate any Rule requiring a sanction more severe than an informal admonition; in the alternative, Respondent contends that if the Hearing Committee finds any Rule violation warranting suspension, the appropriate sanction is suspension "*nunc pro tunc*" to an unspecified date,[8] coupled with a requirement for Respondent to complete practice management courses offered by the District of Columbia Bar. Resp. Br. at 65.

The Hearing Committee finds that Bar Counsel has proved by clear and convincing evidence that Respondent committed each of the Rules violations alleged in the Specifications of Charges other than: (1) the alleged violation of Rule 1.9 (engaging in a conflict of interest) in the Evans matter; (2) the alleged violation of Rule 8.1(a) (knowingly lying to Bar Counsel in

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page 54, the transcript of the actual hearing of this proceeding by the Hearing Committee begins with page 55.

[7] References in this Report and Recommendation to Bar Counsel's opening brief filed herein on October 2, 2015, are designated with the prefix "BC Br. ___." The principal aggravating factors asserted by Bar Counsel are that Respondent gave false testimony during the hearing in this matter (BC Br. at 2 and 78); that Respondent has not expressed remorse for his alleged misconduct (BC Br. at 77-78); and that there is no evidence of remedial measures having been taken by Respondent (BC Br. at 77).

[8] Respondent's post-hearing brief asserts that Respondent has been suspended pending the outcome of this proceeding since some time in December of 2014, so the "*nunc pro tunc*" date Respondent has in mind may be that suspension date. *See* Respondent's Response to Bar Counsel's Proposed Findings of Fact, Conclusions of Law, and Recommendation as to Sanction (hereinafter cited at "Resp. Br."), filed herein on November 6, 2015, at 61-62.

connection with a disciplinary proceeding) in the Franklin matter; and (3) the alleged violation of Rule 1.16(d) (failure to returned unearned fees on termination of the representation) in the Chambers matter. As to those three allegations, the Hearing Committee finds that Bar Counsel has not met its burden of proving a Rule violation by clear and convincing evidence. *See* Board Rule 11.6.

With respect to a sanction in this proceeding, the Hearing Committee concludes that Respondent intentionally misappropriated legal fees he received in the Franklin matter, and recommends that Respondent should be disbarred pursuant to *In re Addams*, *supra*. As previously noted, Bar Counsel argues alternatively (BC Br. at 78) that even in the absence of intentional misappropriation the seriousness of Respondent's misconduct and various aggravating factors also warrant disbarment. The Hearing Committee, however, while viewing Respondent's misconduct as very serious, recommends that if disbarment is not ordered pursuant to *In re Addams*, a more appropriate sanction would be a three year suspension, coupled with a showing of fitness to resume the practice of law pursuant to *In re Cater*, 887 A.2d 1, 24 (D.C. 2005).

Part II of this Report and Recommendation contains the Hearing Committee's findings of fact relating to each of the four client matters in question, in the order in which evidence was presented by Bar Counsel on each matter during the hearing. Section II(A) deals with the Evans matter; Section II(B) deals with the Franklin matter; Section II(C) deals with the Chambers matter; and Section II(D) deals with the Owens matter. In addition, Section II(E) contains separate findings of fact relating to Respondent's communications with and responses to subpoenas from the Office of Bar Counsel, as well as his responses to Orders from the Board and/or the Court relating to the four client matters involved in this proceeding. Section II(F)

contains findings of fact relating to one of the aggravating circumstances asserted by Bar Counsel discussed in subsection IV(B)(2)(g) of this Report and Recommendation.

Part III of this Report and Recommendation contains the Hearing Committee's recommended conclusions of law. Part IV of the Report and Recommendation contains the Hearing Committee's discussion of its sanction recommendations.

II. FINDINGS OF FACT

A. EVANS
(Bar Docket No. 2013-D100/Board Docket No. 14-BD-107)

1. Respondent is a member of the Bar of the District of Columbia Court of Appeals, having been assigned Bar registration number 494432. BX 1. On December 19, 2014, Respondent was personally served with the Petition Instituting Formal Disciplinary Proceedings and the Specification of Charges in the Evans matter. BX 6 at 2.

2. In June, 2011, Mark Evans ("Evans") worked with Respondent on a landlord-tenant case in the District of Columbia Superior Court, *Evans v. Clark*, 2011 LTB 13862 (BX 27; Tr. 82:5-14 (Evans)), the complaint for which had previously been filed by Evans on May 26, 2011 (Tr. 81:6-9, 84:8-18 (Evans); BX 27 at 1). The case involved a tenant in an apartment building located at 1610 R Street, S.E., Washington, D.C. The plaintiff in the case was Evans' then-spouse, Lissa Evans, who was the record title owner of the building. Evans served as property manager for the building, and was responsible for asking Respondent to serve as plaintiff's counsel after Evans filed the complaint in the case. Tr. 79:19-80:2; 80:16-81:9; 81:19-82:4; 83:1-10; 84:4-85:3 (Evans); BX 27.[9]

[9] Respondent did not provide a written fee agreement in connection with his work on the landlord-tenant case. Tr. 81:10-18 (Evans).

3. On June 17, 2011, Respondent hand-wrote a praecipe entering his appearance in the landlord-tenant case, identifying Lissa Evans as the plaintiff. BX 27 at 4; Tr. 621:21-622:8 (Respondent). On June 20, 2011, the landlord-tenant case settled, following a mediation session. BX 27 at 1. Evans was the only representative of plaintiff with whom Respondent worked on the landlord-tenant case; Respondent never spoke to or met with Lissa Evans concerning the case. Tr. 618:19-619:4 (Respondent).

4. Beginning in February, 2012, just seven months after the landlord-tenant case ended, Respondent was contacted by Evans in connection with the Evanses' contemplated divorce. BX 28. Respondent knew from the outset of the Evanses' divorce case that allocating ownership rights to the rental property at 1610 R Street, S.E., was a principal financial issue in the case. Tr. 618:5-15, 623:4-10 (Respondent).

5. On March 22, 2012, Lissa Evans, through her counsel, Rebecca Masri, Esq. (hereinafter referred as "Ms. Masri"), filed a complaint in the Circuit Court for Arlington County, Virginia, seeking a divorce from Evans, *Evans v. Evans*, CL No. 12-754. BX 30 at 3-6. In the divorce complaint, Ms. Evans asked the court to grant her exclusive use and possession of the property located at 1610 R Street, S.E. BX 30 at 4-5, ¶ E.

6. Evans asked Respondent to represent him in the divorce case in Arlington, Virginia, and he agreed to do so (Tr. 86:20-87:7 (Evans)), but failed to provide Evans with a writing specifying the basis or rate of the fee, the scope of Respondent's representation, and the expenses for which Evans would be responsible. Tr. 513:9-11 (Respondent). Respondent also failed to explain clearly to Evans that Respondent was not authorized to practice law in Virginia, or how either he or a local Virginia counsel would be representing Evans in the Virginia proceeding. Tr. 87:4-88:2; 88:14-17; 96:7-15 (Evans). Respondent told Evans that Respondent would file a *pro*

hac vice motion in the Virginia divorce case, but did not explain to Evans what such a motion was or what it meant. Tr. 87:4-10, 135:6-137:1 (Evans). Respondent also did not explain to Evans that Evans would have to pay additional legal fees if a Virginia lawyer were to become involved in the case. Tr. 88:14-17 (Evans). Respondent in fact never filed a *pro hac vice* motion in the Evanses' divorce case. BX 29; Tr. 521:9-14, 631:2-4 (Respondent).

7. On May 7, 2012, Respondent sent an e-mail to Evans, attaching a draft Answer to the divorce complaint. BX 32 at 1. Respondent's e-mail also told Evans, "The court charges me $250 to put in my appearance, so I will need $1,200.00[10] initially to cover estimated time and expenses prior to and including first court date." *Id*. However, Respondent did not provide Evans with a written retainer agreement concerning the financial details or the scope of his representation, nor did Respondent's e-mail identify to Evans any Virginia attorney who would act as Evans' counsel of record or what the financial obligations of Evans to that attorney would be. BX 32 at 1; Tr. 88:14-22 and 96:7-15 (Evans); 513:9-11 (Respondent).

8. By May 7, 2012, Respondent had arranged with William Robinson, Esq., an attorney licensed to practice law in Virginia, to be Virginia counsel of record for Evans in the divorce case. Tr. 629:2-5 (Respondent); 192:3-7 (Robinson). However, it was understood between Respondent and Mr. Robinson that the latter would not have any substantive involvement in the case. Tr. 186:21-187:4; 190:14-20; 196:11-15; 198:17-199:8 (Robinson).

9. Respondent's May 7, 2012, e-mail to Evans stated that the purpose of the draft Answer was "to capture the main goals of the divorce on your behalf." BX 32 at 1. The draft Answer attached to the e-mail included a demand that Evans be granted exclusive use and possession of the property at 1610 R Street, S.E. BX 32 at 3, ¶ D; Tr. 95:10-21 (Evans). The draft Answer

[10] Evans paid Respondent's $1,200 fee. BX 47.

also specifically requested, "That Defendant be granted such other and further relief, including without limitation, any other relief pursuant to § 20-103 of the 1950 Code of Virginia, as amended, as the nature of the case may require." BX 32 at 3, ¶ K. The draft Answer did not identify or include a signature line for Mr. Robinson, nor did it identify Mr. Robinson or any other Virginia attorney who would represent Evans in the divorce proceeding. BX 32 at 4.

10. Before the Answer was filed with the Circuit Court for Arlington County, Virginia, Respondent − without Evans' knowledge (Tr. 96:7-16 (Evans)) − modified the draft Answer he previously e-mailed to Evans by adding a signature line for Mr. Robinson. BX 33 at 3.

11. Respondent signed Mr. Robinson's name to the Answer (Tr. 631:16-20 (Respondent)), although Mr. Robinson had no role in preparing it (Tr. 192:8-13 (Robinson)).

12. On June 15, 2012, a praecipe was filed in the Evanses' divorce case scheduling the divorce trial for a two-day hearing beginning February 4, 2013. BX 29.[11]

13. Although Respondent never sought admission *pro hac vice* in the Virginia divorce case (FF ¶ 6, *supra*),[12] he was the only lawyer actually representing Evans. Mr. Robinson never dealt with opposing counsel, Ms. Masri, until a motion to compel discovery from Evans came before the Arlington Circuit Court on January 11, 2013 (Tr. 195:7-196:10 (Robinson)); Mr. Robinson had no contact with Evans until the hearing on that motion (Tr. 98:6-20 (Evans)); and Mr. Robinson had no involvement with pre-trial discovery in the case (Tr. 196:11-15 (Robinson)).

[11] On July 17, 2012, about a month after the filing of the praecipe scheduling of the divorce trial to begin on February 4, 2013, Respondent sent Evans an e-mail misinforming him that the trial had been set for late January. BX 34 at 1.

[12] All references in this Report and Recommendation to the findings of fact made herein are designated with the prefix "FF ¶ ___."

14. On November 19, 2012, Ms. Masri faxed and mailed to Respondent interrogatories and a request for production of documents to be answered by Evans (BX 36 at 1, ¶ 1), which were received by Respondent that day (BX 28 - Respondent's "task list" (Tr. 624:22-625:8 (Respondent) − (11/19/2012 entry)). Evans' discovery responses were due within 21 days, *i.e.*, by December 11, 2012. BX 36 at 1, ¶ 1.

15. The discovery requests referred to in the preceding paragraph were lengthy and complex. The interrogatories were 26 pages long, contained requests for information on 22 different subject matters, and most of the interrogatories included multiple sub-parts. BX 36 at 4-28. The request for production of documents was 19 pages long, contained lengthy and detailed instructions, and requested documents in 52 different categories. Again, many of the document requests contained multiple sub-parts. BX 36 at 29-49.

16. On November 30, 2012, eleven days after Respondent received the discovery requests from Ms. Masri, Respondent e-mailed them to Evans. BX 94;[13] *see also* BX 28 (entry for 11/30/2012); Tr. 739:11-18 (Respondent). Respondent's November 30, 2012, e-mail to Evans contained no instructions or explanation, nor did it inform Evans of the due date for the discovery responses, stating merely, "Please review so that we can discuss." BX 94; Tr. 634:10-13 (Respondent).

17. Evans was clearly at sea as to what to do with the discovery requests, and when his responses were needed. On December 5, 2012, Evans sent Respondent an e-mail stating, "Let's

[13] BX 94 is one of many e-mails between Respondent and Evans that, as hereinafter discussed, Respondent did not produce until the last day of the hearing in this matter, despite repeated requests from Bar Counsel, including a subpoena and an order from the Court enforcing the subpoena.

discuss as soon as possible and what's the deadline for getting you this information." BX 98.[14] Still at sea one day before his discovery responses were due, on December 10, 2012, Evans sent Respondent another e-mail repeating verbatim the request in his December 5, 2012, e-mail to Respondent. BX 94.

18. On December 14, 2012, Ms. Masri faxed and mailed a letter (BX 36 at 48) to Respondent − whom she regarded and referred to as "Defendant's counsel" (BX 36 at 1, ¶ 2)[15] − stating that Evans' discovery responses had not been received on December 11, 2012, as required by court rules, and stating further that complete responses had to be received in Ms. Masri's office by noon on December 20, 2012, or she would file a motion to compel discovery responses.

19. On December 17, 2012, one week after Evans' second e-mail request to Respondent for assistance with the discovery requests (BX 94), Respondent sent an e-mail to Evans saying only, "I will need the materials by the 20th. Thanks." BX 95.[16] The e-mail again contained no instructions or explanation to Evans on how to provide and organize the material responsive to the discovery requests. Respondent's December 17, 2012, e-mail also failed to inform Evans that Ms. Masri required the discovery responses to be in her office by noon on December 20, 2012; failed to inform Evans that if complete responses were not provided by noon on that date, Ms. Masri intended to file a motion to compel responses; and failed to inform Evans what the consequences of such a motion could be.

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[14] BX 98 is another e-mail with Evans that Respondent did not produce until the last day of the hearing. *See* n.13, *supra*.

[15] Ms. Masri's letter indicates that a copy was sent to her client, Ms. Evans, but no copy was sent to Mr. Robinson.

[16] *See* n.13, *supra*.

20. Evans attempted to provide Respondent with the information needed to respond to the discovery requests in electronic format via a computer "thumb drive" that he delivered to Respondent. Tr. 89:7-11 (Evans).

21. Ms. Masri did not receive Evans' discovery responses in her office by noon on December 20, 2012, as required by her December 14, 2012, letter to Respondent; accordingly, on December 21, 2012, Ms. Masri filed a motion to compel discovery. BX 36. The motion to compel requested, *inter alia*, an award of attorney's fees and costs incurred in connection with the motion. BX 36 at 2, ¶ B. Along with her motion to compel, Ms. Masri filed a praecipe scheduling a hearing on the motion for 10:00 A.M. on January 11, 2013. BX 29 at 3.

22. On December 21, 2012, one day after the December 20, 2012, due date specified in Ms. Masri's December 14, 2012 letter, Respondent delivered to Ms. Masri a computer drive − apparently the same thumb drive and in the same format Respondent received from Evans (*see* FF ¶ 20, *supra*) − containing incomplete answers to the pending discovery requests. BX 37 at 2.

23. On January 3, 2013, Ms. Masri sent Respondent by fax and regular mail a detailed letter (BX 37) pointing out 35 categories (some with multiple sub-parts) in which the discovery responses on the computer drive were incomplete. Ms. Masri's letter stated (BX 37 at 2):

> Your responses were not in accordance with the Rules of the Supreme Court of Virginia regarding proper discovery responses. The files were a complete mess with interrogatories mixed in with requests for documents, with the answers to interrogatories not following the questions, with no original oath to answers and many disorganized documents. * * * [M]y assistant spent two days, organizing and printing your responses.

Ms. Masri's letter concluded by asking for the deficiencies detailed in her letter to be cured so that her previously-filed motion to compel could be removed from the court's docket, failing which she would proceed with the motion and its request for legal fees. BX 37 at 6.

24. Respondent never prepared or filed a response to the motion to compel (Tr. 520:5-7 (Respondent); 198:17-19 (Robinson)),[17] failed to supplement the discovery responses (BX 96),[18] and failed to seek additional time to do so (Tr. 203:14-22 (Robinson)).

25. Even though the praecipe scheduling the hearing on Ms. Masri's motion to compel for January 11, 2013, had been filed with the court on December 21, 2012 (FF ¶ 21, *supra*), Respondent did not inform Evans about the hearing until he e-mailed Evans at 9:35 P.M. on the night before the hearing, telling Evans without any further explanation (Tr. 107:15-20 (Evans)) that Respondent could not attend the hearing assertedly because of a "prior commitment in DC,"[19] but that a "VA attorney who is helping me out will be there, but probably not until after 10:30[20] or so . . . ." BX 38. Respondent's e-mail to Evans said the Virginia attorney was named William Robinson, and that Respondent would send Mr. Robinson's telephone number to Evans, although Evans would not be able to bring a cell phone into the courthouse if it had a camera. *Id*. Respondent's e-mail failed to explain to Respondent what the purpose of the hearing was, or that the hearing might result in the imposition of sanctions by the court. *Id*.

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[17] Mr. Robinson testified, "I more or less left it to [Respondent] if he wanted to put in a response." Tr. 199:7-8.

[18] E-mail sent on January 11, 2013, at 7:04 A.M. by Ms. Masri to Respondent; this was another e-mail involving the Evans matter that Respondent did not produce until the last day of the hearing.

[19] However, in an e-mail to Ms. Masri at 6:54 A.M. on January 11, 2013 (BX 96, discussed *infra* in FF ¶ 29), Respondent claimed that he "currently [had] a water emergency at my house, so I am not yet sure where I will be today." In any event, Respondent never filed a motion to appear in the case *pro hac vice* (*see* FF ¶ 6, *supra*), so his ability to appear for Evans at the hearing is highly questionable.

[20] The praecipe that scheduled the hearing set the hearing time for 10:00 A.M.; *see* FF ¶ 21, *supra*.

26. Prior to the January 11, 2013, hearing on the motion to compel, Evans never had any contact with Mr. Robinson, and did not even speak to him at the hearing. Tr. 107:21-108:4 (Evans).

27. At 6:46 A.M. on the morning of the hearing on the motion to compel, Respondent sent Evans an e-mail with a telephone number for Mr. Robinson, and told Evans in the e-mail that Robinson would charge an additional $300 for attending the hearing. The e-mail did not tell Evans what time the hearing was scheduled for, or how to find out where the hearing was going to be held. BX 39.

28. A series of e-mails from Evans to Respondent on January 11, 2013, demonstrates that Respondent failed to inform Evans adequately about what was happening that day. At 8:05 A.M. Evans asked whether he had to be at the hearing, and whether Respondent's e-mail to him earlier that morning (FF ¶ 27, *supra*) meant Respondent would not be representing him. BX 40. At 8:33 A.M. Evans told Respondent he had left a message for Mr. Robinson, but Evans still did not know when the hearing was or where he was supposed to go. BX 41. At 10:47 A.M. Evans asked Respondent for a cell phone number and a mail address for Mr. Robinson. BX 42. At about half past noon, Evans asked Respondent to call him because Evans was concerned about his divorce case and needed to discuss the strategy of how the case was being handled. BX 43.

29. Early on the morning of January 11, 2013, an exchange of e-mails (BX 96)[21] between Respondent and Ms. Masri demonstrates that Respondent had left the posture of the court hearing that morning and the production of discovery materials as muddled as Evans' understanding of that day's court proceedings, described in FF ¶ 28, *supra*:

[21] BX 96 was another set of e-mails relating to the Evans matter that Respondent did not produce until the last day of the hearing.

(a) At 6:54 A.M. Respondent e-mailed Ms. Masri stating that he had planned to provide additional discovery materials to Ms. Masri before the hearing; however, Respondent's e-mail to Ms. Masri did not explain why Respondent had failed to do so. Respondent's e-mail also claimed that he had previously told Ms. Masri the January 11, 2013, hearing date "did not work for me," but that "my local counsel, William Robinson *may* [emphasis added] be available," although not until after 10:30.[22]

(b) At 7:04 A.M. Ms. Masri answered Respondent's 6:54 A.M. e-mail, stating that she had spoken with Respondent about the hearing date a month previously, and that when she filed the motion to compel on December 21, 2012, Respondent had not raised any problem about the hearing date. With regard to Evans' discovery responses, Ms. Masri stated that she had sent Respondent a comprehensive letter on January 3, 2013, indicating what was needed (*see* FF ¶ 23, *supra*), and had not received any response other than a telephone message Respondent left for her on January10, 2013, but when she called back Respondent did not answer.

30. On January 11, 2013, Mr. Robinson appeared at the hearing on the motion to compel, Tr. 200:4-201:8 (Robinson), but Respondent had provided him with only a scanty understanding of the issues related to the hearing:

(a) Respondent had not provided Mr. Robinson with a copy of Ms. Masri's letter dated January 3, 2013,[23] detailing the outstanding discovery defaults (Tr. 199:12-200:3 (Robinson));

(b) Respondent had not provided Mr. Robinson with any explanation that might have been made in a response to the motion to compel (Tr. 199:5-8 (Robinson)); and

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[22] The hearing was scheduled for 10:00 A.M.; *see* FF ¶ 21, *supra*.

[23] *See* FF ¶ 23, *supra*.

(c) Respondent had not provided Mr. Robinson with a knowledge of how the production of responsive discovery materials by Evans and Respondent had proceeded up to the date of the hearing, and Mr. Robinson's only "marching orders" from Respondent were to ask for more time. Tr. 202:16-203:11 (Robinson).

31. On January 11, 2013, the court entered an Order to Compel (BX 44), granting Ms. Masri's motion to compel, and noting that no response to the motion had been filed. BX 44 at 1. The Order to Compel directed that supplemental discovery responses in 40 separate categories were to be provided by January 22, 2013 (BX 44 at 6), and continued the issue of attorney's fees until a further hearing on January 25, 2013 (*id.*). *Inter alia*, the court ordered a supplementary answer to Interrogatory #4, requiring information as to the basis for any claim by Evans to an interest in the property located at 1610 R Street, S.E. BX 44 at 2, ¶ 7.[24]

32. Shortly after the January 11, 2013, hearing, Evans met with Mr. Robinson for the first time at a café near the courthouse (Tr. 97:12-13; 107:21-108:4 (Evans)). Mr. Robinson was so disturbed by the hearing that he "looked incredibly scared . . . like he had just seen a ghost." Tr. 97:14-15 (Evans). Mr. Robinson told Evans at that time that he "needed to get an attorney . . . because this was pretty serious." Tr. 97:17-19 (Evans).

33. On January 16, 2013, only three weeks before the long-scheduled February 4, 2013, trial date in Evans' divorce case (FF ¶ 12, *supra*), Mr. Robinson filed with the Circuit Court for

[24] Paragraph 7 of the court's Order to Compel (BX 44) states:

> Supplement Answer to Interrogatory #4 to include answers to subparts (d) amount and source of down payment for the R Street property, (e) fair market value of the R Street property at date of separation and present, (g) description, cost, and source of funds for any improvements on the R Street property, (h) whether Defendant claims the R Street property to be separate, marital or part-separate and part-marital; and (j) all separate contributions Defendant claims to have made to the acquisition, maintenance, or care of the R Street property.

Arlington County, Virginia, a "Motion to Withdraw" (BX 46) prepared by Respondent. Tr. 211:16-212:3 (Robinson). The motion began by stating that Respondent had been representing Evans "for limited costs" because Evans assertedly "ha[d] limited financial means." BX 46 at 2, ¶ 1. The motion also stated that Robinson's involvement in the case had been solely a "professional favor" to Respondent (BX 46 at 2, ¶ 2),[25] and asserted that "[o]nly last week Counsel [*i.e.*, Respondent] discovered a conflict which prevents Counsel from representing either party in this case" (BX 46 at 2, ¶ 3).

34. Although Respondent's Motion to Withdraw did not state what Respondent's conflict of interest was, at the hearing in this proceeding Respondent testified he had a "clear" (Tr. 751:2 (Respondent)) conflict because in the 2011 landlord-tenant case (FF ¶¶ 2-3, *supra*) Lissa Evans had been his nominal client as the named plaintiff/owner of the property at 1610 R Street, S.E., and she was now an adverse party in the divorce and claiming rights to that property. Tr. 750:2-751:9 (Respondent). However:

(a) Respondent never spoke to or met with Lissa Evans concerning the landlord-tenant case involving 1610 R Street, S.E. (FF ¶ 3, *supra*);

(b) Respondent could not recall receiving any confidential attorney-client information from Ms. Evans concerning the R Street property (Tr. 750:11-20 (Respondent)); and

(c) Ms. Masri, in a contested divorce proceeding, never moved on behalf of her client Ms. Evans to have Respondent disqualified from representing Evans on conflict of interest grounds, even though rights to the R Street property were at issue. BX 29 at 3

35. Respondent testified that he first recognized the name "Lissa Evans" in relation to the property at 1610 R Street, S.E., late in the Evanses' divorce case in connection with document

[25] *See* FF ¶¶ 8, 11, 13, 18, 24 n.17, 26, and 30, *supra*, concerning Mr. Robinson's lack of substantive involvement in Evans' divorce case.

discovery. Tr. 619:6-12; 624:11-19 (Respondent). That testimony, and the assertion in his Motion to Withdraw that "[o]nly last week Counsel discovered a conflict" (BX 46 at 2, ¶ 3) is inherently non-credible:

(a) In the praecipe entering his appearance in the landlord-tenant case discussed in FF ¶ 3, *supra*, Respondent twice, in his own handwriting (Tr. 621:21-622:8 (Respondent)), wrote out the name "Lissa Evans," once in the caption of the praecipe, and once again in the body of that document. BX 27 at 4.

(b) Respondent, over a three day period, participated along with Evans in a mediation to resolve the landlord-tenant dispute at 1610 R Street, S.E. BX 27 at 1; Tr. 84:22-85:6 (Evans).

(c) Just seven months after the landlord-tenant case ended, Respondent was contacted by Evans in connection with the Evanses' contemplated divorce, and Respondent knew from the outset that ownership of the R Street property was a principal financial issue in the case. FF ¶ 4, *supra*.

(d) Ms. Evans' divorce complaint filed on March 22, 2012, clearly named Lissa Evans as the plaintiff (BX 30 at 3) and specifically asked the court to grant Ms. Evans exclusive use and possession of the property located at 1610 R Street, S.E. FF ¶ 5, *supra*.

(e) In May, 2012, Respondent sent Evans an Answer that Respondent had drafted to the divorce complaint, showing Lissa Evans as the named plaintiff and specifically asking that rights to the R Street property be award to Evans. FF ¶ 9, *supra*.

36. After having been told by Mr. Robinson that he "needed to get an attorney . . . because this was pretty serious" (FF ¶ 32, *supra*), on January 16, 2013, Evans retained Steven Salwierak, Esq., to handle his divorce case. Tr. 112:9-14 (Evans); 157:8-18 (Salwierak).

37. Evans obtained boxed documents from Respondent pertaining to his divorce case and provided them to Mr. Salwierak. Tr. 116:12-117:7 (Evans). Respondent's files in the Evans matter were completely disorganized (Tr. 159:1-19 (Salwierak)), and Mr. Salwierak was unable to determine which discovery materials had been produced to opposing counsel and which had not (Tr. 159:4-14 (Salwierak)). Mr. Salwierak spoke briefly with Mr. Robinson, who was not able to provide much information about the case because "he hadn't really been doing the work on the case anyway . . . it was Mr. Grigsby who had been doing [the] work." Tr. 151:6-19 (Salwierak).

38. On January 22, 2013 – the deadline for compliance with the Court's Order to Compel (FF ¶ 31, *supra*) – Mr. Salwierak first learned of the existence of that order from Ms. Masri (Tr. 152:14-153:21 (Salwierak)); BX 49 at 2, ¶ 3.

39. On January 25, 2013, the presiding judge in the Evanses' divorce case entered an Order for Sanctions. BX 50. The court found that there had been no compliance with the January 11, 2013, Order to Compel, and prohibited Evans from presenting any evidence at his divorce trial that had been requested and not provided pursuant to the Order to Compel. *Id*. The effect of this provision of the Order for Sanctions was to bar Evans, *inter alia*, from presenting any evidence at his divorce trial concerning his claim to an interest in the property located at 1610 R Street, S.E. *See* FF ¶ 31 n.24, *supra*. The court further ordered Evans personally to pay his wife's legal fees in connection with the motion to compel, in the amount of $2,650. *Id*.

40. The provision of the Order for Sanctions barring Evans from presenting evidence relating to his claim to an interest in 1610 R Street, S.E., prejudiced Evans because, as he testified, Evans' family had assisted the Evanses in buying the property by providing settlement costs and other acquisition expenses (Tr. 90:2-7; 126:4-6 (Evans)); title to that property had been

taken in the name of Evans' wife only as a convenience to obtain FHA financing because she had a "day job" (Tr. 126:2-4 (Evans)); and Evans had done all the remodeling of the building and served as its property manager (Tr. 121:18-21 (Evans)).

41. The law clerk for the presiding judge in Evans' divorce case called Respondent, Mr. Robinson, and Mr. Salwierak to ensure that they would all be present on February 4, 2013, the first day scheduled for trial of the case (Tr. 161:1-5 (Salwierak), so that the court could understand from the attorneys what had been going on in the case (Tr. 164:16-20 (Salwierak)). Because Mr. Robinson was unfamiliar with the case, Respondent attempted to provide the court with information, which caused the presiding judge to admonish Respondent for representing Evans in a Virginia court when Respondent was not licensed to practice law there. Tr. 164:18-165:8 (Salwierak). The court also directed the $2,650 legal fee sanction in its January 25, 2013, Order for Sanctions to be paid by Mr. Robinson rather than Evans (Tr. 161:8-10 (Salwierak).[26]

42. Also on February 4, 2013, the presiding judge in Evans' divorce case delayed the commencement of the trial, allowing the parties to attempt to reach a settlement. Tr. 160:12-18 (Salwierak); 119:15-21 (Evans). Due the effect of the Order for Sanctions on Evans' ability to present evidence at trial, particularly with respect to ownership rights to the property at 1610 R Street, S.E. (FF ¶¶ 39-40, *supra*), and the short amount of time between Respondent's Motion to Withdraw on January 16, 2013, and the trial date, Evans was at a disadvantage in negotiating a settlement, and Mr. Salwierak as Respondent's successor counsel was not in a position to conduct an effective trial on Evans' behalf (Tr. 120:9-17; 137:5-138:3 (Evans); 162:15-164:9 (Salwierak)).

[26] Respondent eventually paid the $2,650 directly to Ms. Masri (BX 51).

43. The outcome of the Evanses' divorce settlement negotiations, given the adverse factors described in the preceding paragraph, was that Evans was advised by Mr. Salwierak to accept − and based on that advice Evans felt he had no choice but to accept − a settlement in which he gave up all rights to the property at 1610 R Street, S.E., and paid Lissa Evans an additional $23,000. Tr. 120:9-122:9; 137:5-139:6 (Evans).

B. FRANKLIN
(Bar Docket No. 2013-D240/Board Docket No. 14-BD-106)

44. Respondent is a member of the Bar of the District of Columbia Court of Appeals, having been assigned Bar registration number 494432. BX 1. On December 19, 2014, Respondent was personally served with the Petition Instituting Formal Disciplinary Proceedings and the Specification of Charges in the Franklin matter. BX 6 at 2.

45. On July 26, 2005, after a trial in the District of Columbia Superior Court, a jury found Mr. Franklin guilty of second degree murder. BX 56 at 1, 3. The court sentenced Mr. Franklin on November 10, 2005, and his trial counsel, Jennifer Wicks, Esq., filed a notice of appeal on December 2, 2005. BX 56 at 1; Tr. 396:9-17 (Mr. Franklin). On September 17, 2009, Mr. Franklin's conviction was affirmed. BX 57 at 2.[27] Mr. Franklin's lawyer subsequently filed a petition for a writ of certiorari with the United States Supreme Court, which was denied on October 2, 2010 (BX 66 at 12).

46. On February 10, 2011, Ms. Franklin called and then e-mailed Respondent asking him if he could represent her son by filing a motion to reduce his sentence and by pursuing post-conviction claims based on ineffective assistance of counsel. BX 69 at 20; Tr. 398:10-14; 410:7-412:2 (Mr. Franklin); 417:5-9 (Ms. Franklin). In her February 10, 2011 e-mail to Respondent, Ms. Franklin provided a chronology of her son's criminal trial and appeals − including

[27] *Johnson [et al.] v. United States*, 980 A.2d 1174 (D.C. 2009).

specifically the date on which certiorari was denied − as well as the identity of her son's trial and appellate counsel. BX 69 at 20; Tr. 417:14-418:2 (Ms. Franklin). Thus, as Respondent admitted (Tr. 585:11-20 (Respondent)), months before Ms. Franklin formally retained Respondent he was already familiar with the critical dates relevant to Mr. Franklin's criminal case.

47. Ms. Franklin had an initial meeting with Respondent to discuss her son's case and the cost of representation (Tr. 418:17-421:3 (Ms. Franklin)), and then met with Respondent again on May 11, 2011, when she signed a retainer agreement with Respondent and paid him a retainer fee of $2,000 (Tr. 421:3-5; 422:16-423:3 (Ms. Franklin); BX 58; BX 72 at 3). Respondent prepared and stored notes of these meetings on his laptop computer. Tr. 577:16-578:8; 543:1-9 (Respondent).

48. Respondent's retainer agreement (BX 58 at 1) stated that the purpose of the representation was:

> . . . to review case file and look specifically for any appeal related issues, in particular any ineffective assistance of counsel issues . . . . Additionally Attorney agrees to file a request for a sentence reduction.

49. Nothing in Respondent's retainer agreement gives any indication that he had already spent any significant amount of time on the Franklin matter. BX 58 at 1.

50. With respect to financial matters, the retainer agreement (BX 58 at 1) said that "Client agrees to pay Attorney $3,000 flat fee" [*sic*], and that "Client agrees to pay Attorney $2,000 down as a *non-refundable* initial retainer." (Emphasis added.) The $1,000 balance of Respondent's fee was to be paid in monthly installments of $166.67, the first of which was paid by Ms. Franklin. Tr. 426:17-428:4 (Ms. Franklin).

51. In connection with the execution of Respondent's retainer agreement and Ms. Franklin's undertaking to pay the sums specified in it, Ms. Franklin testified as follows regarding

her discussions with Respondent concerning his rights to the flat fee and the initial "non-refundable" $2,000 payment (Tr. 424:13-425:10 (Ms. Franklin)):

> Q. (Bar Counsel): Did [Respondent] tell you that he was going to take any part of the money before he completed any work?
> A. (Ms. Franklin): No, we never discussed that.
> Q. Did [Respondent] tell you that he was going to take the fee regardless of whether he filed a motion, either ineffective assistance motion or a motion to reduce sentence?
> A. No.
> Q. Did you ever give [Respondent] permission to take all the money that you paid him without doing or providing a motion or a service?
> A. No.
> Q. Did [Respondent] ever give you any bill or any update about what he was doing?
> A. No.
> Q. Did [Respondent] ever give you an accounting or tell you what he had done with the money that you gave him?
> A. No.

See also Tr. 426:10-16 (Ms. Franklin).

52. Because D.C. Super. Ct. Crim. R. 35(b) requires a motion for reduction of sentence to be filed within 120 days after the United States Supreme Court denies a petition for certiorari,[28] and the Supreme Court denied certiorari in Mr. Franklin's case on October 2, 2010 (FF ¶ 45, *supra*), by the time Respondent promised in his May 11, 2011, retainer agreement (BX 58) to file a motion for reduction of sentence, the motion was already time-barred.[29] However, nothing in Respondent's retainer agreement (BX 58) indicates he informed Ms. Franklin of this facial bar to filing a motion for a reduction of sentence, nor does Ms. Franklin's description of

[28] D.C. Super. Ct. Crim. R. 35(b) states, in pertinent part, "A motion to reduce sentence may be made not later than 120 days . . . after entry of any order or judgment of the Supreme Court denying review of, or having the effect of upholding, a judgment of conviction or probation revocation."

[29] Respondent claimed he was familiar with Rule 35 and had filed motions to reduce sentence in other matters, but testified that he thought the deadline was 60 or 90 days. Tr. 583:17-584:10 (Respondent).

her discussions with Respondent indicate that he advised her of this problem; indeed, the situation was quite to the contrary. Tr. 419:21-420:19 (Ms. Franklin).

53. Following her May 11, 2011, meeting with Respondent, but before the end of May, 2011, Ms. Franklin provided Respondent with copies of the records pertaining to Mr. Franklin's criminal case. Tr. 422:16-423:19; 427:21-428:7 (Ms. Franklin).[30]

54. On May 13, 2011, Respondent deposited in his IOLTA account at Chevy Chase Bank (now Capital One Bank) Ms. Franklin's $2,000 check, as well as one other client check in the amount of $2,415, for a total deposit of $4,415. BX 73 at 8-9; BX 74 at 3-5; Tr. 258:6-260:18 (O'Connell). Respondent was the sole signatory on this account. BX 73 at 7.

55. On May 18, 2011, Respondent transferred $3,500 from his aforesaid IOLTA account to his office operating account, ending with the digits xxxx5084.[31] BX 73 at 11. On June 22, 2011, Respondent transferred an additional $1,500 from his IOLTA account to the same office operating account ending with the digits xxxx5084. BX 73 at 13. The resulting balance in Respondent's IOLTA account after this second withdrawal on June 22, 2011, was $1,576.69. *Id.* *See also* Tr. 260:19-261:2 (O'Connell) (Respondent failed to maintain a balance in his IOLTA account of at least $2,000 after his deposit of Ms. Franklin's check on May 13, 2011).

[30] Respondent testified that he had received and reviewed the records of Mr. Franklin's case before he was paid on May 11, 2011. Tr. 536:17-21 (Respondent). As discussed *infra* in subsection IV(B)(2)(g) of this Report and Recommendation, the Hearing Committee credits the testimony of Ms. Franklin, and has concluded that Respondent's testimony on this issue was false.

[31] A refund check that Respondent eventually issued to Ms. Franklin (BX 78 at 2) shows that it came from a Capital One Bank account ending with the digits xxxx5084, and entitled, "Sherlock Grigsby T-A Law Office of Sherlock Grigsby."

56. Respondent failed to perform any of the essential services required by his retainer agreement that might have authorized him to appropriate Ms. Franklin's initial $2,000 retainer payment:

(a) After Respondent turned over to Bar Counsel the records Respondent had received for review from Ms. Franklin (FF ¶ 53, *supra*), Kevin O'Connell − a trained investigator with 26 years of experience as a former FBI agent and 10 years of experience with the Office of Bar Counsel (Tr. 230:17-231:17 (O'Connell)) − examined the records, which gave no indication that Respondent had reviewed[32] (or even touched) them.[33] Tr. 254:14-256:4; 268:6-270:15 (O'Connell).[34]

(b) Respondent had no time records,[35] calendar records, documents, or work product to substantiate a claim to the Franklin retainer on the basis of work performed (Tr. 600:16-601:5 (Respondent), nor did Respondent ever provide Ms. Franklin with any bills or

[32] Respondent's retainer agreement required Respondent to "review case file and look specifically for any appeal related issues, in particular any ineffective assistance of counsel issues." BX 58 at 1.

[33] Respondent misidentified one of the three co-defendants in Mr. Franklin's trial as having the last name of "Carter." Tr. 541:4-7; 601:6-10 (Respondent). The name of the third co-defendant was Walter Clark. *See Johnson v. United States*, *supra*, 980 A.2d at 1179.

[34] On direct examination by his own attorney, Respondent testified that he received 2,500 pages of documents from Ms. Franklin, which he reviewed in 10 to 12 hours. Tr. 538:15-22 (Respondent). This computes to a reading speed of between 208 to 250 pages per hour. The Hearing Committee finds Respondent's testimony on this point to be non-credible, and a part of Respondent's attempt to justify his misappropriation of the Franklin retainer. *See* subsection II(B)(9) of this Report and Recommendation, *infra*.

[35] Respondent's retainer agreement (BX 58 at 1) states, "In the event Client rejects modifications, Attorney reserves the right to withdraw from the case and return any unbilled portion of retainer."

other type of accounting that would justify his application of her retainer payment to his own account (Tr. 424:13-425:10 (Ms. Franklin)).

(c) Respondent never filed a motion for reduction of Mr. Franklin's sentence. BX 59 at 2 (disciplinary complaint by Ms. Franklin stating that Respondent failed to file any motions on behalf of her son).

(d) There was some discussion between Respondent and Ms. Franklin about possibly filing a motion for post-conviction relief for Mr. Franklin based on the theory that "there were two young ladies who were cousins who had testified in the trial [and] were pressured to testify in a certain way" (Tr. 540:4-9 (Respondent)). However, Respondent never spoke with the cousins (Tr. 717:21-718:6; 720:6-20 (Respondent)), and at the hearing he could not articulate the factual or legal basis of any motion predicated on information he might have received from them, nor did Respondent ever pursue[36] or file a motion based on the theory that the cousins' testimony had been improperly pressured (Tr. 719:14-720:20 (Respondent); BX 59 at 2 (disciplinary complaint by Ms. Franklin stating that Respondent failed to file any motions on behalf of her son)).

(e) Respondent never produced any e-mail correspondence with Ms. Franklin while he was retained by her in which he confirmed his conversation with Ms. Franklin concerning the two cousins, or asked her to follow up by providing contact information for them or by asking them to come to meet with him. BX 66 (e-mails produced by Ms. Franklin); BX 69 (e-mails produced by Respondent).[37]

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[36] The transcript of the hearing has a typographical error at this point, using the word "perceived" instead of the word "pursued." Tr. 720:10.

[37] On May 6, 2014, approximately a year after Ms. Franklin filed a disciplinary complaint against Respondent, he sent Ms. Franklin an e-mail stating he would provide her a refund, and that "I

57. On May 12, 2011, Ms. Franklin sent Respondent an e-mail that included contact information for her son, another chronology for her son's criminal case and appeals, and other relevant information. Ms. Franklin asked Respondent to send her son a letter introducing himself as his new attorney. BX 66 at 11-12.

58. Respondent responded to Ms. Franklin by e-mail on May 16, 2011, promising he would send Mr. Franklin a letter. BX 66 at 11; Tr. 428:5-15 (Ms. Franklin).

59. Shortly thereafter, Respondent sent Mr. Franklin an undated letter on his law firm letterhead, saying he had been hired and was writing "simply an introduction, and there will be follow-up." BX 89; Tr. 398:16-400:1 (Mr. Franklin).

60. Although Mr. Franklin made many attempts to get in touch with Respondent after Respondent's initial letter (Tr. 400:5-401:14 (Mr. Franklin)), and despite the statement in Respondent's letter to Mr. Franklin that there would be "follow-up" (BX 89), Respondent never communicated again with Mr. Franklin (Tr. 400:2-4 (Mr. Franklin)); 544:21-545:1 (Respondent)).

61. Mr. Franklin told his mother that Respondent was not communicating with him, and asked her to get in touch with Respondent. Tr. 401:15-20 (Mr. Franklin).

62. Notwithstanding multiple attempts by Ms. Franklin to get in touch with Respondent by telephone and e-mail over an extended period of time, Ms. Franklin − with one exception discussed in the next two paragraphs − had no success in getting Respondent to contact her. Tr. 430:6-437:12 (Ms. Franklin); BX 56 at 2 and BX 62 at 1 (disciplinary complaints from Ms. Franklin indicating Respondent's failure to contact her despite numerous inquiries); s*ee also* BX 66 (e-mails produced by Ms. Franklin) and BX 69 (e-mails produced by Respondent).

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had been waiting on the contact information for the witnesses, which I never received." BX 76 at 1.

Respondent admitted his failure to keep Ms. Franklin informed about his representation in the Franklin matter (Tr. 604:11-606:8 (Respondent)), stating as his reason that he did not communicate "[u]less I had something positive really to add" (Tr. 604:15-16 (Respondent)).

63. On October 3, 2011, Ms. Franklin sent Respondent an e-mail reminding him that her son wanted him to file a motion to reduce his sentence, that she wanted to discuss her son's legal matter with Respondent, and that Respondent's telephone voice mail was full so she could not leave a message. BX 66 at 3-4.

64. In response to Ms. Franklin's e-mail described in the preceding paragraph, on October 4, 2011, Respondent sent Ms. Franklin a reply e-mail in which he represented, "I am working on the motion. I am in trial this week, but will try to give you a call during a break." BX 66 at 3. Respondent's October 4, 2011, e-mail to Ms. Franklin is the last e-mail from Respondent to Ms. Franklin that was produced by either of them. *See* BX 66 (e-mails produced by Ms. Franklin); BX 69 (e-mails produced by Respondent).

65. Although Respondent's e-mail to Ms. Franklin stated that he was "working on the motion":

(a) Respondent never sent Mr. Franklin or Ms. Franklin even a draft of any document that would constitute, or was substantively related to, a motion for post-conviction relief. Tr. 402:4-13 (Mr. Franklin); 431:13-432:6 (Ms. Franklin).

(b) Respondent never produced any work product or other evidence that he had worked on or had begun preparing a motion. Tr. 254:14-256:4; 268:6-270:15 (O'Connell).

(c) In a meeting with Bar Counsel on November 18, 2013, Respondent gave no indication that he had been working on a motion. Tr. 254:1-4 (O'Connell).

(d) Respondent's answer to Bar Counsel's question at the hearing to describe the motion he was "working on" was as follows (Tr. 602:4-14: Respondent)):

> At the time, like I said, I don't want to speculate, like I said, either issues pertaining to the appeal or -- because, again, like I said, once we initially spoke and based on her representation that there would be two witnesses with new information, I believe I had prepared/initially started creating some document to go forward with. And it's either the motion for sentence reduction or the actual starting to get a motion for a new appeal. And, again, like I said, I just don't have documents and I [can't][38] remember off the top of my head.

See also Tr. 719:15-19 (Respondent): "At this point I don't remember the exact details of it. But the idea there, and I told [Ms. Franklin], we spoke and I was simply waiting on her to give me the witnesses so I could provide sworn statements."

(e) Respondent did not discuss with Ms. Franklin the details of the notional motion described in the preceding subparagraph. Tr. 603:16-18 (Respondent).

(f) Respondent never in fact spoke with the two potential witnesses on whose supposed information a motion for post-conviction relief of Mr. Franklin might have been based (Tr. 717:21-718:6; 720:10-15 (Respondent)), nor are they mentioned in Respondent's e-mails to Ms. Franklin (BX 69).

66. At some indeterminate point in time, Respondent interviewed one of Mr. Franklin's co-defendants (Tr. 541:1-7 (Respondent)). Respondent prepared and stored notes of this meeting on his laptop computer. Tr. 577:16-578:8; 543:1-9 (Respondent).

67. On October 13, 2011, Ms. Franklin sent Respondent an e-mail stating, *inter alia*, "Please give me a call . . . . I spoke with my son yesterday. He sounds desperate. I have some

[38] The transcript as this point has a typographical error; the word "can" should be "can't." Tr. 602:14.

questions I would like to ask." BX 66 at 5.[39] Ms. Franklin sent this e-mail to Respondent because she had not heard from him, but she did not receive a response to it. Tr. 433:16-434:1 (Ms. Franklin).

68. On November 23, 2011, a toilet in Respondent's home overflowed, causing damage to a laptop computer that was lying on a table beneath the toilet; the laptop computer was used by Respondent in his work, and the water damage rendered the laptop computer inoperable. Tr. 483:8-485:22 (Mrs. Grigsby). Respondent had notes of his meetings with Ms. Franklin (FF ¶ 47, *supra*) and the co-defendant of Mr. Franklin who Respondent interviewed (FF ¶ 66, *supra*) stored on the laptop computer which were lost due to the water damage to the computer. Tr. 577:16-578:8; 543:1-9 (Respondent).

69. On June 17, 2013, more than twenty months after her last e-mail from Respondent on October 4, 2011 (*see* FF ¶ 64, *supra*), Ms. Franklin filed a complaint with Bar Counsel due to Respondent's failure to perform the work he agreed to do and his failures to communicate. BX 59.

70. On May 6, 2014, Respondent sent Ms. Franklin an e-mail saying he would provide her with a refund. BX 76.

71. Via a check dated June 2, 2014, Respondent provided Ms. Franklin a refund in the amount of $2,100. The check was written on a Capital One Bank checking account entitled "Sherlock Grigsby T-A Law Office of Sherlock Grigsby," and ending with the digits xxx5084. BX 78 at 2. Respondent's IOLTA account, however, ended with the digits xxxx2453. *See*, *e.g.*, BX 73 at 8.

[39] *See also* BX 66 at 3 (October 4, 2011, e-mail from Ms. Franklin to Respondent stating, "I spoke with my son . . . . he sound Very [*sic*] desperate when I talked to him . . . . ").

C. CHAMBERS
(Bar Docket No. 2013-D064/Board Docket No. 14-BD-103)

72. Respondent is a member of the Bar of the District of Columbia Court of Appeals, having been assigned Bar registration number 494432. BX 1. On December 19, 2014, Respondent was personally served with the Petition Instituting Formal Disciplinary Proceedings and the Specification of Charges in the Chambers matter. BX 6 at 2.

73. Via a $900 check dated April 17, 2012 (BX 8 at 11),[40] Chambers retained Respondent in connection with several problems involving an ex-girlfriend, Elizabeth Letourneau (hereinafter, "Ms. Letourneau"), including obtaining a "stay away" order against her, and filing suit against her to recover possession of a car and to obtain repayment of a loan to her of about $3,400. Tr. 368:13-370:21; 379:12-20 (Chambers); 527:5-8 (Respondent).

74. Respondent failed to provide Chambers a retainer agreement or other writing stating the basis or rate of his fee and the scope of the representation. Tr. 369:8-12 (Chambers); 528:5-7 (Respondent). (Respondent also did not provide Chambers with a written retainer agreement when Respondent briefly represented him in another matter in 2009. Tr. 367:1-368:3 (Chambers)).

75. Following his retention by Chambers, Respondent went with him to the District of Columbia Superior Court to attempt to obtain a "stay away" order against Ms. Letourneau. That effort was of no help to Chambers, because the intake clerk who reviewed the papers relating to the request for the "stay away" order determined the papers being submitted did not qualify Chambers for the relief being sought. Tr. 371:15-372:5 (Chambers): 528:10-22 (Respondent).

[40] Respondent deposited Chambers' retainer payment directly into his office operating account, ending with the digits xxxx5084 (*see* FF ¶ 71, *supra*), rather than into his IOLTA account. BX 8 at 6, 10. The Specification in the Chambers matter (BX 2), however, does not allege that this handling of Chambers' retainer payment was a violation of Rule 1.15, nor does Bar Counsel advocate for that position in its post-hearing brief. BC Br. at 62-65.

76. In the months that followed the unsuccessful attempt to obtain a "stay away" order against Ms. Letourneau, Respondent failed to file suit against her for repayment of Chambers' loan to her and for recovery of Chambers' car, and failed to communicate with Chambers concerning the status of Chambers' claims against Ms. Letourneau, despite numerous e-mails from Chambers to Respondent asking for updates on the case. Tr. 373:6-374:11; 375:22-376:21 (Chambers).

77. On July 14, 2012, Chambers sent Respondent an e-mail advising him about a specific date and place where Ms. Letourneau could be served with process, and asking him if "all is good to go." BX 10. On July 16, 2012, Respondent replied to Chambers' e-mail, stating, "I will try to have her served then." *Id*. Respondent, however, did not at that time have a lawsuit on file against Ms. Letourneau, and in fact failed to file suit against her until August 14, 2012. BX 12 at 2. When Chambers called Respondent to learn if he had served Ms. Letourneau, Respondent stated he had not been able to do so (BX 16 at 2) – omitting the fact that Respondent had no lawsuit on file at that time and therefore had nothing to serve on Ms. Letourneau.

78. On August 8, 2012, Chambers sent Respondent an e-mail (BX 11) complaining about the lack of concrete activity by Respondent on Chambers' claims against Ms. Letourneau and Respondent's failures to keep in contact with him. *Inter alia*, the e-mail stated, "I have tried on numerous occasions to contact you via email, phone messages etc. to discuss our arrangement for you to provide your legal services" (BX 11 at 1), and "I would like you to notify me as soon as possible on what next steps we should take to resolve this situation. If you cannot proceed, please return the payment I have provided and we can terminate our arrangement." BX 11 at 2.

79. On August 14, 2012, Respondent filed suit against Ms. Letourneau on behalf of Chambers in the District of Columbia Superior Court, seeking repayment of Chambers' loan to

her[41] and the return of Chambers' car. BX 12 at 2-4 (District of Columbia Superior Court civil action no. 6598-12). The summons for service of process on Ms. Letourneau was issued the same day. BX 12 at 5.

80. Respondent neither showed Chambers a copy of the Complaint against Ms. Letourneau before Respondent filed it, nor told Chambers that the Complaint had in fact been filed. Tr. 378:4-11 (Chambers).

81. Respondent delayed almost two months, until October 10, 2012, before providing the Summons and Complaint to a process server to serve Ms. Letourneau. BX 13. The process server tried to serve Ms. Letourneau on October 10 and 12, 2012, and gave Respondent an affidavit setting forth a description of his unsuccessful efforts at service. *Id.*

82. On November 7, 2012, pursuant to D.C. Super. Ct. Civ. R. 4(m), the court dismissed the suit that Respondent filed against of Ms. Letourneau, due to the failure to serve her with process within the time allowed by the rule. BX 12 at 10. The court sent the Order of Dismissal to Respondent. *Id.*

83. On November 16, 2012, Chambers sent Respondent another e-mail providing information that could have been helpful in serving process on Ms. Letourneau. BX 15.

84. There is no evidence the Respondent took any further steps to serve Ms. Letourneau after giving the initial summons to the process server on October 10, 2012, and Respondent did not seek additional time from the court to effect service before the expiration of the 60-day deadline for service of process set forth in D.C. Super. Ct. Civ. R. 4(m). BX 12 at 1.

85. On November 29, 2012, Chambers asked Respondent for an update on the case against Ms. Letourneau. Respondent told him that she was evading service, but failed to inform

[41] The Complaint alleges that the loan was in the amount of $3,500, BX 12 at 2, ¶¶ 3, 5, but the prayer for relief in the Complaint seeks repayment of only $3,400. BX 12 at 3, ¶ 1.

him that the lawsuit Respondent filed on August 14, 2012, had been dismissed on November 7, 2012, pursuant to D.C. Super. Ct. Civ. R. 4(m). Chambers first learned of that fact through contact with the Office of Bar Counsel. BX 16 at 2; Tr. 385:20-387:2 (Chambers); 611:18-21 (Respondent).

86. While Chambers believed Respondent was pursuing the claims against Ms. Letourneau, Chambers also asked Respondent to assist him in having his deceased father's birth certificate changed to reflect his father's correct name, so that Chambers could collect the proceeds of a life insurance policy on his father. Tr. 379:21-380:9 (Chambers); BX 16 at 2; BX 14.

87. Respondent agreed to represent Chambers in correcting his father's birth certificate. Tr. 380:14-381:1 (Chambers).

88. Chambers provided Respondent with documents relating to Chambers' claim for the insurance policy proceeds. Tr. 381:15-20 (Chambers); BX 16 at 2; BX 17 at 4.

89. Respondent called a few people to try to resolve Chambers' insurance problem, but apparently did not obtain information he thought was helpful. Tr. 532:7-533:4 (Respondent). Following those telephone calls, as Respondent testified, "I wasn't sure what exact direction I needed to take, and I don't believe I followed up after that." Tr. 533:5-7 (Respondent).

90. Respondent failed to advise Chambers about the results of his work on Chambers' insurance problem, or that Respondent had given up pursuing it. Tr. 533:8-14 (Respondent).

91. In light of Respondent's failure to resolve Chambers' insurance problem, Chambers got in touch with an attorney in the state of New Jersey, where his father had been born, and that attorney resolved the problem in ten days. Tr. 388:13-17 (Chambers).

92. On December 27, 2012, Chambers sent Respondent another e-mail complaining about the lack of activity on the part of Respondent in proceeding against Ms. Letourneau and in resolving Chambers' insurance problem. BX 17 at 4. That e-mail concluded:

> I would like a written response on the status of the issues I have outlined above, as well as a detailed accounting of how the money I have given you for these services has been spent.
>
> If you can no longer represent me in these matters let me know and please refund the outstanding balance of the money I provided.
>
> Please rectify these outstanding matters or I will be forced to report these issues to the DC Bar.

93. Respondent did not reply to Chambers' December 27, 2012, e-mail to him. Tr. 615:6-16 (Respondent).

94. On February 7, 2013, Chambers filed a disciplinary complaint against Respondent. BX 16. Among the issues raised by Chambers in his disciplinary complaint was that, "I attempted to contact [Respondent] many times via phone calls and emails and receive [*sic*] no response."

95. By letter dated April 5, 2013, Respondent provided a short response to Chambers' disciplinary complaint, stating, *inter alia*, "I have attempted to contact Mr. Chambers and make a full reimbursement of the $900.00. I am waiting on instructions so that I can provide an electronic payment directly to him." BX 17.[42]

[42] On April 5, 2013, Chambers wrote in an e-mail to Respondent, "I don't want to lose you as a lawyer and if you tell me you can find and serve [Ms. Letourneau] and take care of my Dads [*sic*] issue in a timely manner I'd be happy to move forward with you." BX 17 at 3.

D. OWENS
(Bar Docket No. 2013-D439/Board Docket No. 14-BD-105)

96. Respondent is a member of the Bar of the District of Columbia Court of Appeals, having been assigned Bar registration number 494432. BX 1. On December 6, 2014, Respondent was personally served with the Petition Instituting Formal Disciplinary Proceedings and the Specification of Charges in the Owens matter. BX 6 at 2.

97. In the autumn of 2012, Respondent undertook representation of Owens in a suit for possession and unpaid rent against a tenant (a Mr. Harrington), docketed on November 29, 2012, as case no. 2012 LTB 33253 in the Landlord-Tenant Branch of the District of Columbia Superior Court's civil division. BX 79-80. Respondent was an acquaintance of Owens' husband (Tr. 696:1-4 (Owens)), and represented Owens without charging any legal fees (Tr. 695:3-6 (Owens); 548:20-22 (Respondent)).[43]

98. In a complaint for possession, as well as in other documents Respondent filed with the court as Owens' counsel, Respondent listed Owens' address as 601 Pennsylvania Avenue, N.W., Suite 900, Washington, D.C. 20004, although that was not her address, but Respondent's own office address. BX 80 at 1, 5, 7; Tr. 696:20-697:6 (Owens); 567:9-11 (Respondent). The complaint for possession also listed the same address for Respondent as Owens' attorney. BX 80 at 1.

99. After the tenant was served with the complaint and summons in the lawsuit, he was represented by Stephen Clark, Esq. (hereinafter, "Mr. Clark"). Tr. 456:12-457:18 (Clark). On

[43] Respondent did not have a written retainer agreement with Owens (BX 87), although he knew he had an obligation to provide clients with a written retainer agreement even if no fee is being charged (Tr. 566:10-14 (Respondent). The Specification of Charges in the Owens matter (BX 5), however, does not contain an allegation that Respondent violated Rule 1.5(b).

January 4, 2013, Mr. Clark filed an answer and counterclaim on behalf of the tenant. BX 80 at 14-19.

100. On January 18, 2013, Respondent and Mr. Clark attended a prehearing conference in Owens' lawsuit, at which the court scheduled a mediation for March 7, 2013. BX 80 at 22-24. The Scheduling Order signed by the court (BX 80 at 22) listed 601 Pennsylvania Avenue, N.W., Suite 900, Washington, D.C. 20004, as the address for both Owens and for Respondent as her attorney.

101. At the prehearing conference on January 18, 2013, the parties agreed to the terms of a protective order whereby the tenant would make $250 payments into the registry of the court beginning on January 28, 2013, and on the fifth day of each month thereafter during the pendency of Owens' lawsuit. BX 80 at 26. The protective order, approved by the court, listed 601 Pennsylvania Avenue, N.W., Suite 900, Washington, D.C. 20004, as Respondent's address. *Id*.

102. On March 7, 2013, the parties and their counsel attended an initial mediation session, and agreed to another session to be held on April 22, 2013. BX 79 at 3; BX 80 at 29; Tr. 460:21-22 (Clark). On April 19, 2013, Respondent sent Mr. Clark an e-mail saying he could not attend that mediation session and asked to reschedule it. BX 87 at 42; Tr. 462:3-6 (Clark). Respondent's e-mail listed 601 Pennsylvania Avenue, N.W., Suite 900, Washington, D.C. 20004, as his address. A new mediation date was scheduled for May 28, 2013. BX 87 at 33-38; BX 80 at 30.

103. At the May 28, 2013 mediation, the parties agreed to settle Owens' lawsuit. Tr. 462:19-463:2 (Clark); 697:7-698:22 (Owens). Mr. Clark prepared a draft settlement agreement

and sent it to Respondent the following day, May 29, 2013. BX 87 at 27-30; Tr. 462:8-464:12 (Clark).

104. On June 3, 2013, not having heard from Respondent, Mr. Clark sent him an e-mail asking "How are we doing on this case?" BX 87 at 23. No response to this e-mail from Respondent is in the record, but on the same day Respondent sent the draft settlement agreement to Owens. BX 87 at 25.[44]

105. On July 15, 2013, Respondent e-mailed Mr. Clark the signed signature page for the parties' settlement agreement (BX 87 at 22; BX 80 at 40), and on July 22, 2013, Mr. Clark filed the settlement agreement with the court (BX 80 at 31-34; Tr. 466:1-6 (Clark)). Respondent believed that with the execution of the settlement agreement, there could be no further need for him to appear in court. Tr. 550:6-8 (Respondent).

106. *Inter alia*, the settlement required Owens to make certain repairs to the tenant's apartment by August 15, 2013, and upon completion of the repairs all funds paid into the registry of the court by the tenant pursuant to the parties' January 18, 2013, protective order agreement would be disbursed to Owens. BX 80 at 32, ¶¶ 7-9. If either party breached the settlement agreement, the aggrieved party could seek relief by motion filed in the Landlord-Tenant Branch of the court, after ten days' prior notice to counsel. BX 80 at 33, ¶ 13.

107. On July 30, 2013, Respondent exchanged e-mails with Mr. Clark about the repairs to be made, and on August 30, 2013, Respondent sent Mr. Clark an e-mail concerning payments by the tenant. BX 80 at 41-42. Respondent's e-mails to Mr. Clark continued to show Respondent's address as 601 Pennsylvania Avenue, N.W., Suite 900, Washington, D.C. 20004.

[44] Respondent's June 3, 2013, e-mail referring to a "Draft Settlement Agreement" was sent to Owens at an e-mail address designated as "Kri101@aol.com."

108. Beginning in August and September of 2013, Respondent started winding down his practice, and as of July, 2013, he had physically stopped going to his office because he thought he had resolved all outstanding matters, and he knew that in September of 2013 he would be starting a different job; however, Respondent did not issue change of address notifications. Tr. 551:1-18 (Respondent). Respondent's new job was an appointment as Chief Deputy Clerk of the Circuit Court for Prince George's County, Maryland, and the appointment required Respondent to cease the private practice of law. Tr. 562:12-563:4 (Respondent); BX 87 at 2.

109. Although Respondent's new job prohibited him from engaging in the private practice of law, and notwithstanding that Respondent's new work address was located in Prince George's County, Maryland, Respondent failed to file any notice with the court in Owens' landlord-tenant case − in which he was still the attorney of record for the plaintiff − advising the court or opposing counsel of his change of address, nor did Respondent file any motion with the court for leave to withdraw as counsel for Owens. BX 79. Respondent also continued to list 601 Pennsylvania Avenue, N.W., Suite 900, Washington, D.C. 20004, as his address of record with the District of Columbia Bar until July 15, 2014, when he changed his address of record to 3813 Usher Court, Alexandria, VA 22304. BX 1 at 3, ¶¶ (c)-(d).

110. On September 12, 2013, Mr. Clark sent Respondent an e-mail advising that none of the agreed-upon repairs to the tenant's apartment required by the parties' settlement agreement had been made, and pursuant to ¶ 13 of the settlement agreement (FF ¶ 106, *supra*) Mr. Clark gave Respondent the ten-day prior notice to counsel of Mr. Clark's intention to file a motion to show cause with the court. BX 80 at 41; Tr. 466:10-21 (Clark). Respondent did not reply to Mr. Clark's e-mail (Tr. 469:16-19 (Clark)), and failed to advise Owens of it (Tr. 700:7-11 (Owens)).

111. On October 2, 2013, Mr. Clark filed a motion to show cause on behalf of the tenant due to Owens' failure to make repairs to the tenant's apartment as agreed, and sought financial penalties from Owens. BX 80 at 35-36. The motion provided notice of a hearing date on October 15, 2013 (BX 80 at 36), and was served by mail on Respondent at his address of record in the suit (and with the D.C. Bar), *i.e.*, 601 Pennsylvania Avenue, N.W., Suite 900, Washington, D.C. 20004 (*id.*).

112. Respondent did not notify Owens about the motion to show cause (Tr. 700:12-15 (Owens)), and failed to respond to it (BX 79 at 3).

113. On October 15, 2013, the court issued an order which noted that plaintiff had failed to appear at the court hearing that day, and scheduled a hearing on October 31, 2013, for Owens to show cause why the funds in the registry of the court should not be released to the tenant. BX 80 at 43. The order indicated that it was mailed to Owens at 601 Pennsylvania Avenue, N.W., Suite 900, Washington, D.C. 20004. BX 80 at 44. Respondent had used that address for Owens in the landlord-tenant suit even though she did not live there (FF ¶ 98, *supra*), and the mailing to Owens was returned to the court with her name crossed out and marked "RTS [return to sender] – For what Attorney?" BX 80 at 47.

114. On October 15, 2013, the court also mailed Respondent a notice of the hearing scheduled in Owens' case, which was sent to him at his address of record in the case, *i.e.*, 601 Pennsylvania Avenue, N.W., Suite 900, Washington, D.C. 20004. BX 80 at 46.

115. Respondent did not inform Owens that a court hearing in her case was scheduled for October 31, 2013. Tr. 700:16-19 (Owens).

116. Owens did not appear at the October 31, 2013, hearing (Tr. 472:2-10 (Clark); BX 79 at 2) because she did not receive the court's notice (FF ¶ 113, *supra*), and because Respondent

did not inform her of it (FF ¶ 115, *supra*). Respondent, who did have notice of the hearing (FF ¶ 114, *supra*), also did not appear at the hearing as Owens' attorney (Tr. 471:21-472:10 (Clark)); to have done so would have violated the terms of his new position as Chief Deputy Clerk of the Circuit Court for Prince George's County (FF ¶ 108, *supra*).

117. At the hearing on October 31, 2013, the Court ordered the release to the tenant of $1,250 then held in the court registry. BX 80 at 48; Tr. 472:11-21 (Clark).[45] Owens did not know about the October 31, 2013 order. Tr. 701:2-9 (Owens).

118. On October 31, 2013, the Court scheduled another status hearing in Owens' lawsuit for November 14, 2013, and sent notice of the hearing to Respondent at 601 Pennsylvania Avenue, N.W., Suite 900, Washington, D.C. 20004. BX 79 at 49. The notice was returned to the court with the notation "RTS-Moved." BX 80 at 50. The court's notice to Respondent of a subsequent hearing in the case sent to him at 601 Pennsylvania Avenue, N.W., Suite 900, Washington, D.C. 20004, was also returned with the same "RTS-Moved" notation. BX 80 at 53.

119. On November 2, 2013, Owens sent Respondent an e-mail asking him if the tenant had made a required payment. BX 87 at 13. There is no documentation that Respondent answered Owens' e-mail, followed up to determine if the tenant had made the required payment, or sent Owens any written notice of the further hearing scheduled for November 14, 2013. BX 87.

120. Neither Respondent nor Owens attended the court hearing on November 14, 2013. Tr. 473:3-474:4 (Clark); BX 79 at 2.

[45] The date written in at the bottom of BX 48 is "November" 31, but the Hearing Committee takes notice of the fact that November has only thirty days, and the cited testimony of Mr. Clark confirms that the order for release of funds was signed on October 31, 2013. *See also* BX 79 at 2.

121. On November 14, 2013, Judge Cordero of the landlord-tenant court contacted Bar Counsel because Respondent had failed to appear on that date and missed other hearings, and the court was seeking the assistance of Bar Counsel in order to contact Owens. BX 81 at 1.

122. On November 15, 2013, Bar Counsel sent Respondent an e-mail advising him of Judge Cordero's report to Bar Counsel as discussed in the preceding paragraph. *Id.*

123. Bar Counsel subsequently provided the court with contact information for Owens. Tr. 262:20-263:4 (O'Connell). On November 20, 2013, the court mailed a notice directly to Owens advising that a hearing in her case was scheduled for December 2, 2013. BX 80 at 54; Tr. 703:12-15 (Owens).

124. On November 18, 2013, Bar Counsel employees Kevin O'Connell and Julia Porter met with Respondent, and sent Respondent a follow-up e-mail. At the meeting and in the e-mail Bar Counsel advised Respondent to provide the court with his current address and to notify clients and the District of Columbia Bar about his status and locational information because he had obtained new employment and was no longer practicing law. Tr. 238:16-239:9 (O'Connell); BX 24.

125. At his November 18, 2013, meeting with Bar Counsel, Respondent did not provide any substantive information about his representation of Owens. Tr. 239:14-17 (O'Connell).

126. On November 20, 2013, Respondent received an e-mail from the landlord-tenant court notifying him that the court had scheduled another hearing in Owens' case for December 2, 2013. The e-mail stated that Judge Cordero had asked for this e-mail notice because Respondent had previously failed to appear and the court had been unable to reach him by telephone. BX 87 at 12.

127. Prior to the hearing on December 2, 2013, Respondent spoke with Owens and informed her that he would not be able to represent her. Tr. 702:16-703:8 (Owens).

128. On the morning of December 2, 2013, Respondent replied to the court's November 20, 2013, e-mail hearing notice (FF ¶ 126, *supra*), saying he had planned to attend but was sick.[46]

129. Owens appeared without counsel at the hearing on December 2, 2013, and requested a continuance to December 16, 2013, when Owens' case was again continued. Tr. 474:17:-476:17 (Clark).

130. At no point after September of 2013 did Respondent file a motion to withdraw as Owens' counsel. Tr. 476:5-477:6 (Clark); BX 79 at 1-2.

131. On January 28, 2014, Owens, acting *pro se*, again continued her case to February 12, 2014. BX 79 at 1.

132. On February 12, 2014, Owens and Mr. Clark jointly agreed to have the tenant's motion to show cause withdrawn as moot because the repairs required by the parties' settlement agreement had been made by the District of Columbia, and the case was resolved. BX 80 at 57; BX 79 at 1; Tr. 477:7-13 (Clark).

133. Also on February 12, 2014, the court *sua sponte* struck Respondent's appearance from the record as plaintiff's attorney, effective that day. BX 79 at 1.

[46] However, if Respondent's employment with the Prince George's County Circuit Court prohibited him from practicing law (FF ¶ 108, *supra*), it is not clear how he could have represented Owens at the hearing in any event.

E. Respondent's Responses to Inquiries From
Bar Counsel and to Board and Court Orders

Evans

134. On February 27, 2013, Bar Counsel received a complaint from Evans concerning his representation by Respondent. BX 52.

135. By letter dated April 5, 2013, Respondent provided a brief, one-page answer to Evans' complaint, concluding with the statement, "I am electronic copies [*sic*] of materials I have for this case and reserve the right to update these as I find additional materials." BX 53. The "electronic copies" Respondent produced were on a CD, and consisted mostly of discovery materials in Evans' divorce case, a "task list" (BX 28), a copy of the complaint for divorce and related cover letter, and a receipt letter dated January 22, 2013, signed by Respondent acknowledging payment by Evans of $1,200, but did not contain any e-mails, financial records, or a retainer agreement. Tr. 246:11-248:13 (O'Connell).

136. By certified letter dated September 27, 2013, Bar Counsel served Respondent with a subpoena for Respondent's client file and all related documents concerning Respondent's representation of Evans, including but not limited to electronic mail. BX 55.

137. On November 5, 2013, the Court issued an order granting Bar Counsel's unopposed motion to enforce the subpoena in the Evans matter (BDN 100-13), *inter alia*,[47] and giving Respondent ten days to comply; the order was mailed to Respondent by the Court at his address of record then on file with the District of Columbia Bar. BX 21.

138. On November 18, 2013, Respondent was personally served with the Court order enforcing the subpoena in the Evans matter (BX 23; Tr. 239:18-240:14 (O'Connell); Tr. 597:11-

[47] The order also enforced Bar Counsel subpoenas for records in the Chambers matter (BDN 64-13) and the Franklin matter (BDN 240-13).

18 (Respondent)), but Respondent did not − until the hearing in this matter − provide any additional documents. Tr. 248:14-18 (O'Connell); 708:9-709:19 (Respondent).

139. On December 3, 2013, Bar Counsel sent Respondent an e-mail reminding him of his obligation to produce all records relating to the Evans matter. BX 25 at 1. On January 24, 2014, Bar Counsel sent Respondent a letter (BX 26 at 1) enclosing a draft of the Specification (BX 26 at 8-15) in the Evans matter (as well as the Chambers matter). Bar Counsel's letter expressly gave Respondent an additional opportunity to submit any documents relevant to the Evans matter that had not previously been provided by Respondent. BX 26 at 1.

140. At the hearing, after questioning by Bar Counsel, Respondent produced (overnight) 106 pages of e-mails relating to his representation of Evans that he had never previously provided in response to Evans' disciplinary complaint, Bar Counsel's investigation, Bar Counsel's subpoena, or the Court order enforcing the subpoena. Tr. 708:9-709:19 (Respondent).

Franklin

141. On June 17, 2013, Ms. Franklin filed a complaint with Bar Counsel concerning the representation provided by Respondent in the Franklin matter. BX 59.

142. By letter dated July 2, 2013 (BX 60), Bar Counsel wrote to Respondent asking for a response to the disciplinary complaint filed by Ms. Franklin, and by certified letter dated September 27, 2013 (BX 61), Bar Counsel served Respondent with a subpoena for Respondent's client file and all related documents, including but not limited to all invoices, accountings, and financial records.

143. Having received no response from Respondent to Ms. Franklin's disciplinary complaint, on October 11, 2013, Bar Counsel filed a motion with the Board for an order

directing Respondent to provide Bar Counsel with a reply to Ms. Franklin's disciplinary complaint. BX 63.

144. On November 5, 2013, the Court issued an order (BX 21) granting Bar Counsel's unopposed motion to enforce the subpoena in the Franklin matter (BDN 240-13), giving Respondent ten days to comply; the order was mailed by the Court to Respondent's address of record then on file with the District of Columbia Bar.

145. Respondent filed no reply to Bar Counsel's motion asking the Board to compel a response to the disciplinary complaint in the Franklin matter, and on November 7, 2013, the Board issued an order directing Respondent to provide Bar Counsel with a reply to Ms. Franklin's disciplinary complaint within ten days. BX 64 at 2-3.

146. On November 18, 2013, Respondent was personally served with both the Court's order and the Board's order (BX 23; Tr. 239:18-240:14 (O'Connell); 597:11-18 (Respondent)), but Respondent never provided a written response to Ms. Franklin's disciplinary complaint. Tr. 254:9-11 (O'Connell). In response to the Court order, Respondent provided copies of some e-mails and several boxes of documents previously provided to him by Ms. Franklin, but no financial records relating to the Franklin matter. Tr. 254:12-255:6; 258:4-5 (O'Connell).

147. In an e-mail sent to Respondent on November 26, 2013, Bar Counsel specifically reminded him that Bar Counsel's subpoena in the Franklin matter required Respondent to produce all financial records relating to his work, but Respondent failed to produce such documents. BX 69 at 1; Tr. 257:20-258:5 (O'Connell). On January 27, 2014, Bar Counsel sent Respondent a letter (BX 75 at 1) enclosing a draft of the Specification (BX 75 at 2-8) in the Franklin matter. Bar Counsel's letter expressly gave Respondent an additional opportunity to

submit any documents relevant to the Franklin matter that had not previously been provided by Respondent. BX 75 at 1.

148. Capital One Bank was subpoenaed by Bar Counsel to provide copies of records and statements for the IOLTA bank account that Respondent maintained there, and on January 17, 2014, and January 27, 2014, the bank provided such records. BX 73-74.

Chambers

149. On February 7, 2013, Bar Counsel received a complaint from Chambers concerning Respondent's representation of him. BX 16.

150. In response to Bar Counsel's initial inquiry to Respondent about the Chambers matter, Respondent produced a photograph of a woman and a young child, and several documents relating to the suit Respondent filed against Ms. Letourneau, but not, crucially, the notice from the Superior Court (BX 12 at 10) dismissing the suit pursuant to D.C. Super. Ct. Civ. R. 4(m) due to failure to file a timely affidavit of service of process on the defendant (Tr. 242:13-244:14 (O'Connell)), nor did Respondent ever provide any financial records relating to his representation in the Chambers matter (Tr. 244:15-21 (O'Connell)).

151. By certified letter dated September 27, 2013, Bar Counsel served Respondent with a subpoena for Respondent's client file and all related documents concerning Respondent's representation of Chambers. BX 19; Tr. 597:11-18 (Respondent).

152. Not having received a response to the subpoena from Respondent in the Chambers matter described in the preceding paragraph, on October 11, 2013, Bar Counsel moved the Court for an order enforcing the subpoena, and on November 5, 2013, the Court issued an order (BX 21) granting Bar Counsel's unopposed motion to enforce the subpoena in the Chambers matter

(BDN 64-13), giving Respondent ten days to comply; the order was mailed by the Court to Respondent at his address of record then on file with the District of Columbia Bar.

153. On November 18, 2013, Respondent was personally served with the Court's order enforcing Bar Counsel's subpoena in the Chambers matter. BX 23; Tr. 239:18-240:14 (O'Connell); Tr. 597:11-18 (Respondent).

154. On December 3, 2013, Bar Counsel sent Respondent an e-mail (BX 25 at 1) reminding him of his obligation to produce all records relating to the Chambers matter pursuant to Bar Counsel's subpoena and the order of the Court enforcing that subpoena, but Respondent did not thereafter produced any e-mails, correspondence, a retainer agreement, or other documents in the Chambers matter. Tr. 244:15-245:8 (O'Connell).

Owens

155. On November 21, 2013, Bar Counsel sent Respondent a letter requesting a written response by December 6, 2013, regarding information received from the District of Columbia Superior Court that Respondent had failed to appear at two scheduled hearings in Owens' landlord-tenant case; Respondent was also asked to produce any documents he had to show that he had notified Owens of those hearings. BX 82 at 1-2.

156. On December 11, 2013, Bar Counsel sent Respondent a reminder letter and an e-mail asking for a written response to Bar Counsel's inquiry in the Owens matter described in the preceding paragraph, to be provided by December 18, 2013. BX 83. The letter and enclosures were sent to Respondent at his residence address listed with the District of Columbia Bar,[48] and by e-mail. BX 84 at 1-2. Neither was returned, and Respondent failed to answer Bar Counsel's inquiry by the specified date. BX 84 at 2, ¶¶ 4-5.

[48] The residence address used by Bar Counsel for this letter is the same address as Respondent eventually filed with the Bar as his address of record in July, 2014. *See* FF ¶ 109, *supra*.

157. Having received no response from Respondent with regard to Bar Counsel's inquiry about the Owens matter, on December 20, 2013, Bar Counsel moved the Board for an order compelling Respondent to provide a written response to Bar Counsel's investigation. BX 84.

158. On February 11, 2014, the Board granted Bar Counsel's unopposed motion to compel a response to Bar Counsel's inquiries in the Owens matter, and issued an order directing Respondent to provide a written response to Bar Counsel within ten days of the date of the Board's order. BX 85 at 2-3.

159. Also on February 11, 2014, Bar Counsel mailed copies of the Board's order to Respondent at his home address as well as his address of record with the District of Columbia Bar. BX 85 at 1.

160. On February 18, 2014, Respondent was personally served with the Board's order. BX 86; Tr. 264:11-18 (O'Connell).

161. On May 6, 2014, a little less than three months after the Board's February 11, 2014, order that required a reply from Respondent within ten days, Respondent provided a written response to Bar Counsel in the Owens matter. BX 87.

162. By certified letter dated May 8, 2014, Bar Counsel served Respondent with a subpoena for his client file and all related records in the Owens matter, including but not limited to records relating to funds received on behalf of Owens during the course of his representation. BX 88.

163. Respondent failed to respond to the Bar Counsel's subpoena in the Owens matter described in the preceding paragraph, and never furnished any additional documents to Bar Counsel relating to his representation of Owens. Tr. 265:18-266:7 (O'Connell).

F. Aggravating Circumstances[49]

164. On November 18, 2013, Respondent had a meeting with two representatives of the Office of Bar Counsel, Julia L. Porter, Esq., and an investigator, Mr. Kevin O'Connell ("Mr. O'Connell"). Tr. 232:19-233:4; 237:13-16 (O'Connell).

165. At that meeting Respondent provided no substantive information about what he had or had not done on behalf of the clients involved in the matters then under investigation by the Office of Bar Counsel that are also involved in this proceeding. Tr. 232:8-14; 239:12-17 (O'Connell).

166. Shortly after the meeting, on November 18, 2013, Bar Counsel sent Respondent an e-mail (BX 24) to confirm what took place at the meeting (Tr. 240:15-22 (O'Connell)). The e-mail provided Respondent with a copy of the disciplinary complaint filed by Ms. Franklin (FF ¶ 69, *supra*), and asked Respondent to submit a written response to it.

167. Nothing in the confirmatory e-mail from Bar Counsel to Respondent that is referred to in the preceding paragraph indicated that Respondent provided any substantive information at his November 18, 2013, meeting with Bar Counsel about the client matters referred to in FF ¶ 165, *supra*. BX 24.

168. After the meeting between Bar Counsel and Respondent on November 18, 2013, the Office of Bar Counsel opened a formal investigation into the Owens matter. Tr. 263:10-17 (O'Connell); BX 82.

169. On December 3, 2013, Respondent sent Mr. O'Connell an e-mail (BX 69 at 1) providing copies of e-mails exchanged between Respondent and Ms. Franklin. Nothing in

[49] The findings of fact in this Section II(F) relate to a specific issue raised by Bar Counsel in aggravation of the sanction in this matter. That issue is discussed in subsection IV(B)(2)(g), *infra*.

Respondent's December 3, 2013, e-mail gives any indication that he had any substantive discussion with Bar Counsel on November 18, 2013, concerning the Franklin matter, or any other matter then at issue.

III. CONCLUSIONS OF LAW

Section A of this Part III provides the reasons underlying the Hearing Committee's recommendation that BX 26, 45, 49, and 75 should remain in evidence despite Respondent's objection.

Section B of this Part III presents the conclusions of the Hearing Committee on the Rules violations alleged against Respondent. After stating the Hearing Committee's conclusion with respect to an alleged Rule violation, each subsection of Section B first quotes the text of the Rule allegedly violated; then reviews applicable principles for finding a violation of that Rule, as articulated in relevant case law and/or Comments to the Rule; and then discusses the Hearing Committee's findings of fact relevant to the Hearing Committee's conclusion. Unless otherwise noted, in this Part III, the words "Rule" or "Rules" refer to the District of Columbia Rules of Professional Conduct.

A. Rulings On Respondent's Evidentiary Objections

Board Rule 7.16 ("Disposition of Motions") states, in pertinent part, "In the case of a motion directed to the admissibility of evidence, the evidence . . . if documentary, shall be included in the record, and the Hearing Committee shall include in its report to the Board a recommendation for disposition of the motion . . . ."

With respect to Respondent's objections to the admission of BX 26, 45, 49, and 75, Board Rule 11.3 provides:

> Evidence that is relevant, not privileged, and not merely cumulative shall be received, and the Hearing Committee shall determine the weight and significance to be accorded all items of evidence upon which it relies. The Hearing Committee may guided by, but shall not be bound by the provisions or rules of court practice, procedure, pleading, or evidence, except as outlined in these rules or the Rules governing the Bar.

Bearing those principles in mind, the Hearing Committee has accorded the challenged exhibits such weight as it deems appropriate. For that reason, and for the substantive reasons stated at Tr. 282:8-284:15 (BX 26), 292:22-294:7 (BX 45),[50] 297:1-298:10 (BX 49),[51] and 309:20-310:10 (BX 75, referring to the discussion and ruling previously cited regarding BX 26 at Tr. 282:8-284:15), when each of the challenged exhibits was discussed, Respondent's objections to the admission of those exhibits into evidence should remain overruled.

B. Conclusions of Law Regarding Alleged Rules Violations

1. Rules 1.1(a) and (b)

Bar Counsel alleges that Respondent violated these Rules in the Evans, Franklin, and Chambers matters. The Hearing Committee concludes that Bar Counsel has proved by clear and convincing evidence that Respondent violated Rules 1.1(a) and (b) in all three matters.

a. Text of the Rules

Rule 1.1(a) states, "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) states, "A lawyer shall serve a client

[50] The discussion of BX 45, a communication from Evans' accountant to Respondent regarding obtaining clarity as to what documents were needed in response to discovery requests in Evans' divorce proceeding, is contained at Tr. 113:7-19.

[51] The two pleadings comprising BX 49 filed by Mr. Salwierak as Respondent's successor counsel in Evans' divorce proceeding were indeed discussed without objection in direct testimony by Mr. Salwierak at Tr. 147:12-22, 153:2-154:5, 155:12-156:16, and 157:7-18.

with skill and care commensurate with that generally afforded to clients by other lawyers in similar matters."

b. Applicable Principles

As stated in Comment [5] to Rule 1.1:

> 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.

See In re Drew, 693 A.2d 1127, 1132 (D.C. 1997) (Board Report appended) (failure to apply requisite knowledge and skill).

In re Evans, 902 A.2d 56, 69-70 (D.C. 2006) (per curiam) (appended Board Report) states:

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

See also In re Ford, 797 A.2d 1231 (D.C. 2002) (per curiam); *In re Yelverton*, 105 A.3d 413, 421-22 (D.C. 2014) (the "serious deficiency" requirement applies equally to Rule 1.1(b)).

In contrast, Rule 1.1(b) is "better tailored [than Rule 1.1(a)] to address the situation in which a lawyer capable to handle a representation walks away from it for reasons unrelated to his competence in that area of practice." *In re Lewis*, 689 A.2d 561, 564 (D.C. 1997) (per curiam) (appended Board Report).

With respect to Rule 1.1(b), the Hearing Committee notes that Bar Counsel did not introduce expert testimony to establish the standard of "skill and care . . . generally afforded to

clients by other lawyers in similar matters" or to demonstrate that Respondent violated that standard of care. A Hearing Committee, however, may find a violation of the standard of care without expert testimony when an attorney's "conduct is so obviously lacking that expert testimony showing what other lawyers generally would do is unnecessary." *In re Nwadike*, Bar Docket No. 371-00 at 28 (BPR July 30, 2004), *aff'd*, 905 A.2d 221 (D.C. 2006) (*inter alia*, at the time of the deadline for a plaintiff's attorney to file a D.C. Super. Ct. Civil R. 26(b)(4) expert witness statement and by the close of discovery, the attorney not only failed to fulfill the attorney's court-ordered discovery obligations regarding essential expert opinion, but also had not yet even obtained an opinion and was unaware of whether or not the attorney had proof to sustain the plaintiff's claim); *In re Schlemmer*, Bar Docket Nos. 444-99 & 66-00 at 13 (BPR Dec. 27, 2002), *aff'd*, 840 A.2d 657 (D.C. 2004) (noting, in a case where the respondent attorney failed to file an immigration appeal after the client paid the initial fee for the appeal, that Bar Counsel need not "necessarily produce evidence of practices of other attorneys in order to establish a Rule 1.1(b) violation").

c. Discussion

Evans

There is clear and convincing evidence that Respondent violated both Rule 1.1(a) and Rule 1.1(b). With respect to Rule 1.1(a), Respondent was egregiously deficient in his organizing and guiding the process of providing timely and complete responses to the discovery requests propounded by opposing counsel. FF ¶¶ 14-24. As Evans rather poignantly testified, "I never got any correspondence from my attorney saying, 'Mark, this is what we need' or 'This is how it needs to go.'" Tr. 133:14-17 (Evans). In particular, but by no means the only serious deficiency described in the previously cited findings of fact, the Hearing

Committee notes Respondent's delay in providing the lengthy and complex discovery requests to Evans, FF ¶ 16, which only exacerbated the problem of providing timely and proper discovery responses. A second serious deficiency was Respondent's failure to file an opposition to Ms. Evans' motion to compel answers to the pending discovery requests, which might at least have provided the court with some explanation of what attempts had been made to provide discovery responses. FF ¶ 24. Due to Respondent's failure, the court on January 11, 2013, was left basically with a one-sided presentation of the situation, and accordingly ordered not only expedited completion of discovery responses in 40 separate categories by January 22, 2013, but also exposed Evans to the possibility that the legal fees associated with the motion to compel might be taxed against Evans personally. FF ¶¶ 31-39.[52] A critical issue in the divorce proceeding, as Respondent knew from the Answer he filed to the complaint for divorce in the Evans matter, was the parties' respective rights to the real property located at 1610 R Street, S.E., in the District of Columbia. FF ¶¶ 4, 9. Respondent's deficient representation seriously prejudiced Evans because one of the sanctions imposed by the court (BX 50) was to bar Evans from presenting any evidence not produced in accordance with the court's order of January 11, 2013, which included a requirement to provide detailed information concerning the R Street property (BX 44 at 2 at ¶ 7, relating to Interrogatory No. 4 dealing with claimed interests in real estate). FF ¶ 39.

There is also clear and convincing evidence that Respondent violated Rule 1.1(b) in the Evans matter. As hereinafter described in subsection IV(B)(2)(g) of this Report and Recommendation, Respondent basically abandoned representing Evans because the case had

[52] The court's initial Order for Sanctions (BX 50) actually taxed those costs, in the amount of $2,650, personally against Evans. However, it appears that the court later orally required those costs to be paid by William Robinson, Esq., as Evans' Virginia legal counsel of record (FF ¶ 41), and that Respondent actually paid the $2,650 directly to Ms. Masri (*see* n.26, *supra*).

become too complex and expensive to handle. And even if one attaches no pejorative motive to Respondent's filing a motion to withdraw as Evans' counsel, his doing so less than three weeks before the scheduled trial date left Evans scrambling to find replacement legal counsel to attempt to deal with a case in which Evans was in a disadvantageous litigating position due to Respondent's deficient representation. FF ¶¶ 33-38, 42-43. In addition, it takes no particular expertise to conclude that Respondent's failure to file an opposition to the motion to compel discovery answers in the Evanses' divorce proceeding (FF ¶ 24) constituted a failure to serve Evans' interests with appropriate skill and care. Furthermore, although Bar Counsel did not introduce any expert testimony about the standard of care in connection with Respondent's representation of Evans, the Hearing Committee does take note of the testimony of Mr. Salwierak, Respondent's successor counsel, that Respondent's files in the Evans matter that were turned over to Mr. Salwierak were completely disorganized (FF ¶ 37), and did not even contain a copy of the court's order compelling answers to discovery, which Mr. Salwierak had to obtain from opposing counsel (FF ¶ 38).

Franklin

There is clear and convincing evidence that Respondent violated both Rule 1.1(a) and Rule 1.1(b) in the Franklin matter. With respect to Rule 1.1(a), filing any motion for post-conviction relief with a fair prospect for success for Mr. Franklin might have been a difficult proposition. However, as stated in *In re Evans*, *supra*, a serious deficiency can be found when an attorney's action "could have prejudiced" the client, and in the Hearing Committee's view, Respondent's most glaring deficiency was not pursuing contact with Alisha Glover and Adrianne Glover, two cousins who were key witnesses in Mr. Franklin's criminal trial. It seems to have been agreed between Respondent and Ms. Franklin that filing a motion for post-conviction relief

would be based on the hypothesis that the Glover cousins' testimony had been unduly pressured by the prosecution. FF ¶ 56(d). However, when Ms. Franklin appeared unable to produce the cousins, Respondent took no action to locate them on his own, FF ¶ 65(d), even though the appellate decision affirming Mr. Franklin's conviction, *Johnson [et al.] v. United States*, 980 A.2d 1174 (D.C. 2009) − if Respondent even bothered to read it − prominently provided the names of the cousins (Alisha Glover and Adrianne Glover), indicated there was information in the record concerning a cell phone used by Adrianne Glover, and provided the location of the block where the Glover cousins lived as well as the identity of other people who knew them. 980 A.2d at 1180. Respondent's testimony in the Chambers matter (Tr. 609:7-9 (Respondent)) indicated that he knew how to use computerized data bases to locate individuals, but in the Franklin matter Respondent simply sat on his hands. Nor is there any indication in Respondent's direct testimony concerning the Franklin matter that Respondent worked with Mr. Franklin's trial/appellate counsel, Ms. Wicks, to obtain information about the Glover cousins. *See* Tr. 533-48 (Respondent). Thus, Respondent's essential violation of Rule 1.1(a), as described by Bar Counsel (BC Br. at 49), is that "he never gave his client the services he had agreed to provide and for which he had been paid."

With respect to Rule 1.1(b), Respondent's misconduct as discussed in the previous paragraph constituted a *de facto* abandonment of his client. Although Respondent took a substantial advance retainer of $2,000, he never produced a motion of any sort for any type of relief on his client's behalf, contrary to the clear promise in the retainer agreement Respondent signed with Ms. Franklin. FF ¶¶ 48, 56, 65. And again, even though Bar Counsel failed to provide any expert testimony concerning the standard of care applicable to Respondent's representation in the Franklin matter, the Hearing Committee finds that Respondent violated that

standard of care in light of the clear language of D.C. Super. Ct. Crim. R. 35(b), which requires any motion for reduction of sentence to be filed within 120 days after entry of an order or judgment of the Supreme Court denying review.[53] Respondent testified that months before he signed his retainer agreement with Ms. Franklin on May 11, 2011, he was familiar with the critical dates in Mr. Franklin's criminal matter (FF ¶ 46), which would include the fact that the Supreme Court had denied certiorari in Mr. Franklin's case in October, 2010 (FF ¶ 45). Therefore, by May, 2011, the 120-period specified in Rule 35(b) had already lapsed, and by explicitly agreeing in his retainer agreement (FF ¶ 48) "to file a request for a sentence reduction," Respondent was in essence embarking on (and taking $2,000 from Ms. Franklin for) a fool's errand. That hardly comports with the standard of care expected of an attorney with even a basic knowledge of criminal procedure in the District of Columbia.

Chambers

There is clear and convincing evidence that Respondent violated both Rule 1.1(a) and Rule 1.1(b) in the Chambers matter. With respect to Rule 1.1(a), there were three serious deficiencies in Respondent's representation of his client. First, Respondent failed to follow through on Chambers' July 14, 2012, e-mail to Respondent advising as to a specific date (July 18, 2012) and location for serving Ms. Letourneau with process. FF ¶ 77.[54] Second, assuming that Respondent might have found the will to follow through on that important lead, Respondent did not even have a suit on file against Ms. Letourneau when he received Chambers' e-mail, so in

[53] Respondent testified that he thought there were two operative dates under Rule 35, 60 or 90 days. Tr. 584:1-12. However, D.C. Super. Ct. Crim. R. 35(b) states, in pertinent part, "A motion to reduce sentence may be made not later than 120 days . . . after entry of any order or judgment of the Supreme Court denying review of, or having the effect of upholding, a judgment of conviction or probation revocation."

[54] Respondent misleadingly replied to this e-mail, "I will try to have her served then." FF ¶ 77.

any event Respondent was not in a position to make effective use of the information provided by Chambers. In point of fact, although Respondent was retained by Chambers in April, 2012, Respondent did not get around to filing the suit against Ms. Letourneau until August, 2012, after receiving a frustrated complaint from his client. FF ¶¶ 73, 78-79. Third, when time was running out to serve Ms. Letourneau, because Respondent appears not to have provided the summons in the case to a process server until the 60-day period for service provided for in Super. Ct. Civ. R. 4(m),[55] Respondent took no action to file a motion as permitted by that rule to extend the time within which to serve Ms. Letourneau with process, and accordingly the suit against Ms. Letourneau was dismissed. FF ¶¶ 81-84.

With respect to Rule 1.1(b), the Hearing Committee concludes that once again Respondent abandoned his client. After the initial suit against Ms. Letourneau was dismissed, Respondent failed to advise Chambers of that fact and failed to take any action to re-file it. FF ¶¶ 83-85. Respondent likewise failed to keep Chambers informed of the status of Respondent's efforts to resolve the issues relating to Chambers' claim for the proceeds of an insurance policy on the life of Chambers' father, and was generally unresponsive to contacts from Chambers. FF ¶¶ 76, 78, 90, 92-94. And although Bar Counsel did not provide any expert testimony concerning Respondent's failure to meet the standard of care required by Rule 1.1(b), the Hearing Committee nevertheless is in a position to conclude that at least one part of Respondent's representation of Chambers failed to meet that standard, inasmuch as Chambers testified that

[55] Super. Ct. Civ. R. 4(m), titled "Time Limit for Service," states, "Within 60 days of the filing of the complaint . . . the plaintiff must file either an acknowledgment of service or proof of service of the summons, the complaint and any order directed by the Court to the parties at the time of filing. . . . Prior to the expiration of the foregoing time period, a motion may be made to extend the time for service. The motion must set forth in detail the efforts which have been made, and will be made in the future, to obtain service."

when Respondent provided no resolution to Chambers' insurance problem, Chambers hired other counsel who took care of the problem in ten days. FF ¶¶ 89-91.

2. Rule 1.3(a)

Bar Counsel alleges that Respondent violated Rule 1.3(a) in all four matters involved in this proceeding. The Hearing Committee concludes that Bar Counsel has proved by clear and convincing evidence that Respondent violated Rule 1.3(a) in all four matters.

a. Text of the Rule

Rule 1.3(a) states that an attorney "shall represent a client zealously and diligently within the bounds of the law."

b. Applicable Principles

With regard to Rule 1.3(a), "[n]eglect has been defined as indifference and a consistent failure to carry out the obligations that the lawyer has assumed to the client or a conscious disregard of the responsibilities owed to the client." *In re Wright*, 702 A.2d 1251, 1254 (D.C. 1997) (quoting *In re Reback*, 487 A.2d 235, 238 (D.C. 1985), *adopted in relevant part*, 513 A.2d 226 (D.C. 1986) (en banc) ("*Reback II*")). Rule 1.3(a) "does not require proof of intent, but only that the attorney has not taken action necessary to further the client's interests, whether or not legal prejudice arises from such inaction." *In re Bradley*, Bar Docket Nos. 2004-D240 & 2004-D302 at 17 (BPR July 31, 2012), *adopted in relevant part*, 70 A.3d 1189, 1191 (D.C. 2013) (per curiam); *Lewis*, *supra*, 689 A.2d at 564 (Rule 1.3(a) violated even where "[t]he failure to take action for a significant time to further a client's cause . . . [does] not [result in] prejudice to the client").

The Court has found neglect in violation of Rule 1.3(a) where an attorney persistently and repeatedly failed to fulfill duties owed to the client over a period of time. *See Reback*, *supra*,

487 A.2d at 238 (respondent violated Rule 1.3(a) by failing to respond to discovery requests, a motion to compel, and a show cause order, and failed to respond to the client's numerous requests for information); *In re Chapman*, 962 A.2d 922 (D.C. 2009) (per curiam) (respondent violated Rule 1.3(a) where he did not perform any work on the client's case during the eight month term of the representation, failed to conduct any discovery, and did not respond to discovery requests from the opposing party); *In re Ukwu*, 926 A.2d 1106, 1135 (D.C. 2007) (appended Board Report) (respondent violated Rule 1.3(a) when he repeatedly failed to inform his clients about the status of their cases, prepare his clients for hearings and interviews with immigration officials, or prepare himself for court appearances).

c. Discussion

Evans

Respondent failed to represent Evans zealously and diligently. In reaching this conclusion, the Hearing Committee incorporates by reference its discussion under Rule 1.1(a) of Respondent's failures to take action needed to further the interests of his client in organizing and guiding the process of providing timely and complete responses to the discovery requests propounded by opposing counsel; Respondent's delay in providing opposing counsel's requests to Evans; and Respondent's failure to file an opposition to Ms. Evans' motion to compel answers to the pending discovery requests.

Franklin

Respondent failed to provide zealous and diligent representation in the Franklin matter. The Hearing Committee views Respondent's misconduct in violation of this Rule as a case of neglect, much of which is described above in the discussion of the Franklin matter under Rule 1.1. Respondent never filed a motion of any sort to obtain post-conviction relief for Mr.

Franklin. FF ¶¶ 56(c), 65, 69. Respondent failed to keep Mr. Franklin informed of Respondent's efforts on his behalf, despite Ms. Franklin's e-mails to Respondent on October 4, 2011, and October 13, 2011, that her son was "desperate." FF ¶ 67. Respondent also did little to keep Ms. Franklin informed about what was happening during the course of the representation. FF ¶¶ 62, 69. As stated in Commend [1] to Rule 1.3, "A lawyer should act with commitment and dedication to the interests of the client." The record in this case demonstrates that Respondent failed to act in a manner consistent with that principle, thereby violating Rule 1.3(a).

Chambers

Respondent's representation of Chambers presents another case of neglect, as demonstrated by Chambers' e-mails to Respondent expressing frustration with the lack of action by Respondent. FF ¶¶ 78, 92.

Owens

In Owens' landlord and tenant matter where Respondent represented Owens as the landlord/plaintiff, Respondent's lack of diligence and zeal is demonstrated by the fact that even though tenant funds were placed in escrow by the court pursuant to the parties' settlement agreement (FF ¶ 106), Respondent failed to act in a manner that would vindicate his client's right to those funds. Respondent also failed to file an opposition to the motion of the tenant's counsel to show cause (BX 82 at 6-7) based on an alleged breach of the settlement agreement by Owens, which was subsequently granted by the court (BX 82 at 14) due to plaintiff's failure to appear at the hearing on the motion. FF ¶¶ 110-17.

3. Rule 1.3(b)(1)

Bar Counsel alleges that Respondent violated Rule 1.3(b)(1) in the Franklin and Chambers matters. The Hearing Committee concludes that Bar Counsel has proved by clear and convincing evidence that Respondent violated Rule 1.3(b)(1) in both matters.

a. Text of the Rule

Rule 1.3(b)(1) states that a lawyer shall not intentionally "[f]ail to seek the lawful objectives of a client through reasonably available means permitted by law and the disciplinary rules."

b. Applicable Principles

A violation of Rule 1.3(b) requires proof of intentional neglect. Intentional neglect is established where the evidence shows that the respondent was (1) "demonstrably aware of [the] neglect," or (2) "the neglect was so pervasive that [the respondent] must have been aware of it." *Reback*, *supra*, 487 A.2d at 240; *Ukwu*, *supra*, 926 A.2d at 1116 ("the Rule does not require proof of intent in the usual sense of the word"). The Court has explained that ordinary neglect of a client matter "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) ("*Mance I*")). *See also Ukwu*, *supra*, 926 A.2d at 1116 ("neglect ripens into an intentional violation when the lawyer is aware of his neglect of the client matter, or, put differently, when a lawyer's inaction coexists with an awareness of his obligations to his client.").

Demonstrable awareness of neglect may be established where there is evidence that: (1) the neglect was brought to the attorney's attention, but still persisted (*In re Delate*, 598 A.2d 154,

155, 158 (D.C. 1991) (per curiam) (appended Board Report)); (2) the attorney fabricated excuses for the neglect after the fact (*In re Lawrence*, Bar Docket No. 153-83 at 10 (BPR Feb. 10, 1986)), *findings and recommendation adopted*, 526 A.2d 931, 931-32 (D.C. 1986) (per curiam)); (3) the attorney began working on a client matter, but then abruptly stopped pursuing the client's interests (*Lewis*, *supra*, 689 A.2d at 564); or (4) the respondent admitted to being aware of an obligation that was not fulfilled (*In re Dory*, Bar Docket No. 128-85 at 12 (BPR Mar. 30, 1987), *findings and recommendation adopted*, 528 A.2d 1247 (D.C. 1987) (per curiam)). Knowing abandonment of a client likewise constitutes intentional neglect. *Lewis*, *supra*, 689 A.2d at 564.

c. Discussion

Franklin

Pursuant to *Vohra*, *Ukwu*, and *Delate*, *supra*, there was an intentional failure to pursue the client's lawful objectives because of Respondent's awareness of his obligations under the retainer agreement he signed with Ms. Franklin and his continued inaction despite that awareness, and Respondent's fabricated excuse for his inaction. Respondent could hardly fail to understand that the express terms of the retainer agreement required him to file at least one motion seeking post-conviction relief for Mr. Franklin, and Ms. Franklin's e-mails to Respondent made him aware of that obligation. FF ¶¶ 48, 57, 62-63, 67. Despite those facts, and the passage of a long period of time, Respondent never produced or filed such a motion, FF ¶¶ 56(c), 65, 69, resulting in a *de facto* abandonment of his client as discussed above in connection with Rule 1.1. In addition, the Hearing Committee concludes that Respondent's excuse for his inaction − that he was waiting for Ms. Franklin to produce the Glover cousins − was false and fabricated. *See* discussion of the Franklin matter in subsection IV(B)(2)(g), *infra*. Similarly, the Hearing Committee finds in its discussion of Rule 8.4(c), *infra*, that Respondent made a

misrepresentation when he sent Ms. Franklin an e-mail on October 4, 2011 (FF ¶ 64), asserting he was "working on the motion" relating to post-conviction relief for Mr. Franklin − another fabricated excuse for Respondent's inaction.

Chambers

As in the Franklin matter, Respondent's sustained neglect of his client's needs coupled with an awareness of his obligations ripened into intentional neglect. If nothing else served to put Respondent on notice of his obligations, Chambers' e-mail to Respondent on August 8, 2012 (FF ¶ 78) made Respondent aware of his dereliction and of the prior series of requests by Chambers for action. Only after receiving that e-mail did Respondent finally file a complaint against Ms. Letourneau, and as discussed in connection with Rule 1.1, above, Respondent's pursuit of that litigation was half-hearted and ineffectual, both in terms of his procrastination in providing the summons and complaint in that case to a process server, as well as in failing to file a motion pursuant to Super. Ct. Civ. R. 4(m) for an extension of time to effectuate service of process.

4. Rule 1.3(c)

Bar Counsel alleges that Respondent violated Rule 1.3(c) in the Evans, Franklin, and Chambers matters. The Hearing Committee concludes that Bar Counsel has proved by clear and convincing evidence that Respondent violated Rule 1.3(c) in all three matters.

a. Text of the Rule

Rule 1.3(c) states that an attorney "shall act with reasonable promptness in representing a client."

b. Applicable Principles

The Court has held that failure to take action for a significant time to further a client's cause, whether or not prejudice to the client results, violates Rule 1.3(c). *In re Dietz*, 633 A.2d 850 (D.C. 1993). Comment [8] to Rule 1.3 provides that "[e]ven when the client's interests are not affected in substance . . . . unreasonable delay can cause a client needless anxiety and undermine confidence in the lawyer's trustworthiness," making such delay a "very serious violation."

c. Discussion

Evans

In two particular instances Respondent failed to act with reasonable promptness, in violation of Rule 1.3(c). First, Respondent delayed for eleven days in providing Evans with the lengthy and complex initial discovery requests from opposing counsel in the Evanses' divorce proceeding. FF ¶ 16. The requests were long and complicated, and had a 21-day deadline. FF ¶¶ 14-15. Respondent's delay prejudiced Evans by reducing the time he had to produce a very large amount of information, and to ask questions of and work with Respondent or others relating to the discovery requests. Second, after obtaining an extension of time from opposing counsel to answer the discovery requests until noon on December 20, 2012, Respondent delayed in providing Evans with that extended deadline, notifying him of the new date only on December 17, 2012. FF ¶¶ 18-19. This again prejudiced Evans in providing timely and complete answers to the discovery requests, because regardless of the actual status of Evans' work on providing answers to the discovery requests (which is somewhat unclear in the record), Respondent's delays deprived Evans of knowing what deadlines were applicable to Evans' efforts.

Franklin

In re Dietz, *supra*, holds that the failure to take action for a significant time to further a client's cause, whether or not prejudice to the client results, violates Rule 1.3(c). From the date Respondent was retained by Ms. Franklin on May 11, 2011, until the date that Ms. Franklin filed her disciplinary complaint against Respondent more than two years later on June 17, 2013, Respondent *never* produced the motion for reduction of sentence he promised in his retainer agreement to file on behalf of Mr. Franklin, or any other motion to provide Mr. Franklin with post-conviction relief. FF ¶¶ 56(c), 65, 69.

Chambers

As previously discussed in connection with Rule 1.1, Respondent failed to act with reasonable promptness when he had information from Chambers that could have led to Ms. Letourneau being served with process, and failed to act with reasonable promptness both in not having a suit on file at that time, and in delaying for approximately four months after he was retained by Chambers before actually filing suit against her. The prior discussion of these issues in connection with Rule 1.1 is incorporated herein by reference, and establishes Respondent's violation of Rule 1.3(c).

5. Rules 1.4(a) and (b)

Bar Counsel alleges that Respondent violated Rules 1.4(a) and (b) in all four matters involved in this proceeding. The Hearing Committee concludes that Bar Counsel has proved by clear and convincing evidence that Respondent violated Rules 1.4 (a) and (b) in all four matters.

a. Text of the Rules

Rule 1.4(a) states that "[a] lawyer shall keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information." 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."

b. Applicable Principles

As a general matter, for purposes of determining whether Bar Counsel has established a violation of Rules 1.4(a) and (b), the question is whether the respondent fulfilled the client's reasonable expectations for information. *In re Schoeneman*, 777 A.2d 259, 264 (D.C. 2001).

With respect to Rule 1.4(a), an attorney must not only respond to client inquiries, but also must initiate contact to provide information when needed. *In re Hallmark*, 831 A.2d 366, 374 (D.C. 2003); *In re Bernstein*, 707 A.2d 371, 376 (D.C. 1998). As stated in Comment [1] to Rule 1.4(a), 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."

With respect to Rule 1.4(b), Comment [2] to Rule 1.4(b) states that an 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"; furthermore, 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.*

c. Discussion

Evans[56] Respondent, in violation of Rule 1.4(a), failed in many ways to keep Evans reasonably informed about the status of the divorce proceeding (FF ¶¶ 9-10, 12, 18-19, 25,

[56] Respondent's violation of Rules 1.4(a) and (b) by failing to explain to Evans that William Robinson, Esq., would be serving as Evans' local counsel in Virginia in association with Respondent, and the parameters of that association, FF ¶¶ 6-9, is also illustrated by reference to Rule 1.5(e)(2), which states that legal fees may be divided between lawyers who are not in the same firm only if, "[t]he 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 fees to be charged."

27-28), and likewise, in violation of Rule 1.4(b), failed in many ways to explain what was happening in the case to Evans so that Evans could make informed decisions about the case (FF ¶¶ 6-7, 16-17, 27-28). Without reiterating all of those findings of fact, the Hearing Committee at this point will highlight two areas of Respondent's more significant failings: first, Respondent's failure to explain the *pro hac vice* process to Evans, as well as how and with whom Evans would have representation by legal counsel actually authorized to practice law in Virginia (FF ¶¶ 6-7); and second, Respondent's failures to discuss the discovery process with Evans and keep Evans informed about it (FF ¶¶ 16-19).

Franklin

Respondent violated Rule 1.4(a) particularly by not keeping in contact with Mr. Franklin after the brief initial letter that Respondent wrote to him, even though the letter (BX 89) expressly promised, "This letter is simply an introduction, *and there will be follow-up.*" (Emphasis added.) There was none. FF ¶¶ 59-63. Respondent failed to meet the client's reasonable needs for information, even though, as previously noted in connection with Rule 1.3(a), Ms. Franklin informed Respondent twice that her son was "desperate" for information. FF ¶ 67. Respondent was also unresponsive to Ms. Franklin, who both wanted information and could have acted as a conduit of information to her son. FF ¶¶ 62-63, 67, 69. With regard to Rule 1.4(b), the burden was on Respondent to initiate and maintain contact with the Franklins, but as previously noted in this paragraph, he failed to do so. On cross-examination, Respondent even admitted that his communication with Ms. Franklin was not as frequent as it should have been. FF ¶ 62. In addition, Respondent violated Rule 1.4(b) by failing to explain, to the extent reasonably necessary, that D.C. Super. Ct. Crim. R. 35(b) presented a facial time bar to filing a motion for reduction of sentence; to the contrary, the retainer agreement Respondent signed with

Ms. Franklin expressly promised that Respondent would file such a motion, leading to dashed expectations on the part of both of the Franklins. FF ¶ 52.

Chambers

Chambers' e-mails complaining to Respondent about the lack of contact and information from him establish that Respondent violated Rules 1.4(a) and (b) in the Chambers matter. FF ¶¶ 78, 92. In addition, Respondent kept Chambers in the dark about when he was filing suit against Ms. Letourneau, about what was going on in connection with effecting service of process on her, and about the fact that the suit Respondent did eventually file was dismissed pursuant to D.C. Super. Ct. Civ. R. 4(m) due to Respondent's failure to effect service of process within the time allowed by that rule. FF ¶¶ 79-85.

Owens

Respondent's violations of Rule 1.4(a) and (b) all stem from his initial failure to recognize that closing his office and ceasing to be engaged in the practice of law in September of 2013 (FF ¶ 108) was information that needed to be communicated promptly to his client and to the court. The record establishes that Respondent did not communicate this information to Owens until December of 2013, FF ¶ 127, by which time many problems had already occurred in Owens' landlord and tenant suit, including repeated failures of Respondent and Owens to appear for scheduled court hearings (FF ¶¶ 110-20), and the court's granting on October 31, 2013, of the defendant/tenant's motion to show cause as to why the funds in the registry of the court should not be released to the tenant, a motion of which Owens was ignorant due to Respondent's failure to provide timely notice to his client and the court of his locational information and his ceasing to practice law. FF ¶¶ 108-09, 113-14, 117-18.

6. Rule 1.5(a)

Bar Counsel alleges that Respondent violated this Rule only in the Franklin matter. In particular, Bar Counsel asserts that the fee charged in this matter was unreasonable because of Respondent's "contending that $2,000 of his $3,000 flat fee was 'non-refundable,' when it was an advanced fee that was not earned and to which he [had] no right unless he performed legal services." BX 4 at ¶ 25(h). The Hearing Committee concludes that Bar Counsel has proved by clear and convincing evidence that Respondent violated Rule 1.5(a) in the Franklin matter.

a. Text of the Rule

Rule 1.5(a) states, "A lawyer's fee shall be reasonable." The Rule continues by describing the following eight considerations involved in determining whether or not a fee is reasonable:

> (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 time 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.

b. Applicable Principles

Bar Counsel does not contend that the $3,000 flat fee in the retainer agreement signed by Ms. Franklin is unreasonable; rather, "Respondent's fee was unreasonable because he claimed that $2,000 of the $3,000 advanced fee would be 'non-refundable' regardless of whether he did any work." BC Br. at 60.

In *In re Cleaver-Bascombe*, 892 A.2d 396, 403 (D.C. 2006) ("*Cleaver-Bascombe I*"), the Court has stated, "[i]t cannot be reasonable to demand payment for work that an attorney has not in fact done." *See also* Restatement (Third) of the Law Governing Lawyers, § 34, comment 2 (2000) (alleged "engagement fee" retainers agreed to by clients not experienced in retaining and compensating lawyers should be "closely scrutinized"). Furthermore, as stated in *In re Mance*, 980 A.2d 1196, 1206 (D.C. 2009) ("*Mance II*"), also discussed *infra* in the context of Rule 1.15, "money paid by a client as a flat fee for legal services remains the client's property, and counsel may not treat any portion of the money otherwise until it is earned, unless the client has agreed otherwise." *Mance II*, 980 A.2d at 1206-07, stresses that a client's agreement to treat an advance flat fee as earned when paid, *i.e.*, "non-refundable," must be based on informed consent: "the client must understand [that] the attorney can keep the fee only by providing a benefit or providing a service for which the client has contracted," the fee agreement entered into by the parties "must spell out the terms of the benefit to be conferred upon the client," and "the client must be aware of the attorney's obligation to refund any amount of advance funds to the extent that they are unreasonable or unearned."

c. Discussion

It is clear that Respondent violated Rule 1.5(a). The retainer agreement he drafted for Ms. Franklin to sign explicitly stated that the initial $2,000 she was required to pay was non-refundable (FF ¶ 50), and Ms. Franklin did not provide informed consent in accordance with *Mance II*, *supra*, for Respondent immediately to treat the $2,000 as his own property (FF ¶ 51). Compounding this violation of Rule 1.5(a), Respondent in fact failed to produce any of the essential work product on which payment of the $2,000 was predicated, *i.e.*, a motion for

reduction of sentence or any other type of motion for post-conviction relief on behalf of Mr. Franklin. FF ¶¶ 56(c), 65, 69.

7. Rule 1.5(b)

Bar Counsel alleges that Respondent violated this Rule in the Evans and Chambers matters.[57] The Hearing Committee concludes that Bar Counsel has proved by clear and convincing evidence that Respondent violated Rule 1.5 (b) in both matters.

a. Text of the Rule

Rule 1.5(b) states:

> When the lawyer has not regularly represented the client, the basis or rate of the fee, the scope of the lawyer's representation, and the expenses for which the client will be responsible shall be communicated to the client, in writing, before or within a reasonable time after commencing the representation.

b. Applicable Principles

Comment [1] to the Rule explains that "[i]n a new client-lawyer relationship . . . an understanding as to the fee should be promptly established, together with the scope of the lawyer's representation and the expenses for which the client will be responsible."

c. Discussion

There is clear evidence in the record, including admissions by Respondent, that he had no written retainer agreement with either Evans or Chambers. FF ¶¶ 7, 74. The Hearing Committee therefore concludes that Respondent violated Rule 1.5(b) in both of those matters.

[57] Bar Counsel's brief mentions that Respondent did not provide a retainer agreement to Owens in accordance with the requirements of Rule 1.5(b), BC Br. at 37, ¶ 148 and BC Br. at 61, but no such allegation is contained in the Specification for the Owens matter (BX 5). Similarly, Bar Counsel notes that Respondent did not provide a proper retainer agreement to Ms. Franklin, BC Br. at 61, but again, no such allegation is made in the Specification for the Franklin matter (BX 4). The section heading in Bar Counsel's brief dealing with Rule 1.5(b) refers only to the Chambers and Evans matters, BC Br. at 61, and therefore those are the only matters in which the Hearing Committee considers the issue of a Rule 1.5(b) violation.

8. Rule 1.9

Bar Counsel alleges that Respondent violated this Rule only in the Evans matter. The Hearing Committee concludes that Bar Counsel has failed to meet its burden of proving by clear and convincing evidence that Respondent violated Rule 1.9.

a. Text of the Rule

Rule 1.9 states, in pertinent part, "[a] lawyer who has formerly represented a client in a matter shall not thereafter represent another person . . . *in a substantially related matter* in which that person's interests are materially adverse to the interests of the former client unless the former client gives informed consent." (Emphasis added.)

b. Applicable Principles

Comment [3] to Rule 1.9 states, "Matters are substantially related for purposes of this rule if they involve the same transaction or legal dispute or if there otherwise is a substantial risk that confidential factual information as would normally have been obtained in the prior representation would materially advance the client's position in the subsequent matter." Comment [2] to Rule 1.9 provides further guidance by stating, "Rule 1.9 is intended to incorporate District of Columbia and federal case law defining the 'substantial relationship' test. *See*, *e.g.*, *Brown v. District of Columbia Board of Zoning Adjustment*, 486 A.2d 37 (D.C. 1984) (en banc); *T.C. Theatre Corp. v. Warner Brothers Pictures*, 113 F. Supp. 265 (S.D.N.Y. 1953), and its progeny."

In *Brown*, 486 A.2d at 49, the Court established a three-part "methodology" for determining whether two matters are substantially related. First, the tribunal must examine "both the facts and the legal issues involved" and must "make a factual reconstruction of the scope of the prior legal representation" (citing *Westinghouse Electric Corp. v. Gulf Oil Corp.*, 558 F.2d

221, 225 (7th Cir. 1978)). Second, only if the factual contexts of the two cases in which the allegedly conflicted attorney is involved are determined to overlap, the tribunal must then proceed to determine "whether it is reasonable to infer that the confidential information allegedly given would have been given to a lawyer representing a client in those [prior] matters" (citing *Westinghouse*, *id*.). Third, if such information apparently was available to counsel in the prior representation, the tribunal must determine whether it "is relevant to the issues raised in the litigation pending against the former client" (citing *Westinghouse*, *id*.). The Court in *Brown*, *supra*, 486 A.2d at 49 n.16, cautioned that without the preliminary "need [to] show a reasonable possibility that an actual impropriety based on the likely abuse of . . . information has taken place, . . . [w]e would encourage litigants to convert lawsuits into disciplinary inquiries when there is no reasonable possibility that the underlying proceeding is tainted."

c. Discussion

The allegation that Respondent engaged in a conflict of interest in violation of Rule 1.9 rises or falls on whether Respondent's representation of Lissa Evans during June, 2011, as the nominal plaintiff in a routine landlord and tenant case against one tenant who occupied premises in a building identified as 1610 R Street, S.E., in Washington, D.C., was "substantially related" to the later divorce proceeding between her and Evans, in which ownership of that entire building was a principal issue.

The evidence at the hearing was clear that in the landlord-tenant case, Respondent never met or spoke with Ms. Evans, and all matters related to that case were handled exclusively between Evans and Respondent. FF ¶¶ 2-3. Respondent testified that he received no confidential information from Ms. Evans (FF ¶ 34(b)), and that his January 16, 2013, motion to withdraw from representing Evans in the divorce proceeding (BX 46) was based on the theory

that he had a conflict of interest because the tenant in the prior landlord-tenant case lived in the same building the ownership of which was at issue in the Evanses' divorce proceeding (FF ¶ 34).

The teaching of *Brown v. District of Columbia Board of Zoning Adjustment*, *supra*, however, is that just because the same piece of property is involved in two different representations, it does not follow that an attorney who works on both representations has a conflict of interest when the issues in the first representation are essentially different from those in the second. Bar Counsel effectively concedes that Respondent had no conflict of interest for purposes of Rule 1.9, BC Br. at 62,[58] but then belabors the thinness of the grounds on which Respondent belatedly claimed that he had such a conflict. *Id*. Although Bar Counsel's argument speaks to other deficiencies in Respondent's representation of Evans, it does not establish by clear and convincing evidence that Respondent violated Rule 1.9.

9. Rules 1.15(a) and (e)

Bar Counsel asserts that Respondent violated these Rules only in the Franklin matter, alleging that "Respondent failed to hold entrusted funds in a separate trust or escrow account until earned, and instead intentionally or recklessly misappropriated the entrusted funds." BX 4 at ¶ 25(i). The Hearing Committee concludes that Bar Counsel has proved by clear and convincing evidence that Respondent, in violation of Rule 1.15(a), intentionally misappropriated the advance fees he received in the Franklin matter, which were client property until earned, thus also violating Rule 1.15(e).

[58] "Bar Counsel questions whether Respondent's representation of Ms. Evans in the landlord-tenant matter gave rise to a conflict under Rule 1.9, given the nature of the litigation, Respondent's claim that he dealt with Mr. Evans and not Ms. Evans in the matter, and the fact that he apparently was never entrusted with any confidences or secrets that would be relevant to his representation of Mr. Evans in the divorce case."

a. Text of Rules

Rule 1.15 (a) states, in pertinent part:

> A lawyer shall hold property of clients or third persons that is in the lawyer's possession in connection with a representation separate from the lawyer's own property. Funds of clients or third persons that are in the lawyer's possession (trust funds) shall be kept in one or more trust accounts . . . .

Rule 1.15(e) states:

> Advances of unearned fees and unincurred costs shall be treated as property of the client pursuant to paragraph (a) until earned or incurred unless the client gives informed consent to a different arrangement. Regardless of whether such consent is provided, Rule 1.16(d) applies to require the return to the client of any unearned portion of advanced legal fees and unincurred costs at the termination of the lawyer's services in accordance with Rule 1.16(d).

b. Applicable Principles

Bar Counsel's argues that Respondent misappropriated the advance fees he received in the Franklin matter, which were client property until earned pursuant to Rule 1.15(e), when he took the fees without providing the services he had promised (BC Br. at 65),[59] and that the misappropriation was intentional (BC Br. at 64).[60] Bar Counsel must prove that Respondent's use of entrusted funds was unauthorized, and that the unauthorized use of the entrusted funds was intentional.

Misappropriation is defined as "any unauthorized use of client . . . [or third party] funds entrusted to [the lawyer], including not only stealing but also unauthorized temporary use for the

[59] "Respondent in fact deposited the $2,000 in his trust account, demonstrating that he knew that the funds were not his . . . . Respondent, however, did not hold the funds in trust. Instead, he helped himself to Ms. Franklin's $2,000 . . . notwithstanding that Respondent did not perform the services he had agreed to perform . . . ."

[60] "Clear record evidence demonstrated that Respondent misappropriated the Franklins' funds and did so intentionally when he took the fees that Ms. Franklin advanced without providing the services he agreed to provide, and without the consent of Ms. Franklin or his client Mr. Franklin with whom he never communicated."

lawyer's own purpose, whether or not [the lawyer] derives any personal gain or benefit therefrom." *In re Harrison*, 461 A.2d 1034, 1036 (D.C. 1983) (citation and quotation marks omitted).

For purposes of the present case, a finding of unauthorized use may be predicated on proof of any of three different possible scenarios: (1) the balance in the attorney's trust account may be shown to have fallen below the amount due the client; (2) the withdrawal may be shown to have been done without the client's consent; or (3) a flat or advance fee may have been withdrawn without client authorization and before it was earned.

With respect to the first scenario, unauthorized use occurs where "the balance in the attorney's . . . account falls below the amount due to the client [or third party], regardless of whether the attorney acted with an improper intent." *In re Edwards*, 990 A.2d 501, 518 (D.C. 2010) (appended Board Report). Thus, "when the balance in [a] [r]espondent's . . . account dip[s] below the amount owed to" the respondent's client or clients, misappropriation has occurred. *In re Chang*, 694 A.2d 877, 880 (D.C. 1997) (per curiam) (appended Board Report) (citing *In re Pels*, 653 A.2d 388, 394 (D.C. 1995)).

With respect to the second scenario, unauthorized use may also occur when a respondent withdraws entrusted funds without the client's consent. *In re Thompson*, 583 A.2d 1006, 1010 (D.C. 1990) (per curiam) (appended Board Report). Furthermore, client consent cannot be inferred from a client's failure to object to a proposed distribution of entrusted funds. *In re Haar*, 667 A.2d 1350, 1353-54 (D.C. 1995) ("*Haar I*") (rejecting "silence as consent").

With respect to the third scenario, *Mance II*, *supra*, considered the question of whether a "flat fee" paid in advance for legal services constitutes an "[a]dvance[] of unearned fees" under Rule 1.15(e) (*Mance II*, 980 A.2d at 1199), and established a "default rule [whereby] an attorney

must hold flat fees in a client trust or escrow account until earned." 980 A.2d at 1206. The Court held that for purposes of Rule 1.15(e), "money paid by a client as a flat fee for legal services remains the client's property, and counsel may not treat any portion of the money otherwise until it is earned, unless the client has agreed otherwise." *Id*. Consequently, if an attorney withdraws any part of a flat fee before the attorney has earned it and without the client's informed consent, the attorney has committed misappropriation. 980 A.2d at 1200-01.

Rule 1.0(e) defines informed consent as "denot[ing] the agreement by a person to a proposed course of conduct after the lawyer has communicated adequate information and explanation about the material risks of and reasonably available alternatives to the proposed course of conduct." In *Mance II*, the Court held that in order to obtain a client's informed consent in the context of a flat fee, "the attorney must expressly communicate to the client verbally and in writing that the attorney will treat the advance fee as the attorney's property upon receipt." *Mance II*, 980 A.2d at 1206 (quoting *In re Sather*, 3 P. 3d 403, 413 (Colo. 2000) (en banc)). Moreover, "the client must understand [that] the attorney can keep the fee only by providing a benefit or providing a service for which the client has contracted." *Id*. In addition, the fee agreement entered into by the parties "must spell out the terms of the benefit to be conferred upon the client," and "the client must be aware of the attorney's obligation to refund any amount of advance funds to the extent that they are unreasonable or unearned if the representation is terminated by the client." *Mance II*, 980 A.2d at 1206-07 (quoting *Sather*, *supra*, 3 P.3d at 413). Finally, "the client should [also] be informed that, unless there is an agreement otherwise, the attorney must . . . hold the flat fee in escrow until it is earned by the lawyer's provision of legal services." *Mance II*, 980 A.2d at 1207.

Assuming that Bar Counsel has proved the required predicate of an unauthorized use of entrusted legal fees, Bar Counsel must then also prove intent. Because intent may sometimes involve the difficult task of looking into another person's mind, the requisite intent may be established by circumstantial evidence. *In re Mabry*, 11 A.3d 1292 (D.C. 2011) (per curiam). Intentional misappropriation has been found, for example, where an attorney handles entrusted funds in a way "that reveals . . . an intent to treat the funds as the attorney's own" (*In re Anderson*, 778 A.2d 330, 339 (D.C. 2001)); where the attorney allowed the amount in his trust account to fall below the amount owed to his client's medical providers and . . . acknowledge[d] having used funds in the account for personal and business expenses" (*In re Mooers*, 910 A.2d 1046 (D.C. 2009)); where the attorney used funds in his trust account for personal and business expenses (*In re Cappell*, 866 A.2d 784 (D.C. 2004)); and where the respondent attorney deposited settlement funds in a non-escrow account and then drew checks on that account to pay a telephone bill, a cable bill, and to buy crack cocaine (*In re Marshall*, 762 A2.d 530 (D.C. 2000)).

c. Discussion

Respondent clearly violated Rules 1.15(a) and 1.15(e) in the Franklin matter. Respondent's unauthorized use of the funds that Ms. Franklin provided on May 11, 2011 (FF ¶ 47) is patent, no matter which of the three analytical scenarios discussed above is applied. As shown in BX 73 at 9, Ms. Franklin's $2,000 payment was deposited into Respondent's trust account on May 13, 2011.[61] FF ¶ 54. Five days after the latter date (*i.e.*, seven days after receiving the $2,000 from Ms. Franklin), Respondent transferred $3,500 from his trust account to

[61] The $2,000 from Ms. Franklin was part of an aggregate deposit of $4,415 made to Respondent's trust account on that date.

his office operating account (FF ¶ 55), and on June 22, 2011, Respondent transferred out an additional $1,500 to his office operating account (*id.*).[62] The balance in Respondent's trust account on June 22, 2011, was only $1,576.69. *Id*. Inasmuch as Respondent never filed the motion for post-conviction relief on behalf of Mr. Franklin that was the clear promise and premise of the retainer agreement signed by Ms. Franklin (FF ¶¶ 48, 56(c)), the balance in Respondent's trust account quickly − indeed, rapaciously − fell below the amount owed to the client (the first scenario discussed above regarding unauthorized use). Respondent's trust account withdrawals were also unauthorized under the second scenario: the withdrawals were made without informed client consent. FF ¶ 51. The facts discussed above also establish Respondent's unauthorized use under the third scenario, discussed in *Mance II*: assuming the $2,000 was a flat fee paid in advance, those funds remained the client's property until they were earned, and it is clear that Ms. Franklin never provided informed consent in accordance with *Mance II* for any other application of the funds (FF ¶ 51), nor, as noted above, did Respondent ever perform the basic requirement of the promise made in his retainer agreement (FF ¶ 56(c)).

Respondent's unauthorized use of the Franklin funds was also intentional. In reaching this conclusion, the Hearing Committee places principal emphasis on the circumstances surrounding Respondent's transfer of Ms. Franklin's initial payment to his office operating account. First, the speed with which Respondent transferred the Franklin funds to his operating account − a matter of only a few days (FF ¶ 55) − emphasizes Respondent's intent to treat the funds as his own as soon as possible. Second, the unseemly speed of this transfer − and

[62] The Capital One Bank trust account statements referred to in this sentence show that the transfers were made to an account ending with the digits xxxx5084. The refund check that Respondent issued to Ms. Franklin (BX 78 at 2) shows that it came from a Capital One Bank account also ending with the digits xxxx5084, and entitled, "Sherlock Grigsby T-A Law Office of Sherlock Grigsby."

Respondent's intent − is further highlighted by the testimony of Ms. Franklin, which the Hearing Committee credits, that she did not even provide Respondent with the records of Mr. Franklin's criminal case until later in May, 2011, after the initial $2,000 retainer was paid. FF ¶ 53. Third, Respondent's intention to treat Ms. Franklin's funds as his own and on a non-accountable basis is demonstrated by the fact that Respondent never provided Ms. Franklin with any bills or any other accounting justifying his application of the funds he received, nor did he provide her with any of the cautions required by *Mance II* before an attorney may treat an advance retainer as his own property. FF ¶¶ 51, 56(b). Fourth, Respondent intention to misappropriate is demonstrated by his non-credible attempt during the hearing to justify his overly-hasty transfer of the Franklin retainer payment to his operating account. Respondent testified (FF ¶ 56(a) n.34) that in about 10 to 12 hours he reviewed the entire record of Mr. Franklin's criminal case − which he stated was over 2,500 pages of material − even before he was paid. This would require an extraordinary reading speed of between 208 and 250 pages per hour − a purported reading speed rendered even more non-credible by the fact that, in Respondent's own characterization, he was looking for "extremely difficult" (Tr. 539:13-540:2) points of error to raise in a motion for post-conviction relief. Furthermore, if Respondent had in fact already expended such a large amount of time on the Franklin matter before he was paid, one would expect his May 11, 2011, retainer agreement to so state, but it says no such thing. FF ¶¶ 48-49. Fifth, Respondent's intent to misappropriate − to take the $2,000 without doing the work to earn it − is supported by Mr. O'Connell's testimony that based on Mr. O'Connell's experience and the physical status of the records of Mr. Franklin's case that Mr. O'Connell examined after Respondent turned them over to Bar Counsel, the case records appeared not to have been touched by Respondent or to provide any evidence that Respondent had done any substantive work with them. FF ¶ 56(a).

10. Rule 1.16(d)

Bar Counsel alleges that Respondent violated this Rule in all four matters. In the Evans matter, Bar Counsel alleges that Respondent's violation of Rule 1.16(d) included failures to give reasonable notice to the client of the termination of representation, and to allow time for the employment of other counsel. BX 3 at ¶ 32(j). In the Franklin matter, Bar Counsel alleges that Respondent's violation of Rule 1.16(d) included failures to surrender papers and property, and to refund unearned fees on termination of the representation. BX 4 at ¶ 25(j). In the Chambers matter, Bar Counsel alleges that Respondent's violation of Rule 1.16(d) included a failure to refund unearned fees on termination of the representation. BX 2 at ¶ 20(i). In the Owens matter, Bar Counsel alleges that in connection with the termination of his representation, Respondent failed to take timely steps to protect his client's interests. BX 5 at ¶ 25(d). The Hearing Committee concludes that Bar Counsel has proved by clear and convincing evidence that Respondent violated Rule 1.16(d) in the Evans, Franklin, and Owens matters, but has failed to provide clear and convincing evidence that Respondent violated Rule 1.16(d) in the Chambers matter.

a. Text of the Rule

Rule 1.16(d) states:

> In connection with any termination of representation, a lawyer shall take timely steps to the extent reasonably practicable to protect a client's interests, such as giving reasonable notice to the client, allowing time for employment of other counsel, surrendering papers and property to which the client is entitled, and refunding any advance payment of fee or expense that has not been earned or incurred. The lawyer may retain papers relating to the client to the extent permitted by Rule 1.8(i).[63]

[63] Rule 1.8(i) deals with acquiring and enforcing a lien to secure the lawyer's fees or expenses, which is not at issue in this proceeding.

b. Applicable Principles

Rule 1.16 allows a lawyer to withdraw from representing a client if the withdrawal can be accomplished without material adverse effect on the interests of the client. This constitutes a general temporal limitation on the lawyer's ability to withdraw; the client must have sufficient time to find another lawyer, and the lawyer must have a reasonable opportunity to become familiar with the client's case.[64]

Furthermore, in connection with any termination of a representation, Rule 1.16(d) requires a lawyer, to "take timely steps to the extent reasonably practicable to protect a client's interests, such as . . . surrendering papers and property to which the client is entitled, and refunding any advance payment of fee that has not been earned." *In re Edwards*, 990 A.2d 501, 521 (D.C. 2010) (failure to refund $1,000 in unearned fees violated Rule 1.16(d)). Failure to refund *any* unearned portion of a fee violates Rule 1.16(d). *See*, *e.g.*, *In re Samad*, 51 A.3d 486, 497 (D.C. 2012) (per curiam) (finding a violation where the respondent claimed that he did some work on the case, but did not "suggest that he earned the entire flat fee or that he returned any portion of the fee"); *In re Carter*, 11 A.3d 1219, 1223 (D.C. 2011) (per curiam) (finding a violation of Rule 1.16(d) where the attorney failed to pay an ACAB award for unearned fees); *In re Kanu*, 5 A.3d 1, 10 (D.C. 2010) (finding a violation of Rule 1.16(d) where the attorney failed to abide by a clause in her retainer agreement promising a refund if she failed to meet her clients' objectives).

[64] *See*, *e.g.*, Saul J. Singer, "*Speaking of Ethics*," The Washington Lawyer, September 2015, at 15.

c. Discussion

Evans

Respondent violated 1.16(d) in the Evans matter by failing to give reasonable notice to the client of the termination of Respondent's representation, and failing to allow time for Evans to employ other counsel who would have a sufficient opportunity to become familiar with Evans' divorce case. Trial of the divorce case was scheduled to begin February 4, 2013. FF ¶ 12. Respondent did not file his motion for leave to withdraw in that case until January 16, 2013. FF ¶ 33. Although Evans was able to obtain replacement counsel (Mr. Salwierak) promptly, the shortness of the notice by which he came into replace Respondent hindered the new attorney in fully vindicating Evans' objectives in the divorce case. FF ¶ 42. The facts that Respondent's files in the Evans matter were turned over to successor counsel in a highly disorganized state and did not even contain a copy of the then-outstanding order compelling further discovery from Evans (FF ¶¶ 37-38) exacerbated the problems caused by Respondent's withdrawal from Evans' case so close to the scheduled trial date.

Franklin

Respondent was retained and was paid an initial fee of $2,000 on May 11, 2011. FF ¶ 47. Respondent never filed a motion for reduction of sentence or any other motion for post-conviction relief on behalf of Mr. Franklin. FF ¶¶ 56(c), 65, 69. On June 17, 2013, Ms. Franklin filed a disciplinary complaint against Respondent due to his failure to fulfill the terms of the retainer agreement. FF ¶ 69. Respondent issued a refund check to Ms. Franklin on June 2, 2014, approximately one year after the filing of the disciplinary complaint, and three years after he was retained. FF ¶ 71. Although these delays are not as egregious as those in *In re Kanu*, *supra*, Respondent was aware at least from the filing of Ms. Franklin's disciplinary complaint (which

Bar Counsel sent to Respondent on July 2, 2013 for comment (FF ¶ 142)) that the attorney-client relationship had ended, and he was likewise aware at that time that he had not performed a basic requirement of the retainer agreement. Respondent's refund payment to Ms. Franklin in June of 2014 (FF ¶ 71) − in the words of Rule 1.16(d), "any advance payment of fee or expense that has not been earned or incurred" − did not occur upon "termination of representation" or even reasonably proximate to the termination of representation, and that delay constituted a violation of Rule 1.16(d).

Chambers

Unlike the Evans and Franklin matters, in the Chambers matter Bar Counsel has failed to provide clear and convincing evidence that Respondent violated Rule 1.16(d).

The focus of the Specification in the Chambers matter regarding Rule 1.16(d) is that in connection with the termination of Respondent's representation of Chambers, Respondent failed to refund unearned fees. BX 2 at 5 at ¶ 20(i). On or about April 17, 2012, Chambers paid $900 to Respondent for legal representation. FF ¶ 73. The civil action that Respondent eventually filed on behalf of Chambers to recover his car and the $3,400 loan to Ms. Letourneau was dismissed on November 7, 2012. FF ¶ 82. On December 27, 2012, Chambers sent an e-mail to Respondent reciting the history of their relationship, and asked for a response detailing the actions Respondent had taken on his behalf as well as an accounting of the money Chambers provided. Chambers also stated, "*If you can no longer represent me* [emphasis added] in these matters let me know and please refund the outstanding balance of the money I provided. Please rectify these outstanding matters or I will be forced to report these issues to the DC Bar." FF ¶ 92. It seems clear to the Hearing Committee from the foregoing quotation that at least as of

December 27, 2012, Chambers did not regard his attorney-client relationship with Respondent as terminated.

On February 7, 2013, however, Chambers filed a complaint against Respondent with the Office of Bar Counsel (FF ¶ 94), and that is when it is most logical to conclude the attorney-client relationship between Respondent and Chambers ended.[65] On April 5, 2015, Respondent submitted a partial response to Chambers' disciplinary complaint, stating, *inter alia*, that Respondent was awaiting instructions from Chambers to make a full reimbursement of the $900 Chambers initially paid. FF ¶ 95. In contrast to the significantly longer delay in Respondent's returning Ms. Franklin's funds after she filed a disciplinary complaint against Respondent, the approximate two-month delay between the time Chambers filed his disciplinary complaint and the time Respondent refunded Chambers' $900 was reasonably close to the "termination of the representation," and therefore the Hearing Committee concludes that Respondent did not violate Rule 1.16(d) in the Chambers matter.

Owens

The Hearing Committee incorporates herein by reference its previous discussion of Respondent's violations of Rule 1.3(a) and Rules 1.4(a) and (b) in the Owens matter. The facts and analysis in that discussion establish that Respondent violated Rule 1.16(d) when he closed his office for the practice of law in September of 2013 and thereafter failed to protect Owens' interests.

[65] However, even as late as April 5, 2013, Chambers wrote in an e-mail to Respondent, "I don't want to lose you as a lawyer and if you tell me you can find and serve [Ms. Letourneau] and take care of my Dads [*sic*] issue in a timely manner I'd be happy to move forward with you." FF ¶ 95 n.42.

11. Rule 3.4(c)

Bar Counsel alleges that Respondent violated this Rule only in the Owens matter. The Hearing Committee concludes that Bar Counsel has proved by clear and convincing evidence that Respondent knowingly violated Rule 3.4(c) in that matter.

a. Text of the Rule

Rule 3.4(c) states that "[a] lawyer shall not: . . . (c) Knowingly disobey an obligation under the rules of a tribunal except for an open refusal based on an assertion that no valid obligation exists."

b. Applicable Principles

The language of Rule 3.4(c) is relatively unambiguous. However, to prove a violation of Rule 3.4(c), Bar Counsel must also establish that Respondent "knowingly" disobeyed an obligation under the rules of a tribunal. "'Knowingly,' 'known,' or 'knows' denotes actual knowledge of the fact in question. A person's knowledge may be inferred from circumstances." Rule 1.0(f).

D.C. Super. Ct. Civ. R. 10-I(b) states, "It is the obligation of the attorney or unrepresented party whose address or telephone number has been changed to immediately notify the appropriate branch or office within the Civil Division and all other attorneys and unrepresented parties named in the case of this change." D.C. Super. Ct. Civ. R. 101(c)(1) states that an attorney's appearance in a case may be withdrawn by praecipe if no trial date has been set, provided that another attorney enters or has entered an appearance. D.C. Super. Ct. Civ. R. 101(c)(2) states that "if the client is not represented by another attorney, an attorney may withdraw the attorney's appearance only by order of the Court upon motion by the attorney served upon all parties to the case or their attorneys."

Rule 2 of the Rules of Procedure for the Landlord and Tenant ("L&T") Branch of the District of Columbia Superior Court specifically makes D.C. Super Ct. Civ. R. 10-I and 101, quoted above, applicable to the L&T Branch. (The Comment to Rule 2 of the L&T Branch states, "Any reference herein to a particular rule, as for example, 'Rule 5,' comprehends both the original rule and any addenda thereto, e.g.,[66] 'Rule 5-I.'")

c. Discussion

Two facts independently demonstrate that Respondent knowingly violated Rule 3.4(c). First, Respondent could not help but know that in September of 2013 he ceased the private practice of law. FF ¶ 108. Second, on November 18, 2013, Bar Counsel specifically reminded Respondent in person and by e-mail of his need to comply with the notice requirements of D.C. Super. Ct. Civ. R. 10-I(b) and 101 well as L&T Rule 2. FF ¶ 124.

No document in the court record indicates that Respondent ever made a filing in the Owens case that complied with D.C. Super. Ct. Civ. R. 10-I(b), D.C. Super. Ct. Civ. R. 101, or L&T Rule 2 (FF ¶¶ 108-09, 130)); to the contrary, the court continued to send notices in vain to Respondent's former office (FF ¶ 118).[67] The Hearing Committee accordingly concludes that Respondent knowingly disobeyed obligations under the rules of the District of Columbia Superior Court, in violation of Rule 3.4(c).

[66] *Sic*; not italicized in original.

[67] As stated in Resp. Br. at 61, "Respondent concedes that law offices [*sic*] arrangement or the lack there of [sic] is/was the root of the Respondent's problem in withdrawing from [Owens'] case, advising the court and Counsel [*sic*] of his change in address and circumstances." Respondent then argues, *id*., that his oversight was merely inadvertent. The two facts noted in the first paragraph of the discussion of Respondent's violation of Rule 3.4(c) prove that his Rule violation was *not* inadvertent.

12. Rule 5.5(a)

Bar Counsel alleges that Respondent violated this Rule only in the Evans matter. The Hearing Committee concludes that Bar Counsel has proved by clear and convincing evidence that Respondent violated Rule 5.5(a) in that matter.

a. Text of the Rule

Rule 5.5(a) provides: "A lawyer shall not: (a) Practice law in a jurisdiction where doing so violates the regulation of the legal profession in that jurisdiction."

b. Applicable Principles

Comment [1] to Rule 5.5 states that the Rule "concerns the unauthorized practice of law by District of Columbia Bar members in other jurisdictions." Comment [2] to Rule 5.5 states that the purpose of the Rule is to protect "the public against rendition of legal services by unqualified persons." The Rule is applied in accordance with its plain terms in order to prohibit the practice of law in a jurisdiction where doing so violates the regulation of the legal profession in that jurisdiction. *In re Kennedy*, 542 A.2d 1225, 1227 (D.C. 1988).

The Introduction to Part Six, Section I, of the Rules of the Supreme Court of Virginia relating to the unauthorized practice of law in that jurisdiction defines the "practice of law" to include the following conduct:

> (1) One undertakes for compensation, direct or indirect, to advise another, not his regular employer, in any matter involving the application of legal principles to facts or purposes or desires.
>
> (2) One, other than as a regular employee acting for his employer, undertakes, with or without compensation, to prepare for another legal instruments of any character, other than notices or contracts incident to the regular course of conducting a licensed business.
>
> (3) One undertakes, with or without compensation, to represent the interest of another before any tribunal judicial, administrative, or executive - otherwise than in the presentation of facts, figures, or factual conclusions, as distinguished from

> legal conclusions, by an employee regularly and bona fide employed on a salary basis, or by one specially employed as an expert in respect to such facts and figures when such representation by such employee or expert does not involve the examination of witnesses or preparation of pleadings.

Section (A) of the Introduction to Part Six further states, "No non-lawyer shall engage in the practice of law in the Commonwealth of Virginia or in any manner hold himself out as authorized or qualified to practice law in the Commonwealth of Virginia except as may be authorized by rule or statute." That prohibition is immediately reiterated in Rule UPR § 1-101(A) ("Unauthorized Practice Rule 1 - Practice Before Tribunals") of the Supreme Court of Virginia, as follows: "(A) A non-lawyer, with or without compensation, shall not represent the interest of another before a tribunal, otherwise than in the presentation of facts, figures or factual conclusions, as distinguished from legal conclusions . . . ."

c. Discussion

As early as May 7, 2012, when Respondent e-mailed Evans a draft that Respondent had prepared of the proposed Answer in his client's Virginia divorce case (FF ¶ 7) − which did not yet even bear the signature of local counsel − Respondent was already engaged in the unauthorized practice of law in Virginia: on page 3 of the draft Answer, ¶ K asks "[t]hat Defendant be granted such other and further relief, including without limitation, any other relief pursuant to § 20-130 of the 1950 Code of Virginia . . . ." FF ¶ 9. Respondent knew he was not authorized to practice law in Virginia, and therefore told Evans that Respondent would file a motion for admission *pro hac vice* with the Virginia court, but Respondent never did so. FF ¶ 6. Respondent nevertheless continued to represent Evans and deal with opposing counsel in all phases of Evans' divorce case. FF ¶¶ 13-14, 18, 22-23, 29. Worse yet, William Robinson, Esq., Respondent's ostensible local/co-counsel in the divorce proceeding, exercised no meaningful role in the case and provided no realistic supervision of Respondent's activities. FF ¶¶ 8, 11, 13, 18

n.15, 24 n.17, 26, 30, 32-33, 37, 41. As the trial judge in Evans' divorce case aptly admonished Respondent, he was practicing law in Virginia without being licensed there. FF ¶ 41.

As described in the preceding paragraph, the record amply demonstrates that Respondent was engaged in activities defined as "the practice of law" in paragraphs (1), (2), and (3) of the Introduction to Part Six, Section I, of the Rules of the Supreme Court of Virginia, quoted above. Respondent was advising Evans on the application of legal principles to the facts of Evans' case and Evans' desires and purposes in that case; Respondent was preparing legal instruments in connection with the case; and Respondent was actively representing Evans' interests in a case pending before a tribunal, to wit, the Circuit Court of Arlington County, Virginia. It could not be plainer that Respondent violated Rule 5.5(a) in the Evans matter.

13. Rule 8.1(a)

Bar Counsel alleges that Respondent violated this Rule only in the Franklin matter. In particular, the Specification in the Franklin matter states (BX 4 at ¶ 24):

> On December 3, 2015, Respondent sent Bar Counsel an e-mail attaching e-mails he had exchanged with Ms. Franklin. Respondent falsely claimed that he had created "electronic documents" in the matter, but these documents were allegedly "lost when the computer [he] stored them on was damaged due to flooding in [his] home."

The Hearing Committee concludes that Bar Counsel has failed to meet its burden of proving by clear and convincing evidence that Respondent violated Rule 8.1(a).

a. Text of the Rule

Rule 8.1(a) states that "a lawyer . . . in connection with a disciplinary matter, shall not . . . knowingly make a false statement of fact[.]"

b. Applicable Principles

Comment [1] to Rule 8.1 provides that "it is a separate professional offense for a lawyer knowingly to make a misrepresentation or omission in connection with a disciplinary investigation of the lawyer's own conduct." Furthermore, "[l]ack of materiality does not excuse a knowingly false statement of fact." *Id*. The Rule does, however, require Bar Counsel to prove that the respondent acted "knowingly" in making the false statement. Rule 1.0(f) states, "'Knowingly,' 'known,' or 'knows' denotes actual knowledge of the fact in question. A person's knowledge may be inferred from circumstances."

c. Discussion

In pertinent part, Respondent's e-mail to Bar Counsel (BX 69 at 1), on which the alleged violation rule 8.1(a) is based, states:

> Please find attached all emails between myself and Ms. Franklin. These emails are the only documents that I have left of this file. All prior electronic documents I created for this file were lost when the computer I stored them on was damaged due to flooding in my home.[68]

In alleging that Respondent's statement that he had created "prior electronic documents" − a rather broad and indefinite phrase − was a lie, Bar Counsel has assumed the very difficult burden of "proving a negative" by clear and convincing evidence: that there literally were *no* documents relating to the Franklin matter that had been stored on Respondent's water-damaged computer. Bar Counsel has not met that burden.

For example, it is uncontested that Respondent created a retainer agreement that was signed by Ms. Franklin, FF ¶ 47, a copy of which could have been stored on Respondent's computer. It is also uncontested that Respondent wrote Mr. Franklin an initial letter, FF ¶ 59, a

[68] It is convincingly established that Respondent had a laptop computer which he used in his work and which was damaged by water from an overflowing toilet in his home on November 23, 2011. FF ¶ 68.

copy of which likewise could have been stored on Respondent's computer. Similarly, it is uncontested that Respondent met with Ms. Franklin several times, and interviewed a co-defendant in Franklin's criminal case; notes of any of these meetings could have been − and Respondent testified that they were − stored in electronic form on Respondent's computer. FF ¶¶ 47, 66.

The Hearing Committee is prepared to believe, and indeed has concluded, there is clear and convincing evidence that Respondent made a misrepresentation when he sent Ms. Franklin an e-mail on October 4, 2011 (FF ¶ 64), asserting he was "working on the motion" relating to post-conviction relief for Mr. Franklin. *See* discussion of Rule 8.4(c), in subsection III(B)(14), *infra*. However, the Hearing Committee cannot find by clear and convincing evidence that there were *no* electronic documents relating to the Franklin matter which had been stored on Respondent's water-damaged computer. Bar Counsel has therefore failed to meet its burden of proving by clear and convincing evidence that Respondent violated Rule 8.1(a).

14. Rule 8.4(c)

Bar Counsel alleges that Respondent violated this Rule only in the Franklin matter. The Specification in the Franklin matter states, "In response to an e-mail of October 3, 2011, Respondent falsely represented he was working on a motion . . . ." BX 4 at ¶ 13. The Hearing Committee concludes that Bar Counsel has proved by clear and convincing evidence that Respondent violated Rule 8.4(c) in the Franklin matter.

a. Text of the Rule

Rule 8.4(c) states, "It is professional misconduct for a lawyer to: . . . (c) Engage in conduct involving dishonesty, fraud, deceit, or misrepresentation."

b. Applicable Principles

The four terms encompassed within Rule 8.4(c) "should be understood as separate categories, denoting differences in meaning or degree." *In re Shorter*, 570 A.2d 760, 767 (D.C. 1990) (per curiam). Each category of Rule 8.4(c) requires proof of different elements. *In re Romansky*, 825 A.2d 311, 315 (D.C. 2003). Misrepresentation is a statement that a thing is in fact a particular way, when it is not so, and usually requires active deception or falsehood. *Shorter*, 570 A.2d at 767. However, the failure to disclose a material fact also constitutes a misrepresentation, *In re Outlaw*, 917 A.2.d 684, 688 (D.C. 2007) (per curiam), and even if a respondent did not act deliberately, "misrepresentation" can be shown if a respondent acted in reckless disregard of the truth. *In re Rosen*, 570 A.2d 728 (D.C. 1989).

c. Discussion

On October 3, 2011, Ms. Franklin sent Respondent an e-mail stating, in pertinent part, "Can you please call me at your earliest convenience, My [*sic*] son Damon would like for you to file the motion asking for a Sentence Reduction." FF ¶ 63. There is clear and convincing evidence that Respondent made a misrepresentation when he sent Ms. Franklin a responsive e-mail the next day, October 4, 2011, stating, "I am working on the motion." FF ¶ 64.

Respondent never sent either Mr. Franklin or Ms. Franklin even a draft of any document that would constitute, or was substantively related to, any motion for post-conviction relief, nor did Respondent ever provide Mr. Franklin with any of the "follow-up" Respondent promised in his initial letter. Respondent also never produced any work product or other evidence that he had worked on or had begun preparing a motion.[69] Furthermore, in a meeting with Bar Counsel on

[69] By comparison, in the Evans matter, Respondent maintained a "task list" (BX 28) to keep track of the work he did in that representation. Respondent, however, had no time records, calendar

November 18, 2013, Respondent gave no indication during the interview that he had been working on a motion, and his description before the Hearing Committee of the motion he had supposedly been preparing was rambling, imprecise, and nearly incoherent. Respondent also admitted that he did not discuss with Ms. Franklin the details of the motion, and it would have been hard for him to do so because the only theory underlying a motion seeking post-conviction relief for Mr. Franklin that Respondent testified to was based on his obtaining information from two trial witnesses with whom Respondent never spoke. FF ¶¶ 59-60, 65.

Given all of the foregoing facts, and when it is read in context, Respondent's October 4, 2011, e-mail written in response to Ms. Franklin's e-mail on October 3, 2011 requesting action was a misrepresentation by a busy lawyer ("I am in trial this week, but will try to give you a call during a break") attempting to placate a persistent client. FF ¶ 63.[70]

15. Rule 8.4(d)

Bar Counsel alleges that Respondent violated this Rule in all four matters involved in this proceeding. The Hearing Committee concludes that Bar Counsel has proved by clear and convincing evidence that Respondent violated Rule 8.4(d) in all four matters.

a. Text of the Rule

Rule 8.4(d) states: "It is professional misconduct for a lawyer to: . . . (d) Engage in conduct that seriously interferes with the administration of justice."

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records, or other written evidence to substantiate his claimed work in the Franklin matter. FF ¶¶ 14, 56(b).

[70] Ms. Franklin's October 3, 2011, e-mail to Respondent that is the subject of FF ¶ 63 requested action from him on the motion for sentence reduction nearly five months after Respondent was retained, and referred to Ms. Franklin's fruitless attempts to leave a telephone message for Respondent because his voice mail was full.

b. Applicable Principles

To establish a violation of Rule 8.4(d), Bar 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). The prohibition of Rule 8.4(d) applies not only to activities which may cause a tribunal to reach an incorrect decision, but also to conduct which taints the decision making process. *In re Keiler*, 380 A.2d 119, 125 (D.C. 1977). Furthermore, Rule 8.4(d) is violated if the attorney's conduct causes the unnecessary expenditure of time and resources in a judicial proceeding. *In re Cole*, 967 A.2d 1264, 1266 (D.C. 2009).

In addition, with respect to the separate issue of an attorney's obligation to cooperate with Bar Counsel in connection with an ethics investigation, Comment [2] to Rule 8.4 states:

> The cases under paragraph (d) include acts by a lawyer such as: failure to cooperate with Bar Counsel; failure to respond to Bar Counsel's inquiries or subpoenas; failure to abide by agreements made with Bar Counsel; failure to appear in court for a scheduled hearing; . . . failure to obey court orders; . . . [and] failure to keep the Bar advised of respondent's changes of address, after being warned to do so . . . . Paragraph (d) is to be interpreted flexibly and includes any improper behavior of an analogous nature to these examples.

D.C. Bar Rule XI, § 8(a), also states, in pertinent part, "An attorney under investigation has an obligation to respond to Bar Counsel's written inquiries in the conduct of an investigation . . . ."

c. Discussion

Bar Counsel argues that insofar as substantive client representations are concerned, Respondent violated Rule 8.4(d) only in the Evans and the Owens matters. BC Br. at 73-74.

This subsection III(B)(15)(c) therefore first discusses each of those two matters based on the analytical framework outlined in *Hopkins*, *supra*.

In addition, Bar Counsel argues that Respondent violated Rule 8.4(d) by failing to cooperate with Bar Counsel's investigations of all four matters involved in this proceeding. BC Br. at 74-75. The Hearing Committee discusses under a separate heading in this subsection the evidence establishing Respondent's violations of Rule 8.4(d) due to his failure to cooperate with Bar Counsel's investigations.

Evans

First, Respondent's conduct was improper. He failed to assist his client in organizing and preparing the responses to the opposing party's discovery requests in the Evanses' divorce case, and to ensure that those answers were provided in a timely and organized manner so that the court (as well as the opposing party) could have ready access to the pertinent information that was relevant to the case. FF ¶¶ 14-23, 31, 39-40. These problems were compounded by Respondent's failure to file an opposition to the motion to compel answers to the discovery requests. FF ¶ 24. Respondent also failed to file a *pro hac vice* motion and otherwise failed to ensure that Evans was effectively represented by legal counsel authorized to practice law in the Commonwealth of Virginia. FF ¶ 6-8. In addition, Respondent failed to file his motion for leave to withdraw (assuming, *arguendo*, that he had good grounds for such a motion) in time to avoid both prejudice to his client as well as a potential delay in the trial of the Evanses' divorce case. FF ¶¶ 33, 37-38, 42. Second, Respondent's aforesaid failures bore directly upon an identifiable case, *i.e.*, the Evanses' divorce proceeding, case no. CL 12-754 in the Circuit Court for Arlington County, Virginia. FF ¶ 5. Third, Respondent's conduct tainted the judicial process in more than a *de minimis* way: (a) by preventing Evans from obtaining a full and fair hearing on his claims in

the divorce case, both because Evans was barred from submitting evidence concerning his contributions to the R Street property (FF ¶¶ 39-40, 42), and by depriving Respondent's successor counsel of the opportunity to become fully familiar with the details of Evans' case before having to go to trial on that case (FF ¶¶ 37, 42); and (b) by causing the court to hold unnecessary hearings in connection with problems arising from the failure to provide timely, organized, and complete responses to Ms. Evans' discovery requests (FF ¶¶ 31, 39).

Owens

First, Respondent's actions were improper for the reasons discussed above in connection with his violation of Rules 1.3(a), 1.4(a) and (b), and 1.16(d); that discussion is incorporated herein by reference. Respondent's misconduct not only prejudiced the rights of his client, but also caused the Landlord and Tenant Branch of the District of Columbia Superior Court unnecessarily to expend time and resources in trying to track down Respondent and his client and in repeatedly having to re-schedule hearings on the defendant's Motion to Show Cause because no one was present to represent Owens as plaintiff. FF ¶¶ 113-18, 121-23, 129. In addition, Respondent's actions were improper for the reasons discussed above in connection with his violations of Rule 3.4(c), relating to knowing violation of the rules of a tribunal. Again, that discussion is incorporated herein by reference. Second, Respondent's misconduct bore directly upon the judicial process with respect to an identifiable case or tribunal, namely case no. 2012 LTB 33253 pending in the Landlord and Tenant Branch of the District of Columbia Superior Court. FF ¶ 97. Third, Respondent's misconduct tainted that proceeding in more than a *de minimis* way because Owens lost whatever rights she may have had to obtain rent payments paid into the registry of the court by the tenant (FF ¶ 117), and because of the repeated scheduling delays already referred to in this paragraph.

Respondent's Failure to Cooperate
With Bar Counsel's Investigations

The findings of fact set forth in Section II(E) of this Report and Recommendation provide clear and convincing evidence that Respondent, in violation of Rule 8.4(d), failed to cooperate with Bar Counsel's investigations in the Evans matter (FF ¶¶ 134-40) (by failing to comply with a subpoena and a Court order enforcing the subpoena); the Franklin matter (FF ¶¶ 141-48) (by failing to respond to the disciplinary complaint or comply with a Board order compelling a response, and failing to comply with a subpoena and a Court order enforcing the subpoena); the Chambers matter (FF ¶¶ 149-54) (by failing to comply with a subpoena and a Court order enforcing the subpoena); and the Owens matter (FF ¶¶ 155-63) (delaying five months in responding to a disciplinary complaint, and in failing to comply with a subpoena).

16. D.C. Bar R. XI, § 2(b)(3)

Bar Counsel alleges that Respondent violated this Rule in all four matters in this proceeding, as follows: Evans matter, BX 3 at ¶ 32(j) (failure to comply with an order of the Court); Franklin matter, BX 4 at ¶ 25(n) (failure to comply with orders of the Court and Board); Chambers matter, BX 2 at ¶ 20(k) (failure to comply with an order of the Court); and Owens matter, BX 5 at ¶ 25(g) (failure to comply with an order of the Board). The Hearing Committee concludes that Bar Counsel has proved by clear and convincing evidence that Respondent violated § 2(b)(3) of D.C. Bar R. XI in all four matters.

a. Text of the Rule

D.C. Bar R. XI, § 2(b)(3), states that "[f]ailure to comply with any order of the Court or the Board" shall be a ground for discipline.

b. Applicable Principles

D.C. Bar R. XI, § 2(b)(3), means what it says, and is applied in accordance with its clear terms. *In re Beller*, 802 A.2d 840 (D.C. 2002) (respondent suspended from practice for failure to respond to repeated inquiries from Bar Counsel regarding three ethics complaints, with reinstatement conditioned on compliance with those inquiries).

c. Discussion

The findings of fact referred to in subsection III(B)(15)(c) under the heading "Respondent's Failure to Cooperate With Bar Counsel's Investigations" fully document Respondent's multiple failures to comply with orders of the Court and/or the Board. In summary, Respondent failed to obey an order of the Court dated November 5, 2013 (BX 21) granting Bar Counsel's unopposed motion to enforce subpoenas in the Evans, Franklin, and Chambers matters, and Respondent failed to obey orders of the Board dated November 7, 2013, in the Franklin matter (BX 64 at 2-3) and February 18, 2014, in the Owens matter (BX 85 at 2-3) directing him to provide written responses to Bar Counsel's inquiries. Accordingly, there is clear and convincing evidence that Respondent violated D.C. Bar R. XI, § 2(b)(3) in the Evans, Franklin, Chambers, and Owens matters.

IV. SANCTION RECOMMENDATION

In Section IV(A), below, the Hearing Committee discusses its primary recommended sanction, *i.e.*, that Respondent should be disbarred pursuant to *In re Addams*. If for any reason on further review that sanction is not found to be warranted, in Section IV(B), below, the Hearing Committee discusses the reasons underlying its alternative recommendation that Respondent should be suspended for a period of three years, and that before being permitted to

resume the practice of law, Respondent should be required to demonstrate fitness to do so pursuant to D.C. Bar Rule XI, § 3(a)(2).

A. Disbarment is Required Under *In re Addams*

Pursuant to *In re Addams*, 579 A.2d 190, 191 (D.C. 1990) (en banc), in virtually all cases of intentional misappropriation disbarment is the only appropriate sanction unless the misappropriation was caused by some compelling extenuating circumstance such as substance abuse (*In re Kersey*, 520 A.2d 321 (D.C. 1987)) or profound psychological disturbance (*In re Verra*, 932 A.2d 503, 505 (D.C. 2007)), or if the misappropriation is excused by unusually strong mitigating factors that outweigh any aggravating factors. In the present case, the Hearing Committee has found that Respondent intentionally misappropriated client funds in the Franklin matter. *See* subsection III(B)(9), *supra*. Respondent has not presented any evidence establishing that his misappropriation was caused by any compelling extenuating circumstance. Furthermore, as discussed in subsection IV(B)(2)(g), *infra*, there are numerous aggravating circumstances in this proceeding that far outweigh any mitigating factors upon which Respondent might rely. Accordingly, pursuant to *In re Addams*, the Hearing Committee recommends that Respondent should be disbarred.

B. Alternative Recommendation For a Three-Year Suspension With a Showing of Fitness[71]

Subsection B(1) of this Part IV discusses the comparability of the Hearing Committee's alternative sanction recommendation to sanctions in similar cases. Subsection B(2) discusses the

[71] This Section IV(B) assumes that disbarment due to misappropriation is *not* an operative factor in fashioning a sanction. However, this Section IV(B) may also have some utility in providing the Hearing Committee's views on various sanction-related factors, as well as providing supplementary analysis validating the Hearing Committee's primary recommended sanction of disbarment.

factors underlying the Hearing Committee's recommendation of a three-year suspension. Subsection B(3) discusses the factors involved in the Hearing Committee's recommendation that Respondent should be required to demonstrate fitness before resuming the practice of law.

1. Comparability of Hearing Committee's
Alternative Recommended Sanction

A disciplinary sanction should be comparable to those imposed in similar cases. D.C. Bar Rule XI, § 9(h)(1) (Court seeks to avoid "inconsistent dispositions for comparable conduct"). Relying on *In re Kanu*, *supra*, Bar Counsel contends that even in the absence of intentional misappropriation, the seriousness of Respondent's misconduct combined with various aggravating factors warrant an alternative recommendation of disbarment. The Hearing Committee finds that *Kanu* is not controlling on the issue of disbarment, and that precedent supports the alternative sanction recommended by the Hearing Committee.

Kanu involved an attorney who was an arrant liar,[72] and was disbarred for "flagrant dishonesty." 5 A.3d at 17 n.4. Kanu filed applications for immigration relief with the federal government *knowing* that no factual basis existed for the relief sought (*id.* at 3), and her misconduct was referred to Bar Counsel for investigation by the United States Bureau of Citizenship and Immigration Services (*id.* at 4). The entire case was suffused with the presence of systematic immigration fraud, *see*, *e.g.*, *id.* at 6 ("According to the [Hearing] Committee, Kanu's 'overall conduct . . . is to be considered in assessing the appropriate sanction, and it is clear that the immigration fraud aspect of the conduct bears on central issues relating to sanction . . . .'"). Kanu's retainer agreements obligated her to refund her clients' substantial advance retainer payments if she was not successful on the clients' behalf (*id.* at 3), and she lied to her

[72] "The record is rife with evidence of Kanu's . . . dishonesty . . . ." 5 A.3d at 17.

clients as well as to Bar Counsel about the status of her efforts to make good on her refund obligation (*id.* at 15). Kanu was precisely the type of attorney whose conduct posed a systemic threat to the integrity of the legal system, leading to disbarment for "flagrant dishonesty."

The most instructive case for the purpose of assessing the comparability of the Hearing Committee's alternative sanction recommendation is *In re Vohra*, *supra*.[73] In that case, the respondent attorney's misconduct included submitting forged visa documents, a criminal act (68 A.3d at 784), sustained neglect of client matters and numerous Rule violations, some involving dishonesty (*id.* at 768), as well as numerous misrepresentations to Bar Counsel (*id.* at 783). In *Vohra*, the Court specifically rejected Bar Counsel's argument that construing the respondent's dishonesty as less than "flagrant" would undermine the Court's holdings in *Kanu*, *supra*, as well as two other cases, *In re Cleaver-Bascombe*, 986 A.2d 1191 (D.C. 2010) (*"Cleaver-Bascombe II"*), and *In re Howes*, 52 A.3d 1 (D.C. 2012). The Court distinguished *Kanu* from Mr. Vohra's misconduct, which did not involve systematically abetting clients in fraudulently applying for

[73] Other cases similar to the present one − involving various types of dishonesty − in which the Court has ordered a three-year suspension include *In re Steele*, 868 A.2d 146 (D.C. 2005) (respondent accepted fees in five cases without rendering services, and attempted to cover up the neglect through avoidance, false statements, and the fabrication of documents); *In re Slaughter*, 929 A.2d 433 (D.C. 2009) (respondent created a false contingency fee agreement, including a forged signature, to mislead his law firm so it would not bill for time spent on a client matter, and later created additional false documents to cover up the previous misrepresentations); *In re Daniel*, 11 A.3d 291 (D.C. 2011) (respondent misused his IOLTA account to hide personal funds and lied to the IRS by reporting that he did not have any business bank accounts, failed to cooperate with Bar Counsel, and failed to recognize his misconduct); *In re Silva*, 29 A.3d 924 (D.C. 2011) (respondent neglected a real estate matter, created a false document with forged signatures to cover up his neglect, lied to his client about the matter, and testified falsely at the hearing); and *In re Samad*, *supra* (respondent neglected six cases, appeared in court unprepared, failed to notify a judge that he would be late, failed to timely file motions, failed to issue refunds, failed to withdraw from cases after representation ceased, misrepresented his availability for trial in two instances, and displayed a cavalier attitude and had a misguided view of his obligations toward his clients and his responsibilities under the Rules).

visas, or the prolonged withholding of client funds by Kanu that was tantamount to misappropriation. 68 A.3d at 772.[74]

Although the dishonesty aspects of the present case[75] as well as Respondent's overall misconduct are very serious, the Hearing Committee's concludes that they do not put Respondent in the same "flagrant dishonesty" category as *Kanu* because they do not involve a systemic threat to the legal system, nor was Respondent's withholding of client funds as prolonged as in *Kanu*.[76]

2. Factors Considered in Recommending a Suspension

In *In re Thyden*, 877 A.2d 129, 144 (D.C. 2005), the Court cited seven factors relevant to determining a disciplinary sanction: (a) the seriousness of the conduct at issue; (b) the prejudice, if any, to the client which resulted from the conduct; (c) whether the conduct involved dishonesty and/or misrepresentation; (d) the presence or absence of violations of other provisions of the disciplinary rules; (e) whether the attorney has a previous disciplinary history; (f) whether or not the attorney acknowledged his wrongful conduct; and (g) circumstances in mitigation or aggravation of the misconduct. *In re Hutchinson*, 534 A.2d 919, 924 (D.C. 1987) (en banc) and *Cleaver-Bascombe II*, *supra*, also note the relevance of the need to maintain the integrity of the

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[74] The Court also distinguished Vohra's misconduct from the systemic threats that were considered in *Cleaver-Bascombe II* (misappropriation of public funds) and *Howes* (systematic misuse public funds).

[75] Respondent made a misrepresentation to Ms. Franklin in violation of Rule 8.4(c) (*see* subsection III(B)(14), *supra*), and there are four instances in which the Hearing Committee has found that Respondent provided false testimony during the hearing of this case (*see* subsection IV(B)(2)(g), *infra*, regarding aggravating circumstances).

[76] The issue of Respondent's refunding of fees in the Evans matter has not been raised by Bar Counsel as a Rules violation. In the Franklin matter, the Hearing Committee has found that the one-year delay in refunding the client's legal fees constitutes a violation of Rule 1.16. That delay, however, pales in comparison with the delay of more than six years in *Kanu*. In the Chambers matter, the Hearing Committee has found that the approximate two-month delay in refunding the client's legal fees does not constitute a violation of Rule 1.16. Last, Respondent represented Owens without any charge, so there is no issue involving legal fees in that matter.

legal profession, to protect the public and the courts, and to deter future or similar misconduct by the respondent and other lawyers. All of these factors are discussed in this subsection (B)(2).

a. Seriousness of the Misconduct

In subsection III(B)(4), *supra*, the Hearing Committee has found that Respondent violated Rule 1.3(c) by failing to represent his clients diligently in the Evans, Franklin, and Chambers matters. Those violations alone are sufficient to establish that Respondent's misconduct is very serious. *See* Comment [8] to Rule 1.3. Furthermore, incompetent representation of a client, misrepresentations, and causing parties and judicial tribunals to engage in unnecessary work − all of which are present in this case − are also serious violations of the Rules. *In re Cole*, 967 A.2d 1264, 1267 (D.C. 2009). And, "[t]he seriousness of the conduct at issue increases with an additional violation of the rule prohibiting dishonest conduct. There is nothing more antithetical to the practice of law than dishonesty . . . ." *In re Daniel*, *supra* n.73 at 300 (citing *In re Hutchinson*, *supra*, 534 A.2d at 924). Accordingly, the Hearing Committee concludes that Respondent's misconduct in this case is very serious within the meaning of *In re Thyden*, *supra*.

b. Prejudice to Clients

The Hearing Committee has found that Respondent's misconduct prejudiced at least Evans, Chambers, and Owens. As discussed in subsections III(B)(1) and (2), *supra*, Respondent's misconduct deprived Evans of a fair chance to establish his right to some part or all of the value of the Evanses' real property at 1610 R Street, S.E.; deprived Chambers of the opportunity to sue and serve Ms. Letourneau when she might have been found, and resulted in the eventual dismissal of the suit against her pursuant to D.C. Super. Ct. Civ. R. 4(m); and deprived Owens of the chance to obtain funds that had been placed in escrow with the registry of

the court by the tenant she was suing. Although substantive legal prejudice to Mr. Franklin in obtaining actual post-conviction relief is somewhat conjectural, what is not conjectural is the distress Mr. Franklin − who was "desperate" for news about the filing of a motion for such relief (FF ¶ 67) − felt while waiting for help and hope from Respondent, which never arrived (FF ¶ 60).

c. Presence of Misrepresentation

The Hearing Committee has found that Respondent violated Rule 8.4(c) by misrepresenting to Ms. Franklin that he was actually working on a motion for post-conviction relief of her son. *See* subsection III(B)(14), *supra*.

d. Multiple Violations of the Rules

As set forth above in section III(B), the Hearing Committee has found that Respondent violated Rules 1.1(a), 1.1(b), 1.3(a), 1.3(b)(1), 1.3(c), 1.4(a), 1.4(b), 1.5(a), 1.5(b), 1.15(a), 1.15(e), 1.16(d), 3.4(c), 5.5(a), 8.4(c), and 8.4(d), as well as § 2(b) of D.C. Bar Rule XI.

e. Prior Disciplinary History

Respondent has no prior disciplinary record that was brought to the attention of the Hearing Committee by Bar Counsel. The fact that an attorney has no prior disciplinary record is "highly relevant and material" to the determination of a sanction, *In re Cope*, 455 A.2d 1357, 1361 (D.C. 1983), and the Hearing Committee has fully taken that factor into consideration for Respondent's benefit. The Hearing Committee believes, however, that Respondent's lack of a prior disciplinary history is outweighed by his many violations of the Rules, including in particular his misrepresentation to a client in violation of Rule 8.4(c); his blatant violation of Rule 8.4(d) and § 2(b) of D.C. Bar Rule XI in failing to cooperate with Bar Counsel's investigations and disobeying orders issued by the Court and the Board; the aggravating factors

discussed *infra* in subsection IV(B)(2)(g); and the fact that Respondent's violations of the Rules occurred in four different client representations over a period of several years. The Hearing Committee therefore has no hesitancy in recommending a three-year suspension as an alternative sanction.

f. Non-Acknowledgement of Wrongful Conduct

Aside from admitting that he had no written fee agreements with Evans (FF ¶ 7) and Chambers (FF ¶ 74), Respondent's direct testimony sought to justify all of his actions in the four matter at issue in this proceeding. *See* Tr. 513-26 (Evans matter); 533-48 (Franklin matter); 526-33 (Chambers matter); 548-52 (Owens matter); and 552-61 (dealings with Bar Counsel).

g. Aggravating Circumstances

Bar Counsel contends (BC Br. at 78) that ten instances of false testimony by Respondent before the Hearing Committee are aggravating factors: four instances relating to the Evans matter (BC Br. at 13 (PFF[77] ¶¶ 41-42) and BC Br. at 17 (PFF ¶¶ 58-59)); three instances relating to the Franklin matter (BC Br. at 28 (PFF ¶ 107) and BC Br. at 34-35 (PFF ¶¶ 138-139)); and three instances relating to Respondent's interactions with Bar Counsel (PFF ¶¶ 36, 131, and 139). These instances of alleged false testimony are discussed in this subsection IV(B)(2)(g). Bar Counsel also contends (BC Br. at 77) that other aggravating factors exist, including Respondent's failure to express any remorse for his misconduct (discussed in subparagraph IV(B)(2)(f), *supra*), and his failure to take any remedial measures (discussed in subsection IV(B)(3)(c), below).

The Hearing Committee concludes that Bar Counsel has failed to provide clear and convincing evidence all four of the alleged instances of false testimony in the Evans matter, but has provided clear and convincing evidence of two (BC Br. at 28 (PFF ¶ 107) and BC Br. at 34

[77] References herein to proposed findings of fact in Bar Counsel's initial post-hearing brief are designated with the prefix "PFF ___."

(PFF ¶ 138)) out of the three alleged instances of false testimony in the Franklin matter. With respect to Respondent's assertedly false testimony about his interactions with Bar Counsel, the Hearing Committee concludes there is clear and convincing evidence to support Bar Counsel's contention in PFF ¶¶ 36 and 131 that Respondent provided false testimony about the extent of the substantive information he provided Bar Counsel in a meeting on November 18, 2013, but there is a lack of clear and convincing evidence to support Bar Counsel contention in PFF ¶ 139 (which does not, in any event, focus on Respondent's interactions with Bar Counsel) concerning allegedly false testimony about the nature of some of Respondent's communications with Ms. Franklin.

Evans

In the Evans matter, Bar Counsel's PFF ¶ 41 asserts Respondent testified falsely that he had not prepared the landlord-tenant complaint on behalf of Lissa Evans and therefore he was unaware he represented her at that time. The problem with this assertion is its premise: the record is clear that Evans prepared the complaint himself. FF ¶ 2. Respondent did not enter his appearance in the matter until June 17, 2011. FF ¶ 3.

Bar Counsel asserts next in PFF ¶ 42, citing Tr. 624:6-7, that Respondent testified falsely by asserting that he did not recall representing Lissa Evans because her landlord-tenant matter occurred "a number of years" before Respondent's representation of Evans in the couple's divorce proceeding. (Respondent entered his appearance on behalf of Lissa Evans in the landlord- tenant case involving 1610 R Street, S.E., on June 17, 2011 (FF ¶ 3), and initiated work with Evans relating to his divorce in February of 2012 (FF ¶ 4). Having heard the testimony of Respondent, which was often vague and provided in an overly-hasty manner, the Hearing Committee concludes that this brief reference to the relative timing of the landlord- tenant matter

and the divorce case, while inaccurate, was not a deliberate attempt by Respondent to deceive the Hearing Committee.

Bar Counsel also asserts in PFF ¶ 58, citing Tr. 632-34, that Respondent testified falsely by stating that he did not e-mail Evans the discovery requests propounded by legal counsel for Ms. Evans but instead made copies for Evans to pick up. This assertion is not supported by clear and convincing evidence because Respondent's testimony on this point was rather tentative and equivocal.[78]

Bar Counsel further asserts in PFF ¶ 59, citing Tr. 519 and 633-34, that "Respondent testified falsely that he told Evans it was important to provide [discovery] responses on time." The Hearing Committee finds a lack of clear and convincing evidence on this point because Respondent testified credibly that he made at least some effort to inform Evans that timeliness is important in complying with discovery requests. Tr. 519:10-17 (Respondent).[79]

Franklin

In the Franklin matter, the Hearing Committee likewise finds a lack of clear and convincing evidence supporting Bar Counsel's assertion in PFF ¶ 139 that Respondent testified falsely at the hearing that he communicated on a number of occasions with Ms. Franklin about her son's matters, and advised her that it was "highly unlikely" her son had a claim for ineffective

[78] Respondent testified: ". . . *I believe* I provided/*may* have made the documents available. Because once -- the original discovery request was quite voluminous and I believe it may have been like 60-some pages and I believe I *may* have had a physical copy available at my office to give him. And then to the extent the requirements [*sic*], back-and-forth requests, I believe I *may* have sent a copy *but I just don't recall how it was done*." Tr. 633:3-11, emphasis added.

[79] "Q. [Counsel for Respondent] And did you advise Mr. Evans of the importance of getting the discovery to you in a timely fashion?

"A. [Respondent] I explained to him it was important. To be honest, I said I probably put the fear of god or anything in him, but I told him that we needed this in terms of trying to help out with his case that we need this stuff in."

assistance of counsel. Ms. Franklin testified to one early meeting with Respondent, in which they discussed filing a motion for post-conviction relief due to insufficiency of evidence, Tr. 419:10-20, and that Mr. Franklin's prior trial/appellate counsel had not filed a motion for sentence reduction. Tr. 420:5-11. The Hearing Committee also credits Respondent's testimony at Tr. 539:13-540:2, that he told Ms. Franklin that a post-conviction motion based on ineffective assistance of counsel would have a low chance of success, and that alternative grounds for post-conviction relief should be explored. *See also* Tr. 716:17-717:16 (Respondent).

The Hearing Committee does, however, agree with Bar Counsel that Respondent's testimony regarding the Franklin matter was false in two other respects. First, Bar Counsel asserts in PFF ¶ 107 that Respondent lied in testifying that he received and reviewed the boxes of background documents regarding Mr. Franklin's criminal proceedings before Respondent was paid. Respondent received Ms. Franklin's initial retainer payment of $2,000 on May 11, 2011. FF ¶ 47. Respondent attempted to justify his misappropriation of the Franklin retainer by testifying that he reviewed the entire record of Mr. Franklin's case even before he was paid. Tr. 536:20-539:7.[80] However, Ms. Franklin's testimony − which the Hearing Committee credits − was that she gave Respondent the records of Mr. Franklin's case *after* she paid the retainer on May 11, 2011. FF ¶ 53. Furthermore, an examination of those records by an investigator for the Office of Bar Counsel indicated that they had not been reviewed by Respondent. FF ¶ 56(a).

Second, Bar Counsel asserts in PFF ¶ 138 that Respondent lied in testifying that he did not file any motion for post-conviction relief of Mr. Franklin because Ms. Franklin failed to locate for Respondent two witnesses who testified at Mr. Franklin's trial. *See*, *e.g.*, Tr. 540:3-15

[80] *Inter alia*, Respondent testified that he received over 2,500 pages of material to review, which he did in about 10 to 12 hours. Giving Respondent the benefit of the doubt by allocating 12 hours to the task of reviewing only 2,500 pages, that would entail an inherently non-credible reviewing speed of 208 pages per hour. Tr. 538:15-539:1 (Respondent).

(referring to "two young ladies who were cousins") and Tr. 605:16-19 (Respondent). The Hearing Committee concludes that Respondent's testimony on this subject was intentionally false because this subject is never mentioned in Respondent's e-mails to Ms. Franklin (FF ¶ 65(f)), and because if Respondent actually had reviewed the records of Mr. Franklin's criminal proceeding he would have readily obtained locational information concerning the two cousins who were key witnesses at Mr. Franklin's trial − and even if that information were not in the records Respondent was given, the Glover cousins were clearly identified in the appellate decision affirming Mr. Franklin's conviction, *Johnson [et al.] v. United States*, 980 A.2d 1174, 1180 (D.C. 2009). Any attorney who had actually come to grips with the information concerning Mr. Franklin's conviction would have had ample information to locate the Glover cousins. For Respondent to take the position that his inaction in the Franklin matter was due to Ms. Franklin's not providing information about the Glover cousins was intentionally false.

Interactions With Bar Counsel

The discussion of PFF ¶ 139, *supra*, with regard to the Franklin matter disposes of and rejects Bar Counsel's contention that Respondent testified falsely as described in that proposed finding.

The Hearing Committee agrees, however, with Bar Counsel's contention in PFF ¶¶ 36 and 131 that Respondent testified falsely in asserting that in a meeting with Bar Counsel on November 18, 2013, he gave Bar Counsel a "detailed explanation" of all of the matters involved in this proceeding.[81] A number of factors convince the Hearing Committee that this testimony

[81] At Tr. 546:13-21 Respondent testified, "We went over the cases and they took notes and I gave information, discussed the situation with each one of them. And I explained I wanted to be transparent or try to come to help resolve the situation. And then at that point I asked what options were available and I believe we went over options. But I think one of the sticking points I believe [Bar Counsel] said at that point, 'I'm still going to go forward with the charges.'" At Tr.

by Respondent was false. First, the Hearing Committee specifically credits the testimony of Kevin O'Connell, an investigator for the Office of Bar Counsel who attended Bar Counsel's November 18, 2013, meeting with Respondent, whose testimony directly contradicts Respondent's. FF ¶¶ 164-65. Mr. O'Connell served as an FBI agent for 26 years before joining the Office of Bar Counsel (FF ¶¶ 56(a)), and the Hearing Committee found his testimony to be ordered, organized, and believable. Second, shortly after the meeting on November 18, 2013, Bar Counsel sent Respondent an e-mail to confirm what took place at the meeting. FF ¶ 166. The e-mail directly contradicts Respondent's version of events, because, for example, it specifically asks Respondent for a reply to Ms. Franklin's disciplinary complaint (*id.*) − a request that would have been superfluous if Respondent had provided a "detailed explanation" of that matter. Furthermore, nothing in Bar Counsel's confirmatory e-mail indicates that Respondent provided any substantive information about the matters discussed during the meeting. FF ¶ 167. Third, Respondent's explanation as to why he did not reply to Bar Counsel's e-mail by stating that he had in fact provided a "detailed explanation" of the Franklin matter at the meeting was unconvincing and evasive. Tr. 725:11-726:17 (Respondent). Moreover, on December 3, 2013,

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552:15-21, Respondent testified, " . . . I agreed to the meeting and I tried to schedule it at the earliest, convenient date. And that's when I sat down in detail and went over each of the cases in the situation. And, again, in terms of I gave them the documents, I agreed to provide any documents for any cases that I had. And I provided whatever documents, physical files I had . . . ." At Tr. 723:18-724:8, Respondent became more evasive on this subject, but maintained the same basic position:

> Q. [by Bar Counsel] So it's your contention that you gave us a detailed explanation as to the Chambers matter. Is that correct?
> A. [Respondent] Like I said, I don't recall exactly what was said, but we talked about the matters that were outstanding."
> Q. The Evans matter, did you give us a detailed explanation?
> A. I don't recall exactly. But we talked about these matters, I know.
> Q. And it's your contention you gave us a detailed explanation about the Franklin matter?
> A. I gave you an explanation, yes.

Respondent sent Mr. O'Connell an e-mail providing copies of e-mails exchanged between Respondent and Ms. Franklin, and nothing in Respondent's December 3, 2013, e-mail gives any indication that he had any substantive discussion with Bar Counsel on November 18, 2013, concerning the Franklin matter, or any other matter then at issue. FF ¶ 169. Fourth, the Hearing Committee finds Respondent's statement that he could not remember what he said at the meeting on November 18, 2013 (Tr. 723:18-724:4) was evasive: a meeting between an attorney and Bar Counsel to discuss specific disciplinary complaints is so unusual and important that the details would have to be seared into the lawyer's memory. Fifth, Respondent's testimony that he "went over each of the cases in the situation" (Tr. 552:17-18) lacks credibility because, as Bar Counsel points out in PFF ¶ 36, as of the date of the meeting on November 18, 2013, the Owens matter had not yet been docketed for investigation by Bar Counsel, so there would have been no occasion for that matter to be substantively discussed at the meeting. FF ¶ 168.

Respondent's Motion to Withdraw in the Evans Matter

In addition to the aggravating circumstances for which Bar Counsel contends, the Hearing Committee believes there is one additional aggravating circumstance that should be considered. This circumstance involves Respondent's motion for leave to withdraw that he filed with the Circuit Court for Arlington County, Virginia, in the Evans divorce matter, based on a purported conflict of interest. In the Hearing Committee's view, that motion exhibited a lack of fundamental honesty in the most general sense of *Shorter*, *supra*, 570 A.2d at 768, *i.e.*, conduct which "may not legally be characterized as an act of fraud, deceit, or misrepresentation [but which] may still evidence dishonesty."

Respondent's motion was filed on January 16, 2013, less than three weeks before the February 4, 2013, scheduled trial date of the Evans divorce proceeding. FF ¶ 33. By the time

Respondent's motion was filed, Respondent had made a complete shambles of organizing the response to opposing counsel's complex discovery requests. FF ¶¶ 14-23. Respondent had also failed to file a response to Ms. Masri's motion to compel proper and complete responses to those discovery requests (FF ¶ 24), and the court on January 11, 2013, had entered a detailed order granting the motion to compel, requiring supplemental discovery responses in 40 distinct categories to be provided by January 22, 2013, and scheduling a hearing for January 25, 2013, on Ms. Masri's request for legal fees in connection with the motion (FF ¶ 31). William Robinson, Esq., who appeared on behalf of Evans at the hearing on the motion to compel, was so disturbed by the proceeding that when Evans met with him after the hearing, Mr. Robinson "looked incredibly scared . . . like he had just seen a ghost," and told Evans he "needed to get an attorney . . . because this was pretty serious." FF ¶ 32.

It appears to the Hearing Committee that Respondent's motion for leave to withdraw was pretextual and lacked good cause. Respondent's statement to the court in his motion that only "late last week Counsel discovered a conflict" was inherently incredible. FF ¶ 35. Respondent was operating on a limited budget in the Evans divorce proceeding (FF ¶ 33), which had become too costly and complicated for Respondent to continue representing Evans, and Respondent was simply looking for a convenient excuse to abandon the representation. In sum, Respondent's motion for leave to withdraw was dishonest both with the court and with his client.

h. Public Integrity Concerns/Deterring Misconduct

Protecting clients and the judicial system is a principal – if not the principal – function of the disciplinary system. *In re Goffe*, 641 A.2d 458, 464 (D.C. 1994); *In re Haupt*, 422 A.2d 768, 771 (D.C. 1980); *In re Kleindienst,* 345 A.2d 146, 147 (D.C. 1975). Deterring future and similar misconduct is likewise an important purpose of the disciplinary system. *In re Kennedy*, 542

A.2d 1225, 1231 (D.C. 1988); *In re Hutchinson*, 534 A.2d 919, 924 (D.C. 1987) (en banc). Of special concern to the Hearing Committee in this proceeding is Respondent's cavalier attitude toward Bar Counsel's investigations and his disobedience of orders issued by the Court and the Board. In recommending a three-year suspension as an alternative sanction, the Hearing Committee particularly seeks to discourage that type of misconduct.

3. Factors Underlying a Fitness Requirement

The Hearing Committee recommends as part of its proposed alternative sanction that Respondent should be required to demonstrate fitness before resuming the practice of law, due to clear and convincing evidence in the record which raises a serious doubt about Respondent's fitness. *In re Cater*, 887 A.2d 1, 24 (D.C. 2005). Before making a fitness recommendation, *Cater* requires the Hearing Committee to consider the following five additional factors: (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) 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*, *supra*, 887 A.2d at 21. These additional factors are discussed in this subsection (B)(3).

a. Nature and Circumstances of Misconduct

Bar Counsel has demonstrated by clear and convincing evidence that Respondent engaged in very serious misconduct, violating multiple disciplinary rules in the course of representing four different clients, in his dealings with the Office of Bar Counsel, and in disobeying orders of the Court and the Board.

b. Failure to Recognize Seriousness of Misconduct

In the cross-examination of Respondent, Bar Counsel has demonstrated by clear and convincing evidence that Respondent in numerous ways has failed to recognize the seriousness of his misconduct:

-- Tr. 571:22-573:10 (Respondent admits that the water damage to his laptop computer (FF ¶ 68) did not affect his access to stored e-mails, but he nevertheless failed to produce 106 pages of previously-subpoenaed e-mails relating to the Evans matter until the last day of the hearing after an overnight search of his e-mail records (FF ¶ 140)).

-- Tr. 578:14-22 (Respondent admits he kept no time records in the Franklin matter (FF ¶ 56(b)), but nevertheless testified that he fully earned the initial $2,000 fee paid by Ms. Franklin).

-- Tr. 588:11-589:9 (Bar Counsel advised Respondent in November, 2013, of the need to make court and Bar filings regarding the closing of his law office in September of that year (FF ¶ 124), but Respondent failed to do so promptly because "it was not placed on my priority list").

-- Tr. 597:11-598:6 (Respondent received Bar Counsel subpoenas for bank records (FF ¶ 146), but seeks to excuse his failure to respond to the subpoenas because Bar Counsel was able to subpoena the records directly from the bank).[82]

-- Tr. 604:10-16 (Respondent received requests for information from Ms. Franklin (FF ¶ 62), but felt he had no obligation to respond unless he had something "positive" to say).

-- Tr. 611:11-21 (Respondent failed to notify Chambers when the suit against Ms. Letourneau was dismissed pursuant to D.C. Super. Ct. Civ. R. 4(m) (FF ¶ 85), and averred his

[82] As noted in *In re Clower*, 831 A.2d 1030, 1034 (D.C. 2003), the purpose of the record keeping requirement in Rule 1.15 is "so that the documentary record itself tells the full story of how the attorney handled client or third party funds and whether the attorney complied with his fiduciary obligation that client or third-party funds not be misappropriated or commingled. . . . The reason for requiring complete records is so that any audit of the attorney's handling of client funds by Bar Counsel can be completed even if the attorney or the client, or both, are not available."

failure to inform his client of the dismissal was excusable because Respondent thought there would not be a statute of limitations problem in re-filing the suit).

-- Tr. 712:14-714:14 (Respondent agrees that his retainer agreement in the Franklin matter included reviewing possible appellate alternatives (FF ¶ 48), but he could not bring himself to admit that he had a duty under the agreement to communicate his findings to his client).

-- Tr. 719:1-721:11 (Respondent avers his October 4, 2011, e-mail to Ms. Franklin stating he was "working on the motion" (FF ¶ 64) for further appellate consideration was based on a good-faith belief that he had grounds for such a motion, when the only basis for such a motion was hypothetical information from the Glover cousins, with whom he had never spoken (FF ¶ 65(f)).

-- Tr. 721:12-726:17 (Respondent seeks to excuse his continued disobedience of a Board order directing him to provide a written response to the disciplinary complaint in the Franklin matter after meeting with Bar Counsel on November 18, 2013 (FF ¶¶ 146, 164) because he was "hesitant to provide" (Tr. 722:6) anything other than what he had already done, "wasn't sure in terms of how it would benefit me to provide [Bar Counsel] with additional . . . materials outside of what was already created" (Tr. 726:6-9), and "wasn't sure if it would be in my best interest to provide/create additional materials to provide to [Bar Counsel] to use against me" (Tr. 726:15-17)).

c. Lack of Remedial Measures by Respondent

Respondent returned the $900 Chambers retainer fairly promptly, but the Hearing Committee has found that Respondent's failure to refund the Franklin retainer for approximately one year after Ms. Franklin filed a disciplinary complaint constitutes a violation of Rule 1.16(d).

Nothing in the record indicates that Respondent ever offered or paid any refund of fees he received from Evans, or that had taken any other remedial measures with regard to his misconduct in this case.[83]

d. Respondent's Present Character

Neither party provided character witnesses, and the Hearing Committee is not of the view that Respondent affirmatively set out to harm any of the clients involved in the matters under consideration (*see In re Baber*, 106 A.3d 1072, 1077 (D.C. 2015) (attorney used confidential information from his client to make knowingly false accusations of fraud against his client)). However, based on the evidence adduced during the hearing, the Hearing Committee has a definite opinion regarding Respondent's present character.

In the Hearing Committee's view, there is a fundamental lack of honesty by Respondent with himself and with his clients, although not a form of dishonesty described in *In re Shorter*, *supra*. That lack of honesty leads Respondent to avoid admitting to himself that he is facing − and to avoid coming to grips with − a complicated or non-routine situation that requires detailed analysis or attention. Time and again in this proceeding, that character trait has been shown by Respondent.

In the Evans matter, he gave his client and others (as well as himself) the "benefit of the doubt" (Tr. 524:7-8; 635:6-7; 637:3-4 (Respondent)) when he was facing a complicated situation involving non-production of discovery and a motion to compel, to which he never filed a response (FF ¶¶ 14-24), all of which would have required him to undertake a detailed analysis of the current state of discovery production and to take appropriate action. When faced with this

[83] In his post-hearing brief, Respondent suggests that an appropriate sanction in this case might include requiring him − at some point in the future − to take practice management courses. Resp. Br. at 65.

situation, which cried out for a lawyer to assume strong responsibility in representing his client, Respondent's character predisposed him to avoid doing so.

In the Franklin matter, when the Glover cousins were not produced for Respondent by Ms. Franklin, he avoided the detailed work that would have been required to locate them and at least give himself a chance to test his hypothesis that their trial testimony had been unduly pressured by the prosecution, and if so, possibly to file an appropriate motion. Instead, he sat back, avoided the complications of the situation, and wound up neither preparing nor filing any type of motion for the post-conviction relief of Mr. Franklin (FF ¶¶ 56(c), 65, 69). *See* discussion of the Franklin matter in subsection III(B)(1), *supra*, relating to Respondent's violation of Rule 1.1(a).

In the Chambers matter, Respondent avoided the complications of promptly filing suit against and effectuating service of process on Ms. Letourneau (FF ¶¶ 76-79), avoided taking action to extend the time for service of process under D.C. Super. Ct. Civ. R. 4(m) (FF ¶ 84), and avoided telling his client that the suit he did eventually file had been dismissed due to Respondent's failure to properly and timely effect service (FF ¶ 85). In the subsidiary effort to resolve the insurance problem involving Chambers' father, Respondent contented himself with making a few telephone calls to try to resolve the situation (FF ¶ 89), and when Respondent "wasn't sure what exact direction I needed to take" (*id*.), the complications of the situation led him to avoid further analysis and give up on the effort, as well as not to inform Chambers of his failure (FF ¶ 90).

In the Owens matter, once the settlement agreement with the tenant was signed Respondent thought he was finished (FF ¶ 105). It didn't occur to him that there were possible complications in the case, and his character led him to avoid them. The settlement agreement

was still executory, and until he was certain the agreement had been carried out and all matters properly disposed of, he could *not* be sure − as Respondent incorrectly assumed − there would be no further need for him to appear in court. *Id*. Respondent once again avoided the complications of the situation, failed to file a response to an important motion (FF ¶ 112), and failed to undertake a full analysis of the status of the case that was required in order to protect the interests of his client. Notifying the court and the Bar of the change in Respondent's locational information was avoided because "it was not placed on my priority list." Tr. 589:8-9 (Respondent).

In his dealings with Bar Counsel, the avoidance mechanism in Respondent's character was also highly evident. He could not bring himself to deal with the complications of responding to Bar Counsel's subpoenas, to Board orders, and to an order of the Court enforcing the subpoenas. FF ¶¶ 136-38, 143-46, 151-53, 157-63. After his meeting with Bar Counsel on November 18, 2013 (FF ¶ 164), Respondent apparently felt he had done everything that was necessary, but once again his failure to do a detailed analysis of the requirements of the situation lead him astray.

The Hearing Committee is not in a position to determine how or whether a change in Respondent's character will have been effected. The process of demonstrating fitness, however, may lead to a showing that a sufficient change has taken place in Respondent's character to permit him to resume the representation of clients with a proper level of analysis, even in the difficult or non-routine situations that every lawyer must inevitably face.

e. Present Competence to Practice Law

As of the time of the hearing (August, 2015), Respondent was unemployed and had not engaged in the practice of law since December, 2014 (Tr. 563:10-15 (Respondent)); the last time

he handled a trial was in July, 2014 (Tr. 588:5-7 (Respondent)). Respondent's post-hearing brief filed in this matter on November 6, 2015, further states that he has been suspended from practicing law since December, 2014, pending the outcome of this case (Resp. Br. at 61). As a criminal law practitioner (Tr. 579:20-21 (Respondent)), Respondent claimed to be familiar with D.C. Super. Ct. Crim. R. 35 but could not accurately answer a question as to the time limit specified in that rule for filing a motion for reduction of sentence.[84] FF ¶ 52 n.29.

More important, however, than the foregoing considerations is the nature of several of Respondent's Rules violations discussed in Part III of this Report and Recommendation. Respondent was not even doing the basics of practicing law right. He failed to provide written retainer agreements to clients (*see* subsection III(B)(7), *supra*, and FF ¶¶ 2, 74, and 97 n.43, *supra*, concerning Respondent's violation of Rule 1.5(b) and other failures to provide proper retainer agreements). He actively practiced law in a jurisdiction where he was not licensed, and wound up mishandling responses to the opposing party's discovery requests and exposing his client to possible sanctions (*see* discussion in subsection III(B)(1), *supra*, regarding the Evans matter). He failed to provide proper notice to the court and the Bar when he closed his law practice in September, 2013 (*see* discussion in subsection III(B)(11), *supra*). He failed to cooperate with Bar Counsel's investigations of his actions, and ignored Bar Counsel subpoenas, an order of the Court enforcing the subpoenas, and orders of the Board directing him to respond to inquiries from Bar Counsel (*see* subsection III(B)(15), *supra*, under the heading "Respondent's Failure to Cooperate With Bar Counsel's Investigations, and subsection III(B)(16)).

All of the foregoing considerations raise serious concerns about Respondent's present competence to practice law.

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[84] *See* n.53, *supra*, regarding the applicable time limit specified in Rule 35.

V. CONCLUSION

For the reasons set forth in this Report and Recommendation, the Hearing Committee recommends that Respondent should be disbarred due to his intentional misappropriation of client funds. If for any reason on further review that sanction is not found to be warranted, the Hearing Committee recommends in the alternative that Respondent should be suspended for a period of three years, and that before being permitted to resume the practice of law Respondent should be required to demonstrate fitness to do so pursuant to D.C. Bar Rule XI, § 3(a)(2).

Respectfully submitted,

/MS/
Martin Shulman, Esq., Chair

/KTW/
Kathleen T. Wach, Esq., Attorney Member

/DJL/
Darryl J. Lesesne, Public Member

Dated: June 20, 2016