

suspended for one year, with fitness, as a sanction for his misconduct. Respondent contends that his conduct was “[f]ar from violating any ethical obligations” and that the “charges should therefore be dismissed,” but argues that an informal admonition would be proper should the Committee disagree. Respondent’s Brief (“R. Br.”) at 21-22, 31.

As set forth below, the Hearing Committee finds that Disciplinary Counsel has proven violations of Rules 1.4(a) and 1.15(c) by clear and convincing evidence. We recommend a sanction of an informal admonition. In addition, and no later than 60 days after issuance of the final disposition in this matter, Respondent shall consult with Dan Mills, Esquire, and the D.C. Bar’s Practice Management Advisory Service (PMAS) to conduct a review of his practices and shall waive confidentiality regarding all aspects of that review. A failure to do so may be grounds for future disciplinary action.

I. PROCEDURAL HISTORY

On January 17, 2024, Disciplinary Counsel served Respondent with a Specification of Charges (“Specification”). Respondent (through counsel) filed his Answer on February 16. A pre-hearing conference was held on March 15, 2024, and an order on March 21 followed setting the hearing dates and deadlines.

On April 8, Disciplinary Counsel issued a subpoena to “[p]roduce all documents previously requested in subpoenas . . . that were not previously produced,” and to “[p]roduce all documents submitted to the D.C. Attorney Client Arbitration Board [(ACAB)] by you or on your behalf” related to a client’s fee

dispute. Following Respondent's Motions to Enlarge Time to Respond and Motion to Quash Subpoena as to ACAB #2022-23/034 (the latter of which Disciplinary Counsel opposed), the Committee held a pre-hearing conference on May 24, 2024, to assist it in resolving these matters. An order on June 4 followed, which denied Respondent's Motions to Enlarge Time as moot, directed Disciplinary Counsel and Respondent to meet and confer about the completeness of Respondent's production, and granted Respondent's Motion to Quash Subpoena as to the ACAB materials. For the latter, the Committee explained that Disciplinary Counsel's subpoena was, by Disciplinary Counsel's own description, investigative. And because Disciplinary Counsel's investigation period had ended upon filing the Specification, Respondent's Motion to Quash the investigative subpoena must be granted.

At the March 15, 2024, pre-hearing conference, the parties agreed that the hearing would begin on July 15 and that the parties would exchange proposed exhibits and rebuttal expert reports by June 21. *See* Order, filed March 21, 2024. On June 21, Respondent filed a Motion to extend the deadline to June 26 to execute what was due. The Chair granted Respondent's Motion on June 24, but Respondent did not meet that June 26 deadline. Instead, Respondent filed a second motion for an extension until June 28, which the Committee denied on June 27.

Respondent sought reconsideration of only the portion of the June 27 Order denying his late filing and/or exchange of exhibits and exhibit lists. The Committee granted Respondent's Motion insofar as extending his deadline to exchange and file to 10:00 a.m. on July 8. Respondent lodged his List of Exhibits in the afternoon of

July 8 and submitted a Motion to late file, which the Committee granted that same day. (The Committee also denied Disciplinary Counsel’s Motion to Strike and for Expedited Response, without prejudice to Disciplinary Counsel objecting to the use of exhibits at the hearing, including objections based on prejudice from late identifications.)

A hearing was held on July 15-17 and August 7, 2024, before this Hearing Committee. Disciplinary Counsel was represented at the hearing by Assistant Disciplinary Counsel Jerri U. Dunston, Esquire. Respondent was present during the hearing and was represented at the hearing by Johnny M. Howard, Esquire.

During the hearing, Disciplinary Counsel submitted DCX 1-38, 40-63, 66-69, and 71, which were received into evidence.¹ Tr. 1131, 1133, 1139. Disciplinary Counsel called as witnesses Christine Chicherio, Tonja Bennett, Kimberly Edley, Esquire, Brian Kass, Esquire,² Charles Anderson, and Respondent.

¹ “DCX” refers to Disciplinary Counsel’s exhibits. “RX” refers to Respondent’s exhibits. “Tr.” refers to the transcript of the hearing held on July 15-17 and August 7, 2024. “FF” refers to the enumerated findings of fact in this Report and Recommendation. The following Disciplinary Counsel Exhibits were admitted over objection and/or with limitations: DCX 11 (objection and limitations), 14 (objection and limitations), 20-21 (objection and limitations), 24 (objection and limitations), 29-30 (objection and limitations), 40-63 (objection), 71 (objection). The following Disciplinary Counsel Exhibits were excluded: DCX 39, 70. Tr. 1131; *see also* Disciplinary Counsel’s Notice of Filing Exhibits, filed August 13, 2024 (noting that DCX 64 and 65 were not offered into evidence rather than having been excluded).

² Disciplinary Counsel called Brian Kass, Esquire, an experienced probate attorney in the District of Columbia, to provide expert testimony on probate practices and procedures in representing heirs to decedents’ estates in the District of Columbia and the reasonableness of Respondent’s attorney’s fees. Tr. 453-59 (Kass). Mr. Kass

Respondent submitted RX A (over objection) and RX B, which were both admitted. Tr. 1140. Respondent testified on his own behalf and called as witness Lyzka DeLaCruz, Esquire.

Upon conclusion of the hearing, the Hearing Committee made a preliminary non-binding determination that Disciplinary Counsel had proven at least one of the Rule violations set forth in the Specification. Tr. 1132; *see* Board Rule 11.11.

was knowledgeable and forthright in his testimony, but we do not assign much weight to his testimony about Respondent’s fees. We credit Respondent and his methods for keeping track of his time, and we find his descriptions of his entries instructive in providing corresponding context. We also found Respondent and Ms. Edley both generally credible, except as specified in our Findings.

By contrast, we found Ms. Bennett’s testimony scattered, confusing, and sometimes contradictory with other evidence in the record. Ms. Bennett’s testimony that Respondent charged an \$8,000 flat fee, for example, contradicts the retainer agreement Ms. Bennett signed on September 21, 2017. *See* DCX 7 (retainer agreement stating Respondent’s “time is billed at the rate of \$350 an hour, with a minimum retainer of \$7,000”); *see also* FF 8, 11. Ms. Bennett moreover characterized her fee agreement in different ways and with different amounts—further demonstrating to us that the retainer agreement should govern. *Compare, e.g.*, Tr. 118-19 (\$8,000 was the “fixed amount”), *and* Tr. 231 (same), *with* Tr. 128 (it would not be more than \$8,000), *and* Tr. 191 (same, discussing DCX 20); *see also* Tr. 124 (\$7,000 along with possible other expenses is “fine”); Tr. 177-78 (explaining that her claim in DCX 19 that the “fixed amount, which is not to exceed \$14,000” is mistaken, and referring to \$8,000); DCX 19 (Ms. Bennett stating that for “billable hours,” Respondent “deserves \$5,000 and that is being generous”). Finally, when Disciplinary Counsel asked Ms. Bennett for a complete set of her emails or communications with Respondent, Ms. Bennett provided only the ones “to support [her] claim” “about the abuse [she] was feeling.” Tr. 368-69; *see also* Tr. 367 (Ms. Bennett kept all communications with Respondent’s office). Mindful of this partial production, along with the testimony and other evidence just described, we did not find Ms. Bennett generally credible.

The Committee and the parties then discussed the post-hearing briefing schedule pursuant to Board Rule 12.1. Disciplinary Counsel agreed that its brief would be due by September 3. Tr. 1141. Respondent requested more time for his response brief (due September 13, per Board Rule 12.1), because his counsel was involved in another disciplinary matter beginning September 16. Tr. 1142. Respondent's counsel agreed with the Chair's proposal to have Respondent's brief due September 20. Tr. 1144. Disciplinary Counsel's reply would be due September 27. *Id.*

On September 3, Disciplinary Counsel filed a Consent Motion to extend the deadline until September 6 to file its brief. The Committee granted Disciplinary Counsel's request and extended Respondent's response brief deadline to September 23. Disciplinary Counsel submitted its Proposed Findings of Fact, Conclusions of Law, and Recommendation as to Sanction ("ODC Br.") on September 6.

On September 23, Respondent filed a Consent Motion seeking to extend his deadline to September 30 to file his response brief, citing the complexity of the issues, the need for a thorough review and analysis of the record, and the precedent for granting extensions in similar cases. The Committee denied his request. Respondent sought reconsideration, and the Committee granted Respondent's request on September 26.

On September 30, Respondent filed another Motion seeking to extend his deadline to October 2 to file his brief. In support, Respondent's counsel cited working 14-hour days and experiencing discomfort from a known illness. The

Committee granted Respondent's request and extended Disciplinary Counsel's reply brief due date to October 9.

On October 2, Respondent filed a Motion seeking another extension until October 7 to file his brief. In support, Respondent's counsel asserted that the volume of the record has proved to be too large to meet the deadlines. The Committee denied Respondent's Motion without prejudice to Respondent filing his post-hearing brief by October 7, 2024, along with a motion for leave to file out of time which should set forth good cause for Respondent's failure to meet the October 2, 2024, deadline.

Respondent sought reconsideration of the Committee's order and a further extension until October 11 to file his brief. The Committee denied Respondent's motion without prejudice to Respondent filing his post-hearing brief by October 9, 2024, along with a motion for leave to file out of time which again should set forth good cause. Respondent lodged his response brief on October 9 along with a Motion for Leave to File Out of Time, which the Committee accepted for filing and granted respectively. The Committee also set a due date of October 18 for Disciplinary Counsel's reply brief. Disciplinary Counsel sought an extension until October 25, which the Committee granted, and filed its reply brief ("ODC Reply") on that date.³

³ In its Reply, Disciplinary Counsel attaches copies of two emails—marked DCX 72 and 73—it wishes to introduce into evidence. ODC Reply at 5 n.2. It acknowledges that "they were not admitted into evidence during the hearing," but states they were part of Respondent's proposed exhibits that were served on Disciplinary Counsel on July 8, 2024, and presented to the Committee during the hearing. *Id.* It argues these emails are relevant to understanding the context of the emails in RX A (and thus its Rule 1.2(a) charge). *Id.* We will reopen the record and admit DCX 72 and 73 into

At the end of the hearing, the parties were also directed to file their respective signed exhibit list forms and exhibits within seven days of the end of the hearing. Tr. 1130-32; *see also* Order filed August 9, 2024. On August 13 and 14, Disciplinary Counsel filed two Notices of Filing Exhibits explaining that, contrary to the parties' stipulations at the hearing, DCX 40-63 were admitted over objection and that DCX 64-65 were never offered into evidence. Because Respondent did not file a response as to the accuracy of Disciplinary Counsel's Notices, the Committee accepted Disciplinary Counsel's amendments as true and ordered the parties to file their exhibit lists, exhibits, and excluded exhibits by September 5, 2024. *See* Order, filed August 28, 2024. Disciplinary Counsel did so; Respondent's submissions were not accepted for filing.

On December 18, 2024, the Committee directed Respondent to file its signed exhibit list with the Office of the Executive Attorney. After several subsequent filings by both parties, the Chair on February 11, 2025, admitted an additional exhibit, RX 13, into the record (but denied Respondent's request otherwise to admit all exhibits, except RX A and RX B), which appeared to be the only exhibit Respondent cited in his brief, other than RX A and RX B. Respondent also filed a Post-Hearing Request to Preserve Documents on February 18, to which the Chair on April 2 sought Disciplinary Counsel's response. Upon receipt, the Chair noted it

evidence (though as we explain, we find Disciplinary Counsel has not proven Respondent violated Rule 1.2(a)). Within *two weeks* of the publication of this Report and Recommendation, Disciplinary Counsel is directed to supplement the record with a new set of exhibits and a new exhibit list, which will include DCX 72 and 73.

appeared that Respondent was in possession of the documents he sought to preserve and thus denied Respondent's request. Respondent sought reconsideration and the Chair denied Respondent's request, noting that it appeared Respondent was attempting to resolve factual issues after the hearing had closed. *See* Board Rule 7.19, 12.1(b).

II. FINDINGS OF FACT

The following findings of fact are based on the testimony and documentary evidence admitted at the hearing, and are established by clear and convincing evidence. *See* Board Rule 11.6; *In re Cater*, 887 A.2d 1, 24 (D.C. 2005) ("clear and convincing evidence" is more than a preponderance of the evidence, it is "evidence that will produce in the mind of the trier of fact a firm belief or conviction as to the facts sought to be established" (quoting *In re Dortch*, 860 A.2d 346, 358 (D.C. 2004))).

A. Background

1. Respondent became a member of the U.S. District Court for the District of Columbia on January 28, 1968, and was automatically enrolled as a member of the District of Columbia Bar when it was created in 1972. *See* D.C. Code § 11-2501(c) (2001); DCX 3; Tr. 673-74 (Queen). He was assigned D.C. Bar Number 146340. DCX 3. Respondent is also admitted to practice in Maryland. Tr. 779 (Queen).

B. Count I: The Bennett Matter

2. In 2017, Respondent was hired by Tonja Bennett to represent her in a probate matter. Tr. 119-120 (Bennett).

3. Tonja Bennett teaches biology and environmental science at the college level. Tr. 108. She has an undergraduate degree in Biology. Tr. 273. She has also owned a yoga business for 12 years. Tr. 274. She has a master's degree in Biological Sciences with a concentration in Neuroscience and is working toward a second master's degree in Yoga Therapy. Tr. 108, 274-75. At 17 years of age, Tonja Bennett worked in a small law firm as a receptionist, and later while in college, she worked at a large firm as a researcher and was responsible for billing her work time. Tr. 238 (Bennett).

4. Ms. Bennett is the daughter of Maurice Toler and was born out of wedlock. Tr. 109 (Bennett). Mr. Toler died on November 3, 2015; his second and current wife, Vernise Steadman-Toler, died two days later. Tr. 110-12 (Bennett); Tr. 797 (Queen). The combined value of the couple's estates exceeded two million dollars. Tr. 814 (Queen).

5. Both probate matters were pending in the Superior Court of the District of Columbia. Tr. 111 (Bennett); Tr. 771 (Queen). As a child of Maurice Toler, whom he acknowledged during his lifetime, Ms. Bennett was identified in probate pleadings as one of his heirs. DCX 5 at 3; DCX 6 at 3; Tr. 112-13 (Bennett). In the course of the proceeding, however, Ms. Bennett's paternity was challenged. Tr. 111 (Bennett); Tr. 773 (Queen).

Respondent is hired and the parties sign a retainer agreement.

6. The attorney for Lesa Horton (Barbara Mann)—who was the original personal representative for Maurice Toler’s estate—declined to communicate directly with Ms. Bennett and insisted that she retain counsel. DCX 4 at 4; Tr. 113-15, 257 (Bennett).

7. Ms. Bennett, who lives in Georgia, spoke to Respondent about the probate case by telephone for about a year before she hired him. Tr. 115-16; 306-07 (Bennett).

8. On September 21, 2017, Ms. Bennett and her mother met with Respondent in his D.C. office to determine whether Ms. Bennett felt comfortable hiring him to represent her. Tr. 116-17 (Bennett); Tr. 793-94 (Queen). Ms. Bennett decided to hire Respondent, received both pages of the retainer agreement, and signed the second page of the agreement at the meeting. DCX 7; Tr. 794.

9. The first page of the retainer agreement contains its material terms. The agreement states that she will pay Respondent \$350 per hour. DCX 7 at 1. It states also that Respondent anticipates that it will take him 20 hours of work to establish her paternity, and that Ms. Bennett will pay a “minimum retainer” of \$7,000 in addition to litigation costs. *Id.*; Tr. 962 (Queen).

10. The retainer agreement does not address whether or how often Respondent will bill Ms. Bennett. *See* DCX 7. Respondent did not send Ms. Bennett any invoices during the representation. Tr. 175 (Bennett).

11. The retainer agreement Ms. Bennett signed does not state or otherwise indicate that Respondent would receive a “flat fee” for his services. *See* DCX 7. We do not credit her testimony that Respondent had agreed to charge an \$8,000 flat fee. *See supra* note 2.

Respondent’s engagement of Lyzka DeLaCruz and the draft motion for summary judgment.

12. Respondent emailed the opposing attorneys on March 26, 2018, at 5:12 p.m. and stated in pertinent part that “[he] intend[ed] to file a Motion for Summary Judgment on behalf of [his] client, Tonja Bennett. If granted, this ruling would benefit Maureen Toler and Durell Toler as well. If the Motion is granted, then the heirs of Vernise Steadman-Toler would not benefit from the estates.” RX A; Tr. 816 (Queen). Respondent “cc’ed” Tonja Bennett to this email. RX A; Tr. 816. Tonja Bennett responded by email on March 27, 2018, at 6:39 a.m. by saying: “What you are proposing is agreed upon by me.” RX A at 3.

13. Respondent hired an attorney from outside of his firm, Lyzka DeLaCruz, Esquire, to research the pertinent legal theory and to prepare a motion for summary judgment seeking to disinherit the Steadman-Toler heirs. Tr. 859-860 (Queen); Tr. 730-31 (DeLaCruz); DCX 68. Respondent’s January 18, 2018, letter to secure Ms. DeLaCruz’s work says nothing regarding the amount or composition of her compensation. *See generally* DCX 68. When Ms. DeLaCruz worked for Respondent as a subcontractor, her fee “would be agreed upon or [she] would just send an invoice.” Tr. 744 (DeLaCruz). Ms. DeLaCruz’s invoice to Respondent was time-based because it was based on the number of hours she worked on the motion

for summary judgment, multiplied by the rate she was charging him for her time. Tr. 744-46 (DeLaCruz). If Respondent did not pay her, she had no authority to seek payment from Ms. Bennett, because “the representation or the entity retaining [her firm] is who [her firm] would go after for payment.” Tr. 746 (DeLaCruz).

14. Respondent asked Ms. Bennett at their initial meeting if she would mind having a researcher/assistant help with her case, and she responded, “whatever you need, you know, no problem.” Tr. 129 (Bennett). Respondent did not identify Ms. DeLaCruz as the person he might hire or discuss whether he would share fees or responsibilities with Ms. DeLaCruz. *See* Tr. 129-130 (Bennett).

15. Respondent sent an email indicating that he prepared a draft motion for summary judgment and outlining the draft’s position to the lawyers representing both sets of heirs, without first reviewing the draft with Ms. Bennett. Tr. 269 (Bennett); *see* Tr. 862-63 (Queen). *But see* FF 12, 19 (Ms. Bennett was “cc’ed” and replied to the email “What you are proposing is agreed upon by me”).

The March 1, 2018, hearing.

16. A hearing was held on March 1, 2018, in the Toler and Steadman-Toler matters. DCX 4 at 6 (docket entry). Both Respondent and Ms. Bennett attended the hearing, and spoke either before or after. Tr. 912-13, 1020-21, 1039 (Queen).

17. The hearing lasted about an hour. Tr. 1028-29 (Stipulation). At the end of the hearing, the judge ordered the parties to mediation. Tr. 278-79 (Bennett). The judge took the Motion to Establish Paternity that Respondent had filed on

Ms. Bennett's behalf under advisement pending the mediation. Tr. 808 (Queen); *see also* Tr. 279 (Bennett).

18. Following the hearing, Respondent did not respond to Ms. Bennett's subsequent requests that he contact her. Tr. 136-38, 142-46 (Bennett); DCX 8; DCX 9; DCX 10; DCX 66.

The April 30, 2018, mediation and settlement.

19. The court-ordered mediation was scheduled for April 30, 2018. DCX 4 at 7 (docket entry). Before the mediation, Respondent did not ask Ms. Bennett what she wanted to get out of the process. Tr. 965 (Queen). However, Respondent communicated in writing the position he planned to pursue at mediation by including Ms. Bennett on the email he sent to the opposing attorneys indicating his intent to file the motion for summary judgment and its possible consequences. RX A; Tr. 815-16. Ms. Bennett responded in an email, stating "What you are proposing is agreed upon by me." RX A at 3; *see* FF 12. Ms. Bennett was present at mediation and conferred with Respondent in real time regarding the matters discussed in mediation. Tr. 268-270 (Ms. Bennett stepped outside with Respondent during the mediation to discuss the division of proceeds).

20. Consistent with the stated theory of his draft motion for summary judgment, Respondent took the position in the mediation that the assets from both estates should go only to the Toler heirs, and the Steadman-Toler heirs should take nothing. Tr. 815-16 (Queen). During the mediation, the mediator asked Ms. Bennett

and Respondent to go out into the hallway and discuss her position. Tr. 269-272 (Bennett).

21. By the end of the mediation, the other heirs acknowledged that Ms. Bennett was Maurice Toler's daughter. Tr. 825-26 (Queen). The parties also resolved the inheritance by agreeing that the Toler and Steadman-Toler heirs would each receive 50% of the two estates. Tr. 823-24 (Queen).

22. By the date of mediation on April 30, 2018, Respondent had expended about \$18,000 in billable time. Tr. 843 (Queen). He realized that Ms. Bennett's case was more complicated than he had anticipated, and he had spent more than the 20 hours he had initially estimated on the matter. Tr. 909 (Queen). Respondent never told Ms. Bennett how much time he had spent or that he would seek fees in excess of the amount he originally estimated, but Respondent provided Ms. Bennett with copies of all documents he was filing. Tr. 909-910 (Queen); *see* DCX 7 at 1.

Respondent's lack of communication with Ms. Bennett after the settlement.

23. Respondent last saw or spoke in person with Ms. Bennett at the end of the mediation in April 2018. Tr. 152 (Bennett).

24. After the mediation, Ms. Bennett attempted to contact Respondent several times to discuss issues including paternity, the status of the cases, and the fees being charged to the estates by the personal representative's attorney. Respondent did not respond to her questions and requests for a telephone call. Tr. 147-152, 164-66, 266-67 (Bennett); Tr. 866-67, 875-77, 879-880 (Queen); DCX 11 at 1; DCX 12; DCX 14; DCX 17.

The September 2018 first partial distribution of Ms. Bennett's inheritance and Respondent's failure to notify and deliver.

25. In September 2018, Respondent learned that he would receive \$133,334 on Ms. Bennett's behalf as the initial partial distribution of the estate. DCX 15 at 5 (Stipulation of Heirs).

26. Respondent did not inform Ms. Bennett about the anticipated partial distribution. Tr. 868-69 (Queen); Tr. 158-160 (Bennett). It is common practice for a lawyer to inform the client about this anticipated event. Tr. 483-84 (Kass).

27. On September 24, 2018, the attorney for the personal representative sent Respondent \$128,665.84.⁴ DCX 16; Tr. 974-77 (Queen).

28. Respondent did not tell Ms. Bennett about the partial distribution when he received it. Tr. 977 (Queen). He did not deliver the partial distribution to Ms. Bennett. Tr. 831 (Queen).

Respondent's continued failure to communicate with Ms. Bennett.

29. Respondent did not inform Ms. Bennett when the original personal representative of the estate petitioned to resign or when a successor had been appointed. DCX 4 at 9-10 (September 12 and November 5, 2018, docket entries); Tr. 168-69 (Bennett). He did not tell her when the other heirs challenged the fees charged by the original representative's attorney through a series of court filings. DCX 4 at 10-11 (October 12, 2018, and February 27, 2019, docket entries); Tr. 172

⁴ The estate withheld approximately \$4,670 for expenses it expected to incur related to transporting certain estate property to Ms. Bennett in Georgia. *See* Tr. 831 (Queen).

(Bennett). He did not inform Ms. Bennett when the decedents' home was sold. Tr. 169 (Bennett).

30. The original personal representative wanted to purchase a vehicle owned by the estates. Tr. 286 (Bennett). Beginning in June or early July 2019, the successor personal representative, Kimberly Edley, sought the written consent of the heirs to avoid seeking court approval for the sale. Tr. 387-89 (Edley).

31. In August 2019, the successor personal representative, Ms. Edley, had the written consent of all the heirs except for Ms. Bennett. Tr. 389-390 (Edley); *see also* Tr. 390 (Ms. Edley testifying that Respondent said, a month or two earlier, that Ms. Bennett "orally consented"). Respondent emailed Ms. Bennett requesting her written consent as part of his status update on September 6, 2019. DCX 18.

Respondent's belated notification to Ms. Bennett about the receipt of her inheritance, his refusal to provide it to her or account for it, and his demand for indemnification.

32. Respondent did not inform Ms. Bennett about the partial distribution of the estate or other developments in the case until September 2019, a year after he received the distribution. *See* DCX 16; DCX 18. He did not tell her that he had been holding her inheritance for almost a year, and he did not send any of the money to her. *See* DCX 18. Respondent admitted he had "lost focus on the fact that the funds were [in the trust account], . . . because of all of the activity that was going on in the estate and the other caseload that [he] had." Tr. 832-33, 873 (Queen).

33. In his September 2019 communication, Respondent, for the first time, told Ms. Bennett about the sale of the house, the payment of a substantial tax

liability, and the remaining money in the estates. Tr. 169-171 (Ms. Bennett did not know about payment of taxes or sale of the house prior to the September communication), 384-86 (Ms. Edley sold the house in July 2019); DCX 18. He also requested Ms. Bennett sign the consent form for the former personal representative's purchase of the estate car. DCX 18; FF 31.

34. Instead of sending Ms. Bennett the distribution, Respondent offered to give her a portion—\$100,000—but only if she signed an agreement which required her “to indemnify and hold harmless Thomas H. Queen, Esq. and Thomas H. Queen and Associates from any and all claims and liabilities made against them on behalf of the [Toler and Steadman-Toler] Estates.” DCX 18 at 1, 3. Paragraph six of the Stipulation of Heirs noted that the “heirs, through Counsel, agree[d] to refund any, or all, of this preliminary distribution within 30 days of written demand by the Successor [Personal Representative].” DCX 15 at 3. This was a “claw-back” provision where the monies may need to come back from the beneficiaries to the successor personal representative. Tr. 502-05, 542 (Kass).

35. Respondent also told Ms. Bennett that he intended to charge her more than \$20,000 for his work. DCX 18 at 1. He told her that he would keep the balance of her inheritance—over \$28,000—until the end of the representation to pay for attorney's fees and costs. *Id.* He said he would return the difference if the fees and costs totaled less than the amount he was holding. *Id.*; Tr. 175, 231 (Bennett). Ms. Bennett had never agreed that Respondent could withhold more than \$28,000

from her inheritance. Tr. 175 (Bennett); Tr. 501-02 (Mr. Kass discussing the retainer agreement).

36. Ms. Bennett refused to indemnify Respondent. Tr. 173-74 (Bennett).

37. Ms. Bennett called and emailed Respondent's office expressing her anger, concern, and dismay. DCX 19-21; Tr. 176-186 (Bennett). She demanded that Respondent provide an accounting of his hours of work that would justify over \$20,000 in fees. *See* DCX 19 (September 18, 2019, 4:12 a.m. email). Respondent did not provide it when asked. *Id.*; Tr. 183 (Bennett); Tr. 890-91 (Queen).

38. Respondent concedes that he did not intend to give Ms. Bennett her inheritance unless she signed the indemnification agreement. Tr. 881 (Queen). Ms. Bennett refused to sign the agreement, and Respondent did not give Ms. Bennett her money. Tr. 174-75 (Bennett).

Ms. Bennett terminates Respondent's services but Respondent is not aware.

39. On November 7, 2019, Ms. Bennett emailed Respondent. DCX 24. Her email said that she wished "to end [her] relationship with the Law Offices of Thomas Queen" and asked him to "forward [her] contact information to all reaching out in regard to [her]." *Id.*; Tr. 193-95 (Bennett). Respondent asserts he never received this email and was unaware he had been fired until Disciplinary Counsel informed him during the investigation and subsequent proceedings. Tr. 895-96, 997 (Queen). We credit Respondent on this point. Tr. 896 ("If I had seen the document of November 7, 2019, I would have gladly withdrawn my appearance, And so

I never saw that email . . . terminating me. And that’s why I continued representing her.”); Tr. 997 (Queen);⁵ *see also* Tr. 508-09 (Kass).

40. Without seeing Ms. Bennett’s email, Respondent could not and did not respond to Ms. Bennett’s email, and did not surrender any portion of the partial distribution he received on her behalf. *See* Tr. 195 (Bennett); Tr. 895-96 (Queen).

41. Respondent did not withdraw his appearance in the case or inform the other parties and the successor personal representative, Ms. Edley, that he no longer represented Ms. Bennett. But again, Respondent had no reason to know he should perform these actions. *See* DCX 4 (no docket entry); Tr. 393-94, 397, 403-04 (Edley); Tr. 895-96 (Queen).

⁵ We note that DCX 31 memorializes a phone conversation Ms. Chase (Respondent’s legal assistant—DCX 2 at 7) had with Ms. Bennett on January 29, 2020, and DCX 29 is a November 21, 2019 email from Ms. Edley to Respondent. The January note states in part that Ms. Bennett “sent a letter to everyone telling them [she] no longer use[s] [Respondent’s] services.” DCX 31. Several other words are also all capitalized, bolded, and/or underlined. *Id.* Respondent acknowledged seeing the message but was not certain he read it “word for word” because he “thought that Ms. Bennett was just venting, and Ms. Chase had gotten frustrated in dealing with Ms. Bennett.” Tr. 997-98 (Queen). We credit Respondent’s testimony insofar that he still was unaware that he no longer represented Ms. Bennett. Ms. Edley’s November 21 email notes she is sending partial distributions and asks Respondent whether he still represents Ms. Bennett. DCX 29. We do not have clear and convincing evidence Respondent saw or responded to this email, nor that he knew his services were terminated. Respondent also did not believe he needed to provide any services after his last entry of services on November 20, 2019 (except deliver two checks to Ms. Bennett in August and September 2020 respectively). Tr. 896-901 (Queen). This does not alter our credibility finding that Respondent still believed he represented Ms. Bennett.

Respondent communicates with the successor personal representative.

42. When Respondent was (supposedly) fired, Ms. Edley was still seeking to obtain Ms. Bennett's written consent to sell the estate car to the former personal representative. She had asked Respondent twice in October 2019 if she could contact Ms. Bennett directly, but Respondent did not reply. DCX 22; DCX 23; Tr. 391-92 (Edley); Tr. 991 (Queen).

43. Respondent did not inform Ms. Edley that he had been discharged, Ms. Bennett was no longer represented by counsel, and she was therefore free to reach out directly. DCX 22; DCX 23; Tr. 391-92 (Edley); Tr. 991 (Queen). Again, Respondent was unaware he no longer represented Ms. Bennett. His failure to do so was directly contrary to Ms. Bennett's request that he forward her contact information to the other parties in the case, but this instruction was found in Ms. Bennett's November 7, 2019, email which Respondent did not receive.

44. Respondent eventually wrote to Ms. Edley on November 12, 2019: "I suggest that you file the motion indicating that you have the consents of all parties except Tonja Bennett, and that based upon communications with her attorney, you do not expect that she will object to the motion. . . . Unless she specifically instructs me to do so, and I do not believe that she will, I will not file any objection to the motion." DCX 25; *see also* Tr. 396-97 (Edley).

45. Ms. Edley learned that Respondent no longer represented Ms. Bennett from another attorney on the case whom Ms. Bennett had contacted to find out what was happening in the matter. After attempting unsuccessfully to confirm that

information with Respondent, Ms. Edley contacted Ms. Bennett directly. DCX 29; DCX 30 at 1; Tr. 195-96 (Bennett); Tr. 403, 406-08, 425-27 (Edley).

Respondent gives Ms. Bennett a portion of her inheritance.

46. On or shortly before December 5, 2019, and with her understanding that Respondent no longer represented Ms. Bennett, Ms. Edley sent Ms. Bennett \$75,000 as a second distribution from the estate. *See* DCX 27 at 1-2 (November 19, 2019, email from Ms. Edley to Respondent and others about proposed partial distribution); DCX 29 (November 21, 2019, email from Ms. Edley to Respondent asking if he still represents Ms. Bennett); DCX 30 (December 5, 2019 email from Ms. Edley explaining she had “spoken with [Ms.] Bennett who advised me . . . she is no longer represented by [Respondent]”); DCX 1 at 14, ¶ 44 (“On December 5, 2019, Ms. Edley paid the second distribution of \$75,000 directly to Ms. Bennett.”); Tr. 196-97 (Bennett); Tr. 395, 407-08, 441 (Edley). In their continuing conversations, Ms. Edley asked Ms. Bennett if she had received the initial partial distribution of approximately \$130,000 in 2018. *See* FF 25, 27-28. Ms. Bennett told her that she had not received the distribution. Tr. 197-98, 201-04 (Bennett); Tr. 409-410 (Edley).

47. On August 14, 2020, Ms. Edley emailed Respondent, her email stating in part: “A very serious accusation has been made against you by your former client, Tonja Bennett. She states that you never gave her the first partial distribution issued by the estates” DCX 34; Tr. 409-410 (Edley).

48. Respondent did not reply to the email, Tr. 411 (Edley), but on August 14, 2020, he sent Ms. Bennett by express mail a check for \$103,000, stating in his cover letter that he would provide her with a statement of services within ten days and then refund any unused portion of the \$20,000 that he was still holding. DCX 35; Tr. 845-46, 899 (Queen).

49. When the ten days elapsed, Respondent did not provide Ms. Bennett with the promised statement. Tr. 209 (Bennett); Tr. 846, 899 (Queen).

50. Wanting Ms. Bennett “to be made whole,” Respondent sought advice from Chris Hagans (a former auditor of the court) about how much to send Ms. Bennett in interest for withholding roughly \$130,000 from her for 23 months. Tr. 846-48. Though learning that interest was less than one percent, Respondent sent Ms. Bennett a letter in September 2020 enclosing a check for \$5,000, approximately double the rate of interest computed based on Mr. Hagans’ figure. DCX 37 at 1-2; DCX 38; Tr. 847-48 (Queen).

Respondent bills Ms. Bennett.

51. In the same September 2020 letter, Respondent gave Ms. Bennett a statement detailing his work on the matter. DCX 37 at 4-8.

52. Respondent testified about how he keeps track of time detailing his work. Specifically, Respondent stated he records time manually on time slips and prepares them contemporaneously with the service that is reflected. Tr. 821-22 (Queen). And after Respondent attends a hearing, Respondent explained he records

the amount of time he expended on his time sheet, and that becomes the basis for the statement of services. Tr. 1039-40 (Queen). We credit Respondent on these points.

53. Respondent charged Ms. Bennett \$1,050 for three hours of time he expended before she hired him. DCX 37 at 4 (charges for work between July 18 and September 20, 2017, including 1) Reviewing docket printout and related notes on July 18, 2017 (for 0.5 hours); 2) Reviewing “Will, etc.” on July 31, 2017 (for 1 hour); 3) Talking with client about “DNA testing; retainer, etc. and appointment” on September 18, 2017 (for 0.5 hours); and 4) “Ltr re fees; prep questionnaire” on September 20, 2017 (for 1 hour)). Respondent’s retainer agreement did not state that he would charge for such time. DCX 7; Tr. 776-78 (Queen). When personal representatives (and not interested parties) call Respondent for his services, Respondent tells them that that “if you decide to retain me, then the time that I’ve spent is just rolled into the retainer. If you decide that you don’t want to represent me [sic], then there’s no charge. I only charge people a consultation fee for coming in and talking to me about estates.” Tr. 773-74 (Queen). Respondent communicated this to Ms. Bennett. Tr. 776-77 (Queen); *see also* Tr. 779-80 (it was his “habit” of communicating to clients that if the client retained him, the prep work and consultation would be rolled into the retainer charge).

54. Respondent charged Ms. Bennett \$350 for an hour’s work to prepare and file his notice (or praecipe) of appearance on November 21, 2017. DCX 37 at 5; DCX 67 at 1. This included retrieving the praecipe off the court’s website and entering the more standard information (like the case name, attorney’s name).

Tr. 490, 520-21 (Kass). This also included, importantly, ensuring that the interested persons received this praecipe and certifying that he took steps to mail or communicate this document to the list of interested persons. Tr. 521-22, 525 (Kass). There were 23 interested parties in Ms. Bennett’s matter—including one who lived in Scarborough, Ontario, seven parties located in Trinidad, and others located throughout the United States. DCX 67 at 2-4.

55. Respondent charged Ms. Bennett \$525 for one and a half hours on January 14, 2018, for “Email Atty. DeLaCruz re: Motion for Sum Jdgmt and Resp—issues.” DCX 37 at 5. Mr. Kass found this charging one and a half hours for this was excessive, and that this is true “regardless of the content of the email.” Tr. 492, 514, 526, 555 (Kass). However, Mr. Kass also could not say if he reviewed the email referenced in this entry, and his memory was not refreshed. Tr. 513-14 (Kass). We do not credit Mr. Kass’ testimony here.

56. Respondent charged Ms. Bennett \$1,750 for five hours of work on the day of the March 1, 2018, hearing. DCX 37 at 5. The entry states “Hearing; conf/w/clt; conf w/Atty. Mann and follow up.” *Id.* The hearing lasted a little less than an hour. FF 17. Ms. Bennett came up from Atlanta for the hearing, and Respondent spoke with her either before or afterwards. Tr. 913, 1020-21, 1039 (Queen). Though Respondent did not believe there was something that would have taken him hours to discuss with Ms. Mann or Ms. Bennett (Tr. 1023), we find Respondent’s description of services—completed shortly after the hearing—a more

reliable indicator of what had occurred (compared to recalling events that happened six years ago).

57. Respondent charged Ms. Bennett \$1,225 for three and a half hours of work on March 26, 2018. DCX 37 at 6. The entry states: “Email to Miller re: settlement position; emails to attorneys re Consent to Motion for Summary Judgment; prep CSS (Confidential Settlement Statement).” *Id.* Respondent prepared the Confidential Settlement Statement (“Statement”) when preparing for mediation (DCX 61 at 91), which also included reviewing 27 documents for this important moment in the case. Tr. 815-16 (Queen). Respondent was entitled to bill for preparing the Statement, including any notes or otherwise. Tr. 529 (Kass). Filling out the Statement included describing the facts (about nine lines) and importing biographical information about the case (like the Mediation date, Respondent’s name and address, etc.). DCX 69. Mr. Kass believed completing the Statement—including preparation—should take a maximum of 30 minutes, but we give little weight to his testimony. Tr. 528-29 (Mr. Kass believing there is little to any thought in preparing the Statement because the attorney has already gone through the case for quite some time). The email about Respondent’s intent to file a motion for summary judgment is two short paragraphs. RX A at 1.

58. Respondent billed \$525 for one and a half hours to “Rev. outline status memo for clt,” on July 7, 2019. DCX 37 at 7. Respondent then billed \$700 on September 5, 2019, for two hours to “Prep status report to clt.” DCX 37 at 8. He then sent Ms. Bennett a status update the following day. DCX 18.

59. Respondent charged Ms. Bennett \$210 for 0.6 hours of work on November 12 and 20, 2019. DCX 37 at 8. Ms. Bennett had fired Respondent on November 7, 2019, though again Respondent was not aware.

60. Respondent charged Ms. Bennett \$2,500 for work performed by Ms. DeLaCruz. DCX 37 at 8. Mr. Kass conceded that the summary judgment motion prepared by Ms. DeLaCruz was a “very well made motion” that was “well researched” and “well written,” and that \$2,500 was a reasonable charge for preparing that brief. Tr. 498-99, 533 (Kass).

Impacts of Respondent’s conduct.

61. The estates were closed in October 2022. DCX 4 at 14 (October 26, 2022, docket entry).

62. Ms. Bennett testified that she really wanted to purchase a beach property for her family after the mediation, but she “will never be able to do [so] because the prices have quadrupled.” Tr. 234-35 (Bennett). We do not have sufficient specificity and detail to credit Ms. Bennett about the financial harms she incurred, but we credit Ms. Bennett’s testimony that she was distressed and frustrated. *See* Tr. 234-35 (Bennett).

63. Ms. Edley had multiple responsibilities as successor personal representative—including getting all the accounts approved, handling taxes, and getting the car sold—and “in hindsight [would not] have wanted to spend five months talking about [receiving] consent for a car.” Tr. 427-28, 446 (Edley). Trying

to obtain Ms. Bennett’s consent to sell the car consumed more time than nearly every other issue in handling the estate. *See* Tr. 387-395, 416-17, 427-28, 446 (Edley).

64. By August 2019, Ms. Edley had everyone but Ms. Bennett’s written consent to sell the estate car. Tr. 390 (Edley). After two emails to Respondent (DCX 22 & 23), Respondent emailed Ms. Edley (on November 12, 2019), suggesting she file the motion “indicating that you have the consents of all parties except [Ms. Bennett], and that based upon communications with her attorney, you do not expect that she will object.” DCX 25. After a follow-up email to interested parties about consent to sale of the car (DCX 26), Ms. Edley learned from another attorney that Respondent (supposedly) no longer represented Ms. Bennett. Tr. 405-07 (Edley). Ms. Edley emailed Respondent twice more about distributions of the estate—the latter also asked if he still represented Ms. Bennett. DCX 27; DCX 29. Hearing no response, Ms. Edley contacted Ms. Bennett directly. *See* DCX 30 at 1; Tr. 403, 406-08, 426-27 (Edley).

65. Ms. Edley testified she could not close the estate until Ms. Bennett received the initial distribution, because it was her job to make sure that the estate is administered properly before it is closed. Tr. 420-21 (Edley). We credit Ms. Edley’s testimony insofar as this was her belief.

C. Count II: Respondent’s Dealings with the Office of Disciplinary Counsel.

Disciplinary Counsel’s November 2020 request.

66. On November 9, 2020, Disciplinary Counsel emailed Respondent a letter notifying him about Ms. Bennett’s disciplinary complaint and asking

Respondent to respond to the complaint and provide Ms. Bennett's client file.⁶ The deadline for Respondent's response was November 19, 2020. DCX 40. Respondent received the letter. Tr. 680-81 (Queen).

67. On November 23, Respondent apologized for not responding by November 19, noted he was in the process of engaging counsel, and requested a 20-day extension to respond. DCX 41. In an email on November 23, Disciplinary Counsel acknowledged Respondent's assertion that he was in the process of retaining counsel and extended Respondent's deadline to respond until December 14, 2020. *Id.*

68. On February 1, 2021, the Office of Disciplinary Counsel emailed Respondent, stating (in part) it had not received his response nor an update about whether he hired counsel. DCX 42 at 2. It gave Respondent until February 8, 2021, to respond to the complaint. *Id.*

69. Respondent replied the next day on February 2, noting his office was closed on February 1 because of inclement weather. DCX 42 at 1. Respondent was "surprised" to receive Disciplinary Counsel's email because he "formally engaged Johnny Howard on November 29, 2020" and that he emailed Mr. Howard "a copy of the Complaint on the same date that [Disciplinary Counsel] emailed it to me." *Id.* Respondent was "under the impression that [Mr. Howard] had been in contact" with

⁶ Although the letter refers to a subpoena, DCX 40 at 1, the subpoena inadvertently was omitted. Disciplinary Counsel ultimately served Respondent with a subpoena for the client file on July 7, 2021. DCX 50 at 1.

Disciplinary Counsel “to obtain an extension of time to file a substantive response.” *Id.* Respondent then provided Mr. Howard’s contact information, mentioned he would provide Mr. Howard a copy of Disciplinary Counsel’s February 1 email, and apologized for “the failure to submit a substantive response.” *Id.* The Office of Disciplinary Counsel replied stating it had “no record of Mr. Howard contacting our office” and that it “will reach out to [Mr. Howard] to follow-up on your response.” *Id.*

70. These few exchanges demonstrate that Respondent responded to Disciplinary Counsel when he was contacted directly. And we credit Respondent’s consistent testimony (as explained further below) that he provided materials to, and relied on, Mr. Howard to comply with Disciplinary Counsel’s investigatory requests. *See, e.g.*, Tr. 685-86 (provided Mr. Howard with box of requested client files); Tr. 690 (“I turned all those things over to Mr. Howard.”); Tr. 690-91 (Respondent relied on Mr. Howard to comply with Board Order); Tr. 692-93 (Respondent made box of files available to Mr. Howard and expected him to respond, as all of Disciplinary Counsel’s requests went to him); Tr. 700-07 (Respondent expected Mr. Howard to do what needed to be done to represent him, including to timely comply “with the attendant obligations”); Tr. 708-12 (When Respondent knew Mr. Howard did not timely respond to something, he expressed his concerns and believed Mr. Howard would timely comply with all obligations).

71. Mr. Howard emailed the Office of Disciplinary Counsel on February 3, 2021. DCX 43. He stated that “[c]onsistent with the electronic mail from my client,

Attorney Thomas H. Queen, I will forward the response to your inquiry in the subject matter on February 8, 2021.” *Id.* The Office of Disciplinary Counsel acknowledged Mr. Howard’s email a few minutes later. *Id.*

72. On February 8, Mr. Howard requested an extension of time to respond. DCX 44 at 1. He stated “I will need additional time While I believe that I will have completed my work by week’s end, I request a week from today to submit the response.” *Id.* Mr. Howard’s request did not mention Respondent, much less explain that he needed Respondent’s help to provide a response. *See id.* The Office of Disciplinary Counsel extended Mr. Howard’s deadline to respond until February 15. *Id.*

73. On February 16, Mr. Howard requested a two-day extension because he “encountered some issues with the assembly of the documents that cannot be resolved by day’s end.” DCX 45 at 1. Again, Mr. Howard did not mention Respondent (nor that he needed Respondent to comply with responding to the Complaint.) *Id.* The Office of Disciplinary Counsel granted an extension until February 19. *Id.* When Disciplinary Counsel did not hear from Mr. Howard by that deadline, it emailed him again on February 23. DCX 46.

74. Still not hearing from Mr. Howard, Disciplinary Counsel followed up with a letter on March 8, 2021. DCX 47. It was addressed to Respondent and sent “via email only to” Mr. Howard’s email address. *Id.* at 1. It requested a written response to each of the allegations in the complaint by March 18, 2021. *Id.* Though Respondent assumes Mr. Howard sent him a copy of this letter at that time, he was

not certain if he was aware Disciplinary Counsel had not received a response in March 2021. Tr. 687-89 (Queen). Respondent reiterated that “almost as soon as [Disciplinary Counsel] sent me the first letter and asked for whatever it is that you asked for, I hired [Mr. Howard] and he was to respond.” Tr. 688 (Queen).

75. Receiving no response, and five months after its original request, on April 29, 2021, Disciplinary Counsel filed a motion to compel with the Board on Professional Responsibility. DCX 48. Respondent became aware of this motion “[a]t some point in time,” but not necessarily before the time for his response was due. Tr. 690 (Queen). Respondent was counting on Mr. Howard to respond. *See id.* (“Mr. Howard did not file any opposition. I turned all those things over to Mr. Howard. I’m responsible, but he was my representative.”).

76. After receiving no objection, the Board granted Disciplinary Counsel’s Motion on May 21, 2021. DCX 49. It directed Respondent to respond to the Complaint within ten calendar days. *Id.* Respondent again was not certain he saw the Board Order, but assumes that he did. Tr. 690-91 (Queen). He relied on Mr. Howard to comply. *Id.*

77. Disciplinary Counsel received a response on June 6, 2021. *See* DCX 50 at 2. The response included a portion of the client file but no financial records. *Id.* In a letter sent to Mr. Howard’s email, Disciplinary Counsel set a deadline of July 19, 2021, to produce the complete client file, including all financial records related to Ms. Bennett’s case. *Id.* at 1-2.

78. Mr. Howard emailed Disciplinary Counsel on July 30, 2021, stating “[p]lease accept the attached additional documents from my client’s file.” DCX 51 at 2.

79. On August 6, 2021, Mr. Howard had a call with an attorney from the Office of Disciplinary Counsel. See DCX 51 at 1 (subsequent email from Disciplinary Counsel to Mr. Howard). Mr. Howard believed he had sent Disciplinary Counsel a box of Respondent’s records, which Respondent had provided to Mr. Howard. *Id.*; Tr. 685 (“One [request] was for Tonja Bennett’s file. That was in one single box. I provided that to Mr. Howard.”); Tr. 692 (“And once I received the communications from [Disciplinary Counsel], the box was made available to Mr. Howard.”). But Disciplinary Counsel had not received it, and Respondent was not aware of this fact. DCX 51 at 1; Tr. 658-660 (Anderson); Tr. 692 (Respondent does not “really recall being aware. . . . And when [Mr. Howard] turned it over, I’m not certain”). This box had Ms. Bennett’s “complete file.” Tr. 692 (Queen). Mr. Howard and Disciplinary Counsel agreed that by August 13, 2021, Mr. Howard would provide the complete client file and a complete response to questions about handling Ms. Bennett’s partial distribution. DCX 51 at 1. Mr. Howard submitted additional materials to Disciplinary Counsel on October 26, 2021, November 29, 2021, and August 23, 2022. DCX 52 at 4-5.

Disciplinary Counsel’s May 8, 2023, requests.

80. On May 8, 2023, Disciplinary Counsel asked for further information (23 questions) and issued a subpoena for records relating to the representation and

the trust account in which Respondent had deposited the partial distribution of Ms. Bennett's inheritance. DCX 52 at 1-5; DCX 52 at 6-9; Tr. 647-48 (Anderson). It was emailed to Mr. Howard. DCX 52 at 1. The deadline for Respondent's response was May 22, 2023. *Id.* Respondent was aware of Disciplinary Counsel's requests for bank statements, and he testified that he provided the documents he had. Tr. 699-700 (Queen). We credit his testimony in the absence of evidence to the contrary.

81. Mr. Howard emailed Disciplinary Counsel on May 22 requesting an extension until June 6. DCX 53 at 2. Specifically, Mr. Howard wrote that “[m]y client and I” need more time “to complete the responses to the questions and documents demanded in the subpoena dated May 8, 2023.” *Id.* Disciplinary Counsel emailed Mr. Howard agreeing to his proposed extension. *Id.* at 1.

82. Disciplinary Counsel did not hear from Mr. Howard (or Respondent), and at 4:29 p.m. on June 6 (the deadline date), Disciplinary Counsel thus emailed Mr. Howard asking him to explain the lack of production. DCX 54 at 2. Mr. Howard responded that he and Respondent are still gathering information, and that he (Mr. Howard) is “running behind schedule and . . . will be able to send completed responses [tomorrow].” *Id.* at 1. Disciplinary Counsel agreed to a one-day extension. *Id.*

83. Disciplinary Counsel did not receive a response. DCX 55. So it emailed another letter to Mr. Howard on June 8. *Id.* Disciplinary Counsel's letter stated it will “be taking appropriate steps to move this investigation forward.” *Id.*

Respondent assumes he was made aware of this letter and expected Mr. Howard to comply in a timely manner. *See* Tr. 701 (Queen).

84. Mr. Howard and Disciplinary Counsel thereby exchanged several emails from June 8 through June 12. DCX 56. Mr. Howard mentioned that the completion is “taking longer than expected,” that he was experiencing a medical issue with his neck, and finally that he would send everything by June 12. *Id.* Disciplinary Counsel further allowed Mr. Howard to submit materials on a rolling basis (as long as the pace of production was reasonable). *Id.* at 3.

85. Mr. Howard emailed Disciplinary Counsel on June 12, 2023, at 9:29 p.m., attaching documents and noting that additional submissions would follow the next day. DCX 57. Respondent was not aware of Mr. Howard’s partial production. Tr. 702 (Queen).

86. Disciplinary Counsel then emailed Mr. Howard twice—first asking to provide verification from Respondent that Mr. Howard’s attached documents are complete and accurate. DCX 58 at 1. Disciplinary Counsel reiterated its request in a second email, where it also noted it did not receive Respondent’s responses to its May 8, 2023, written requests, and that it did not have all documents it requested in the subpoena. *Id.* Respondent was not aware that Mr. Howard never made an additional submission. Tr. 702-03 (Queen). Nor was Respondent aware that Disciplinary Counsel never received written responses to the May 8 written requests. Tr. 703 (Queen).

87. On June 15, Disciplinary Counsel again emailed a letter to Mr. Howard, which again asked Respondent to verify the June 12 partial production. DCX 59 at 1. Respondent was unsure if he was aware of this letter around the time it was sent. Tr. 704 (Queen). The letters Respondent did see were sometimes “so confusing” that he “couldn’t begin to understand them.” Tr. 705 (Queen). Respondent assumed Mr. Howard understood them and that he would comply. *Id.*

88. Disciplinary Counsel and Mr. Howard then exchanged three emails—two from Disciplinary Counsel and one from Mr. Howard. DCX 60. Mr. Howard explained he would “need more time . . . to complete the submission to the subpoena” because he would be returning from vacation after the new deadline of June 23 to respond. *Id.* at 1.

89. Disciplinary Counsel then filed a motion to compel, which the Board granted on July 14, 2023. DCX 61; DCX 63. Respondent’s compliance was due on July 24, 2023. DCX 63. Respondent became aware Disciplinary Counsel filed, and that the Board granted, the motion to compel. Tr. 715-16 (Queen). But he was unsure when he became aware of either, and he believed Mr. Howard did not oppose the motion. *Id.* When he became aware of the Board order, he relied on Mr. Howard to “do what it is that he’s supposed to do.” Tr. 716 (Queen).

90. On July 31, Mr. Howard emailed Disciplinary Counsel again requesting an extension “[d]ue [to] the vacation schedule of key personnel.” DCX 62. Disciplinary Counsel did not consent. *Id.* at 1. It noted that if Mr. Queen “has the information we have been seeking, he should produce it promptly. . . . [And] [i]f he

does not have the information, he should say so promptly.” *Id.* Respondent did not believe he saw this email from Disciplinary Counsel. Tr. 713 (Queen).

91. Mr. Howard did not meet the Board order’s deadline. Tr. 569 (Anderson). Nor did Mr. Howard provide missing attachments, signed copies, or unredacted copies of documents from the partial production. Tr. 663 (Anderson).

92. Respondent was aware that on several occasions Disciplinary Counsel asked to meet with him. Tr. 716 (Queen). Respondent explained that Disciplinary Counsel asked Mr. Howard to arrange a meeting time, and that he provided Mr. Howard with several dates when Respondent was available. *Id.* Respondent was unsure what Mr. Howard did with those dates. *Id.*

III. CONCLUSIONS OF LAW

Disciplinary Counsel argues that Respondent violated the Rules that it charged. Respondent seeks to dismiss this matter, contending that Disciplinary Counsel has not met its burden on any charge. Tr. 725; R. Br. at 21-22. We find that Disciplinary Counsel has proven violations of Rules 1.4(a) and 1.15(c) by clear and convincing evidence.

A. We Recommend DENYING Respondent’s Motion to Dismiss.

During the hearing and in post-hearing briefing, Respondent asks the Committee to dismiss the charges in the Specification because Disciplinary Counsel has failed to meet its burden on any charge. Upon receiving a motion to dismiss, a Committee shall make a recommended disposition in its report to the Board, after hearing all the evidence. *See* Board Rule 7.16(a); *In re Ontell*, 593 A.2d 1038, 1040

(D.C. 1991) (Hearing Committee should defer consideration of motion to dismiss and include recommendation in report to Board).

We recommend that the Board DENY Respondent's Motion to Dismiss. For the reasons set forth below, the Hearing Committee finds that Disciplinary Counsel did not prove by clear and convincing evidence the charged violations of Rules 1.2(a), 1.3(b)(2), 1.4(b), 1.5(a), 1.5(e), 1.16(d), 8.1(b), 8.4(c), and 8.4(d). However, the Hearing Committee finds that Disciplinary Counsel did prove by clear and convincing evidence the charged violations of Rules 1.4(a) and 1.15(c), and therefore the Board should DENY the Motion to Dismiss.

B. Disciplinary Counsel Did Not Prove by Clear and Convincing Evidence that Respondent Violated Rule 1.2(a).

Rule 1.2(a) obligates a lawyer to

abide by a client's decisions concerning the objectives of representation [and] . . . consult with the client as to the means by which they are to be pursued. A lawyer may take such action on behalf of the client as is impliedly authorized to carry out the representation. A lawyer shall abide by a client's decision whether to accept an offer of settlement of a matter.

Rule 1.2(a); *see also In re Hager*, Bar Docket No. 031-98, at 33-34 (BPR July 21, 2001) ("Rule 1.2(a) requires that, at some point before the interests of clients are compromised in an agreement, they must be given the opportunity to make the decision."), *recommendation adopted*, 812 A.2d 904 (D.C. 2002). Comment [1] to Rule 1.2 states that "[t]he client has ultimate authority to determine the purposes to be served by legal representation."

Disciplinary Counsel argues that Respondent did not pursue Ms. Bennett's goal of receiving her fair share of the two estates and instead aimed to maximize her recovery by preventing Ms. Steadman-Toler's heir from receiving anything. ODC Br. at 28. Disciplinary Counsel asserts that Respondent did not discuss this strategy with Ms. Bennett and did not obtain her consent to incur the cost of hiring Ms. DeLaCruz to prepare a summary judgment motion. *Id.*

Respondent argues that Disciplinary Counsel did not prove this violation because Respondent had sent an email to the other attorneys involved, with Ms. Bennett copied, explaining that he intended to file a motion for summary judgment and noting the potential effects of that decision should it be granted. R. Br. at 22. Respondent moreover points to an email Ms. Bennett subsequently sent, which states that she agreed with what Respondent was proposing. *Id.* Disciplinary Counsel asserts that Ms. Bennett replied to a different email about an intended settlement proposal. ODC Reply at 4-5.

Upon due consideration, we find that Respondent's email to counsel upon which Ms. Bennett was copied advised her of his intended strategy and thereby provided her with an opportunity to affirm or reject that strategy. To the extent that his email did not expressly discuss the hiring of Ms. DeLaCruz, the record indicates that when asked if she minded a researcher or assistant being hired to help with her case, Ms. Bennett authorized Respondent to do "whatever you need, you know, no problem." FF 14. Further, Rule 1.2(a) is clear that "[a] lawyer may take such action on behalf of the client as is impliedly authorized to carry out the representation."

The Hearing Committee considers Respondent's limited retention of Ms. DeLaCruz's assistance for the purpose of research and drafting a motion to be impliedly authorized to carry out his representation of Ms. Bennett in this matter. Further, Disciplinary Counsel has not established by clear and convincing evidence that Ms. Bennett's reply signaling her agreement was in response to a different email (i.e., one other than the one referenced above upon which Ms. Bennett was copied). For these reasons, the limited interaction between Respondent and Ms. Bennett was not so inadequate as to support a determination that Respondent failed to seek her objectives.

Disciplinary Counsel also contends that Respondent violated Rule 1.2(a) by not giving Ms. Bennett her inheritance for two years and not ensuring that she was given access to her funds. ODC Reply at 3. It does not cite a case for support, and it is not clear that these representations actually bear upon whether Respondent violated Rule 1.2(a), which speaks in pertinent part to a lawyer's obligation to "abide by a client's decisions concerning the objectives of [the] representation." Ms. Bennett's "objective," according to Disciplinary Counsel, was to receive a fair share of the two estates. Respondent's delayed payment of Ms. Bennett's share and his lack of action to ensure she had access to those funds seem to be irrelevant to this charge, however, because alleged misfeasance or nonfeasance in the service of a client's objectives does not necessarily constitute a failure to abide by a client's decisions regarding those objectives. Allegations involving Respondent untimely

refunding Ms. Bennett are better addressed by other Rules—for example, Rules 1.3(b)(2), 1.15(c), and 1.16(d).⁷

For the foregoing reasons, the Hearing Committee finds that Disciplinary Counsel did not prove a violation of Rule 1.2(a) by clear and convincing evidence.

C. Disciplinary Counsel Did Not Prove by Clear and Convincing Evidence that Respondent Violated Rule 1.3(b)(2) by Intentionally Prejudicing Ms. Bennett During the Course of the Representation.

Rule 1.3(b)(2) provides that “[a] lawyer shall not intentionally . . . prejudice or damage a client during the course of the professional relationship.” To establish a violation of Rule 1.3(b)(2), Disciplinary Counsel must prove at a minimum that the respondent was “demonstrably aware” that the conduct at issue would damage

⁷ This is not to say that an instance of misconduct cannot violate multiple Rules—indeed, the Court has held the opposite. *See In re Bernstein*, 707 A.2d 371, 376 (D.C. 1998); *In re Drew*, 693 A.2d 1127, 1127 (D.C. 1997) (per curiam).

We have found cases involving the same Rule violations but with slightly different material facts or circumstances and thus decline to consider them dispositive here. For example, the respondent in *Dixon* violated D.C. Rules 1.2(a) and 1.15(b) by failing to notify the client of a settlement and failing to deliver the proceeds promptly to the client. 721 A.2d 168, 168 n.1 (D.C. 1998) (per curiam). However, this was a reciprocal case, and a failure to notify also does not match Respondent’s failure to provide Ms. Bennett her share of the distribution. Both *Stewart* and *Carlson* are inapposite too. *See In re Stewart*, Bar Docket No. 167-05, et al. (BPR Mar. 11, 2008), appended HC Rpt. at 98, 101-02 (Oct. 12, 2007) (finding Rule 1.2(a) violation in part because the respondent “did not consult with these clients or others after he took their funds” and Rule 1.16(d) by failing to refund advance fees); *recommendation adopted*, 953 A.2d 1034 (D.C. 2008) (per curiam); *In re Carlson*, Bar Docket Nos. 136-94 & 295-96, at 25-27, 36 (BPR Feb. 5, 1999) (finding the respondent violated Rule 1.2(a) in part by failing to distribute settlement funds, which also violated Rule 1.15(b)’s failing to promptly deliver third party funds), *recommendation adopted*, 745 A.2d 257 (D.C. 2000) (per curiam).

or prejudice a client but need not prove that a respondent intended to harm the client. *In re Rachal*, 251 A.3d 1038, 1042 (D.C. 2021) (per curiam) (citing *In re Dory*, 528 A.2d 1247, 1248 (D.C. 1987) (Belson, J., concurring)); *see also In re Wright*, Bar Docket Nos. 377-99 *et al.* at 24-25 (BPR Apr. 14, 2004) (Rule 1.3(b)(2) violated where the lawyer “knowingly created a grave risk” that the client would be harmed, and understood that harm was “substantially certain” to follow (quoting *In re Robertson*, 612 A.2d 1236, 1250 (D.C. 1992) (appended Board Report))), *findings and recommendation adopted*, 885 A.2d 315, 316 (D.C. 2005) (per curiam). A violation of Rule 1.3(b)(2) cannot be sustained “unless there is actual prejudice or damage to the client.” *In re Cohen*, 847 A.2d 1162, 1165 n.1 (D.C. 2004); *see, e.g., Rachal*, 251 A.3d at 1042 (clients were prejudiced by their attorney’s accusation in a public filing that they acted deceitfully); *Robertson*, 612 A.2d at 1250 (appended Board Report) (finding intentional damage to a client where the respondent failed to file a client’s tax returns before the deadline, thus forfeiting the client’s requests for tax refunds).

Respondent indicates that his delay during the first year in sending Ms. Bennett her funds was “an honest administrative oversight.” R. Br. at 31. Disciplinary Counsel contends that even if this were so, Respondent intentionally prejudiced Ms. Bennett because he did not promptly inform her or provide her the funds, despite knowing he needed to do both. ODC Reply at 6-7. This is insufficient to establish a violation of Rule 1.3(b)(2), however. Per *In re Rachal*, Disciplinary Counsel must prove at a minimum that the Respondent was “demonstrably aware”

that withholding Ms. Bennett’s funds without notifying her during the first year would damage or prejudice her. *Rachal*, 251 A.3d at 1042 (citation omitted). This has not occurred. There is no testimony nor other record evidence supporting a conclusion that Respondent “*knowingly* created a grave risk” that Ms. Bennett would be harmed by not receiving the funds during the first year, or that he understood that harm to her was “substantially certain” to result from his conduct. *Wright*, Bar Docket Nos. 377-99 *et al.* at 24-25 (emphasis added) (citation omitted). The record indicates that Respondent’s conduct during the first year was laggard at best—and he essentially concedes as much—but it does not establish that he intended his conduct to harm Ms. Bennett or that he understood that his conduct would likely hurt her. As a result, the record does not demonstrate that Respondent’s inaction during the first year arose from, was the result of, or was motivated by an intent that would be sufficient to violate Rule 1.3(b)(2).

Respondent appears to concede that he deliberately delayed distributing the funds to Ms. Bennett during the second year, purportedly to ensure proper handling of her assets and prevent potential issues. R. Br. at 23. Disciplinary Counsel disputes Respondent’s stated rationale, contending that he actually refrained from distributing the funds to compel Ms. Bennett to sign an indemnification agreement. ODC Br. at 29; ODC Reply at 7. Disciplinary Counsel avers that withholding Ms. Bennett’s funds for almost two years prejudiced Ms. Bennett by preventing her from making an investment that was no longer affordable two years later. ODC Reply at 29.

The record contains scant details regarding the particular investment opportunity that Ms. Bennett claims to have been forced to forego due to Respondent's conduct, so we are unable to evaluate the veracity and extent of her claimed injury.⁸ However, even if an investment opportunity existed during this

⁸ Disciplinary Counsel also argues that withholding Ms. Bennett's inheritance—and thus depriving Ms. Bennett of her inheritance—alone establishes prejudice. ODC Br. at 29. We are unaware of a case holding as such. Relevant caselaw seems to instruct that a harm distinct from the action itself is necessary. In *Hines*, for example, the Court found the respondent's failure to transfer the \$1,500 to his client's account "contributed to the financial difficulties she was experiencing at the bank." 482 A.2d 378, 382 (D.C. 1984) (per curiam). The respondent's "willing[ness] to prejudice [his client's] standing with the bank and expose her to legal action" fit the previous-Rule 1.3(b)(2). *Id.* (quoting Board Report) (alterations in original). The Court in *Vohra* pointed to *how* the respondent's delay seriously prejudiced his clients—including the real agony as they sought treaty investor status, the unnecessary legal and filing fees, and the client's "inability to seek ancillary employment while waiting for his E-2 visa status to be obtained." 68 A.3d 766, 781 (D.C. 2013) (appended Board Report) (quoting Hearing Committee Report). And in *Rachal*, the Court found that the following harms were sufficient to establish actual prejudice: the respondent's publicly filed praecipe alleging that his clients made misrepresentations, *and* that this caused the clients to prepare and file an opposition against the respondent to protect their own interests. 251 A.3d at 1042.

We do not mean to diminish Respondent's misconduct of withholding Ms. Bennett's inheritance—indeed, Disciplinary Counsel has proven this violated Rule 1.15(c) (and is related to Respondent's violation of Rule 1.4(a)). Disciplinary Counsel's argument that Ms. Bennett was harmed because she did not have her inheritance makes sense, especially when Respondent repaid Ms. Bennett with interest. There are other Rules that more neatly apply to Respondent's misconduct, however. Absent clear direction from the Board or Court, and given our review of the case law, we are hesitant to find a Rule 1.3(b)(2) violation on this ground. Moreover, even were we to find that this conduct violated Rule 1.3(b)(2) in addition to the two violations we have found he committed, it would not change our view of the appropriate sanction.

time period and Ms. Bennett was deprived of that opportunity due to Respondent's conduct, there is insufficient record evidence to show that Respondent "*knowingly* created a grave risk" that Ms. Bennett would be harmed by not receiving the funds during the first year, or that he understood that harm to her was "substantially certain" to result from his conduct. *Wright*, Bar Docket Nos. 377-99 *et al.* at 24-25 (emphasis added) (citation omitted). For example, no evidence has been adduced that Respondent knew of the particular investment opportunity at issue during the second year, much less that he actually understood or should have understood that his tardy distribution of funds might deprive Ms. Bennett of the ability to partake of that opportunity. Disciplinary Counsel has thereby failed to show that Respondent *intentionally* prejudiced or damaged Ms. Bennett during their professional relationship in violation of Rule 1.3(b)(2).

For the foregoing reasons, the Hearing Committee finds that Disciplinary Counsel did not prove a violation of Rule 1.3(b)(2) by clear and convincing evidence.

D. Disciplinary Counsel Proved by Clear and Convincing Evidence that by Failing to Communicate with Ms. Bennett, Respondent Violated Rule 1.4(a), but Not Rule 1.4(b).

Rule 1.4(a)

Rule 1.4(a) provides that "[a] lawyer shall keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information." Under Rule 1.4(a), an attorney must not only respond to client inquiries but must also initiate contact to provide information when needed. *See*,

e.g., *In re Robbins*, 192 A.3d 558, 564-65 (D.C. 2018) (per curiam); *In re Bernstein*, 707 A.2d 371, 376 (D.C. 1998). The Rule’s purpose is to enable clients to “participate intelligently in decisions concerning the objectives of the representation and the means by which they are to be pursued.” Rule 1.4, cmt. [1]. In determining whether Disciplinary Counsel has established a violation of Rules 1.4(a) and (b), the question is whether Respondent “fulfilled his client’s ‘reasonable . . . expectations for information.’” *See In re Schoeneman*, 777 A.2d 259, 264 (D.C. 2001) (omission in original) (quoting Rule 1.4, cmt. [3]). Attorneys are obligated to respond to client requests for information even when there are no new developments to report. *See In re Lattimer*, 223 A.3d 437, 440-43 (D.C. 2020) (per curiam). In addition to responding to client inquiries, a lawyer must initiate communications when necessary. *In re Hallmark*, 831 A.2d 366, 374 (D.C. 2003) (citing Rule 1.4, cmt. [1]).

Disciplinary Counsel argues that Respondent’s failures to communicate were pervasive when he did not communicate about the representation, his fees, and the distributions owed to Ms. Bennett. ODC Br. at 30-31.

Respondent argues that for matters of substance, he communicated to Ms. Bennett generally in writing or in-person and that Respondent’s legal assistant, Ms. Chase, communicated with Ms. Bennett for more of the phone conversations. R. Br. at 23. Respondent also reiterates that his delay in sending the first distribution to Ms. Bennett was because he “lost focus” that the funds were in the IOLTA

account, and that he ultimately paid Respondent with twice the amount of interest that a commercial bank savings account would accrue. *Id.* at 23-24.

Disciplinary Counsel replies that Respondent's "comprehensive summary of events that had transpired" claim is insufficient to comply with the lawyer's duty to fulfill reasonable client expectations for information. ODC Reply at 9. Disciplinary Counsel argues that Respondent not billing Ms. Bennett at all during the two-year representation, coupled with not providing an accounting of his fees when asked, violated the Rules. *Id.* at 10.

Upon due consideration of the record, the Hearing Committee finds that Disciplinary Counsel has established a violation of Rule 1.4(a) by clear and convincing evidence. The record demonstrates that with limited exceptions, Respondent failed to keep Ms. Bennett timely informed of her matter's status at multiple key points during the representation, neglecting to initiate contact with Ms. Bennett even though doing so would reasonably be warranted by various developments in the case. Representative instances include: (1) when Respondent learned in September 2018 that he would receive \$133,334 on Ms. Bennett's behalf as partial distribution of the estate, but did not inform her of this fact for roughly a year after he received the funds, *see* FF 25-28, 32; (2) when Respondent did not notify Ms. Bennett that the estate's original personal representative resigned, FF 29; (3) when Respondent did not timely inform Ms. Bennett that the other Toler heirs subsequently challenged the fees charged by the original representative's attorney, FF 29; (4) when Respondent did not timely inform Ms. Bennett that the Toler home

was sold, FF 29; and (5) when Respondent did not timely inform Ms. Bennett that the successor personal representative sought her written consent to sell an estate-owned vehicle, FF 30-31. There is no record evidence that Respondent kept Ms. Bennett timely informed of her matter's status at these and other key points during his representation.

Respondent also failed to comply promptly with multiple reasonable requests from Ms. Bennett for information regarding her case. Representative instances include: (1) the interval between the March 1, 2018 hearing and the court-ordered April 30, 2018 mediation, when Respondent did not respond to several requests for information from Ms. Bennett, *see* FF 16-18; (2) after the mediation, when Respondent did not respond to several requests for information from Ms. Bennett regarding paternity, the status of the cases, and the fees being charged to the estates by the personal representative's attorney, FF 23-24; and (3) when Respondent did not respond to Ms. Bennett's demand for an accounting of his hours worked to justify his intent to charge her more than \$20,000 in legal fees, FF 37. These—and other instances in the record (e.g., Respondent did not discuss whether or how often Respondent will bill Ms. Bennett, nor did he send Ms. Bennett any invoices during the representation, FF 10; Respondent also did not timely update Ms. Bennett about the sale of the house, the payment of a substantial tax liability, and the remaining money in the estates, FF 33)—demonstrate that Respondent plainly did not fulfill his client's reasonable expectations for information.

For the reasons presented above, the Hearing Committee finds that Disciplinary Counsel proved a violation of Rule 1.4(a) by clear and convincing evidence.

Rule 1.4(b)

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

The preceding discussion of Respondent’s violation of Rule 1.4(a) shows that Respondent did not keep Ms. Bennett timely informed of multiple case developments, nor could the pattern of communication between them be reasonably characterized as frequent or robust. However, a violation of Rule 1.4(b)—as opposed to Rule 1.4(a)—requires Disciplinary Counsel to show by clear and convincing evidence that Respondent failed to ensure that Ms. Bennett’s decisions were “made only after [she was] informed of all relevant considerations.” *Id.*, cmt. [2]. Disciplinary Counsel must establish that Respondent did not consult with Ms. Bennett “before taking important steps” in the case. *In re Klayman*, 282 A.3d 584, 596 (D.C. 2022) (per curiam).

Disciplinary Counsel has not identified the important steps that were made in the case without Respondent having informed Ms. Bennett of all relevant considerations in violation of Rule 1.4(b). The Hearing Committee finds that the record does not establish by clear and convincing evidence that Respondent failed to inform Ms. Bennett of all considerations relevant to any important steps in the case, despite Respondent's otherwise problematic pattern of communication with Ms. Bennett. For example, the record shows that: (1) before filing the Motion for Summary Judgment, Respondent notified Ms. Bennett of his intention to do so and what the ramifications would be if the motion were granted, after which she consented to its filing, *see* FF 12; and (2) Ms. Bennett was present at the April 30, 2018 mediation, during which Respondent conferred with her in real time regarding the issues discussed, FF 19-20. The record offers additional examples (though in certain instances Respondent provided Ms. Bennett information relevant to important steps but did not do so promptly, such as when he advised her in September 2019 of the successor personal representative's request for her consent to the vehicle sale, even though her consent had been sought for over two months by that point, FF 30-31).

Upon due consideration, the Hearing Committee does not find that Disciplinary Counsel proved a violation of Rule 1.4(b) by clear and convincing evidence.

- E. Disciplinary Counsel Did Not Prove by Clear and Convincing Evidence that Respondent Violated Rules 1.5(a) and (e) by Charging an Unreasonable Fee and Dividing a Fee Without Providing Ms. Bennett the Required Information.

Rule 1.5(a)

Rule 1.5(a) provides that:

A lawyer's fee shall be reasonable. The factors to be considered in determining the reasonableness of a fee include the following:

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

The Court of Appeals has held that “Rule 1.5(a) can be violated by the act of charging an unreasonable fee without regard to whether the fee is collected.” *In re Cleaver-Bascombe*, 892 A.2d 396, 403 (D.C. 2006) (quoting Board Report). Disciplinary Counsel argues that “[a]s supported by testimony from Disciplinary

Counsel’s expert witness, Mr. [Brian] Kass,”⁹ Respondent charged unreasonable fees based on charging for work done before he was hired and after he was fired, charging excessively for “pre-printed one or two-page forms,” and charging for work “not supported by the client file or for which Ms. Bennett received no value.” ODC Br. at 32; ODC Reply at 10. The following discussion examines each of these three allegations in turn.

Per Se Unreasonable Charges: Allegedly Charging for Work Done Before Retention and for Work Done After Ms. Bennett Terminated the Representation.

Disciplinary Counsel argues it was unreasonable for Respondent to charge for work he did before he was hired by Ms. Bennett. ODC Br. at 32. Disciplinary Counsel points to four entries in support: 1) Reviewing docket printout and related notes on July 18, 2017 (for 0.5 hours); 2) Reviewing “Will, etc.” on July 31, 2017 (for 1 hour); 3) Talking with client about “DNA testing; retainer, etc. and appointment” on September 18, 2017 (for 0.5 hours); and 4) “Ltr re fees; prep questionnaire” on September 20, 2017 (for 1 hour). *See* FF 53; ODC Br. at 17, ¶ 58.

⁹ Disciplinary Counsel called Mr. Kass, an experienced probate attorney in the District of Columbia, for the purpose of providing expert testimony in this matter. ODC Br. at 19, ¶ 66. The Hearing Committee qualified Mr. Kass as an expert regarding the reasonableness of fees and regarding the practice of probate and estates in District of Columbia, but not as to the D.C. Rules of Professional Conduct. Tr. 466-67. However, we did not assign much weight to his testimony about Respondent’s fees. *See supra* note 2.

It asserts the fee agreement does not disclose this arrangement, nor did Respondent otherwise disclose this to Ms. Bennett. ODC Br. at 17, 32.

But we have credited Respondent that, before their September 21, 2017 meeting, Respondent explained to Ms. Bennett that any work he had done prior to Ms. Bennett signing the retainer would be rolled into the retainer. We are unaware of a case holding that a lawyer cannot charge for work done for a prospective client who consented to this charge, and who later hires the lawyer. So Disciplinary Counsel has not proven that it was unreasonable for Respondent to charge for work to which Ms. Bennett agreed.¹⁰

Disciplinary Counsel also asserts Respondent's work done on November 12 and 20, 2019 (totaling 0.6 hours) was unreasonable because Ms. Bennett had terminated his representation earlier that month. *See* ODC Br. at 19, 32. We have already found Respondent was not aware he was fired until after a formal investigation began in this disciplinary matter. FF 39. And the estates were closed in October 2022—long after Respondent performed these services in November 2019. FF 61.

It is true that even negligent overbilling violates Rule 1.5(a). *See In re Bailey*, 283 A.3d 1199, 1208 (D.C. 2022) (“The extent of Bailey’s overbilling suggests that

¹⁰ We recognize the Board’s holding in *Ugwuonye* that charging a “PIP fee” was unreasonable “where no such charge is identified in the retainer agreements.” Board Docket No. 10-BD-104 (BPR July 31, 2018), appended HC Rpt. at 29 (Jan. 9, 2018), *recommendation adopted where no exceptions filed*, 207 A.3d 173 (D.C. 2019) (*per curiam*). Unlike here, there was no finding in *Ugwuonye* that the client agreed to pay these fees.

he was, at the very least, negligent.”); *see also id.* at 1208 n.4 (“[H]ere, Disciplinary Counsel sought to prove only that the overbilling was ‘unreasonable’ or negligent so as to constitute a violation of Rule 1.5(a)”); ODC Br. at 31. But we are hesitant to apply *Bailey’s* logic to these facts. For one, *Bailey’s* own language points to *unreasonable* or negligent overbilling, and Disciplinary Counsel has not proven it was unreasonable for Respondent to bill for services when he (reasonably) believed he still represented Ms. Bennett. *Bailey* moreover involved “‘sloppy and unprofessional billing practices’”—double billing and erroneous overcharges in part where he charged for work on submissions that had already been submitted. *Bailey*, 283 A.3d at 1208 (quoting Hearing Committee report). Disciplinary Counsel does not cite any parallel case here, and we cannot find it proved unreasonable fee violations for these entries.

Allegedly Charging Excessively for Completing Form and Emails.

Respondent charged one hour (\$350) to prep his praecipe for appearance on November 21, 2017, and 3.5 hours on March 26, 2018 to “Email to Miller re: settlement position; emails to attorneys re Consent to Motion for Summary Judgment; prep CSS (Confidential Settlement Statement).” FF 54, 57. Respondent also charged one-and-a-half hours on January 14, 2018, for “Email Atty. DeLaCruz re: Motion for Sum Jdgmt and Resp—issues.” FF 55.

Praecipe. Disciplinary Counsel has not proven Respondent’s charge for one hour (\$350) to prepare the praecipe for appearance was unreasonable. Perhaps retrieving the praecipe off the court’s website and entering the more standard

information (like the case name, attorney's name) should not take long. *See* FF 54. But it was important that the interested persons received this praecipe, and Respondent's preparation included certifying he took steps to mail or communicate this document to the list of interested persons. FF 54. There were 23 interested persons in Ms. Bennett's matter—including one who lived in Scarborough, Ontario, seven parties living in Trinidad, and others located throughout the United States. FF 54. With these specifics in mind, we do not have clear and convincing evidence that Respondent charging an hour for preparing his praecipe was unreasonable.

CSS and emails. As to the March 26, 2018, entry, it notes 3.5 hours for an email about settlement position, for emails about the motion for summary judgment, and for preparing the Confidential Settlement Statement. FF 57. Filling out the Statement included describing the facts in about nine lines and importing biographical information about the case (like the Mediation date, Respondent's name and address, etc.). FF 57. Respondent's email about his intent to file a motion for summary judgment is two short paragraphs. FF 57.

We do not find this is clear and convincing evidence of charging an excessive fee. Respondent was entitled to bill for preparing the Statement, including any notes or otherwise. FF 57. Though Mr. Kass thought completing the Statement should take a maximum of 30 minutes, neither he nor Disciplinary Counsel addressed Respondent's preparation—except that Respondent should have already been familiar with this case for quite some time. FF 57. But Respondent prepared this Statement when preparing for mediation, which also included reviewing 27

documents for this important moment in the case. FF 57. We do not have clear and convincing evidence that Respondent’s preparation of and work on the Statement, combined with his work on the other emails was unreasonable.

Email to Ms. DeLaCruz. Finally, we do not have clear and convincing evidence that Respondent’s one-and-a-half-hour entry on January 14, 2018, was unreasonable. This entry notes “Email Atty. DeLaCruz re: Motion for Sum Jdgmt and Resp—issues.” FF 55. Mr. Kass testified that charging an hour and a half was excessive for drafting an email to another party, and that this is true “regardless of the content of the email.” FF 55. As we have stated, we do not credit Mr. Kass’s testimony that preparing and sending an email to another party cannot take an hour and a half. FF 55. We reject Mr. Kass’s proposed bright-line rule; thoughtful, substantive emails on legal issues, just like more formal memoranda, can take that or more. It is content, not formatting, that determines reasonableness. And Mr. Kass could not say if he reviewed the email referenced in this entry. FF 55. With his memory also not refreshed, we cannot find clear and convincing evidence that Respondent’s hour-and-a-half charge here was unreasonable. FF 55.

Allegedly Charging for Unsupported Work or Work for which Ms. Bennett Received No Value.

“It cannot be reasonable to demand payment for work that an attorney has not in fact done.” *In re Cleaver-Bascombe*, 892 A.2d 396, 403 (D.C. 2006). Respondent’s March 1, 2018 entry notes a five-hour charge for “Hearing; conf/w/clt; conf w/Atty. Mann and follow up.” FF 56. Disciplinary Counsel argues that charging five hours is unreasonable because the hearing lasted a little under an hour;

because Respondent did not meet with Ms. Bennett that day, and because “there was nothing that Respondent had to discuss with Ms. Bennett or [Ms. Mann] that could account for the additional four hours charged.” ODC Br. at 18.

We do not have clear and convincing evidence that Respondent’s five-hour charge was unreasonable. All agree the hearing lasted close to an hour, and we have credited Respondent that he met with Ms. Bennett either before or afterwards. FF 56. As to Respondent’s other events listed, Disciplinary Counsel has not proven that Respondent’s method for recording his time after a hearing was unreliable, and thus has not proven a violation for this charge.

It is also unreasonable to charge for work which does not provide value to the client. *See In re Brown*, 310 A.3d 1036, 1047-48 (D.C. 2024). Disciplinary Counsel contends that Respondent billed Ms. Bennett for work for which she received no value and thereby violated Rule 1.5(a). ODC Br. at 32. To support this contention, Disciplinary Counsel states that “Respondent billed \$525 for one and a half hours to review a status memo to send Ms. Bennett on July 7, 2019, but Respondent never sent her a case update in July 2019. . . . Rather, he billed \$700 on September 5, 2019, for two hours to prepare the September 6, 2019, status update email he sent to Ms. Bennett.” ODC Br. at 19, ¶ 63 (citation omitted).

We do not find clear and convincing evidence that Respondent’s charges for \$525 and \$700 were unreasonable. Disciplinary Counsel has not proven that these charges involved double-billing or charging for services from which Ms. Bennett received no value. *Cf. Bailey*, 283 A.3d at 1208. Respondent’s first entry notes

“Rev. outline status memo for clt,” FF 58; his second entry notes “Prep status report to clt,” and Respondent sent Ms. Bennett a status update the following day. FF 58. Respondent’s review of the status memo set forth the basis for preparing and then sending the update to Ms. Bennett. Disciplinary Counsel has also not proven Respondent spent an unreasonable amount of time for either action, and thus has not proven a violation for these two entries.

Rule 1.5(e)

Rule 1.5(e) provides that

(e) A division of a fee between lawyers who are not in the same firm may be made only if:

(1) The division is in proportion to the services performed by each lawyer or each lawyer assumes joint responsibility for the representation.

(2) The client is advised, in writing, of the identity of the lawyers who will participate in the representation, of the contemplated division of responsibility, and of the effect of the association of lawyers outside the firm on the fee to be charged;

(3) The client gives informed consent to the arrangement; and

(4) The total fee is reasonable.

The Court of Appeals has stated that

Rule 1.5(e) was designed “to encourage lawyers to affiliate other counsel, who are better equipped by reason of experience or specialized background to serve the client's needs....” Moreover, the Rule emphasizes “joint responsibility” but ensures flexibility by not requiring a co-counsel “to perform any minimum portion of the total services rendered.” Undoubtedly, to minimize controversy and protest from the client, Rule 1.5(e), unlike its

counterpart in the [ABA Model Rules] requires that the client be notified of the joint responsibility, in writing.

In re Confidential (J.E.S.), 670 A.2d 1343, 1344-45 (D.C. 1996)

(further citations omitted).

Disciplinary Counsel argues that Respondent violated Rule 1.5(e)(2) because he split his fee with Ms. DeLaCruz without providing Ms. Bennett with the required information beforehand. ODC Br. at 32-33. Respondent argues that this Rule does not cover an attorney contracted by Respondent solely to draft a motion for summary judgment. R. Br. at 25-27. Disciplinary Counsel replies that Respondent's right to hire Ms. DeLaCruz is beside the point—because Ms. DeLaCruz was an attorney from another firm (and thus was not a temporary or contract lawyer working for Respondent's firm), Respondent was subject to Rule 1.5(e) by hiring Ms. DeLaCruz. ODC Reply at 11-13; *see* FF 13.

Whether Respondent's hiring of Ms. DeLaCruz violated Rule 1.5(e)(2) hinges on whether his payment to her constituted a fee split. If yes, he had an obligation to disclose this arrangement to Ms. Bennett before hiring Ms. DeLaCruz. *See* D.C. Bar Ethics Op. 284 ("LEO 284") (Sep. 1998) ("Rule 1.5(e)(2) provides that where a lawyer divides the client's fee with any outside lawyer, including a temporary lawyer, disclosure to the client is required."). The disclosure and consent requirement applies only where "there is to be a division of fees," "as opposed to the payment of a salary or *time-based payment* by the law firm to the temporary employee." *Id.* (emphasis added).

Disciplinary Counsel appears to assume that any payment to Ms. DeLaCruz would necessarily constitute a fee split. Disciplinary Counsel stated at the hearing that Respondent “sent [Ms. DeLaCruz] off and she did the research, she drafted the motion for summary judgment and submitted it to him. So we don’t think that she was a temporary lawyer. We think that it was a division of fees.” Tr. 1085 (Dunston). However, the record demonstrates that Ms. DeLaCruz did serve as a temporary lawyer. LEO 284 defines “temporary lawyer” as “one who is not a partner and who is employed by a practitioner or a law firm to work on either *a specific project or matter* or for a fixed or otherwise limited period of time.” LEO 284 (emphasis added). Respondent hired Ms. DeLaCruz—who is not an attorney in his own firm—to research and prepare a motion for summary judgment. *See* FF 13. Neither party contends that Ms. DeLaCruz’s work on the Bennett case continued after she finished researching and drafting the motion and its supporting memorandum, and there is no record evidence to that effect. Because Ms. DeLaCruz did not retain joint responsibility for representing Ms. Bennett, but instead was clearly hired to work only on a specific project—the motion for summary judgment—she qualifies as a temporary lawyer.

Further and more importantly, the record lacks clear and convincing evidence that Ms. DeLaCruz was to be paid via a split of legal fees, as opposed to a “*time-based payment* by the law firm to the temporary employee.” LEO 284 (emphasis added). Respondent’s January 18, 2018, letter to Ms. DeLaCruz to secure her work on the motion for summary judgment says nothing regarding the amount

or composition of her compensation. FF 13. On cross-examination, Ms. DeLaCruz testified that when she worked for Respondent as a subcontractor, her fee “would be agreed upon or [she] would just send an invoice.” FF 13. She indicated that her invoice to Respondent was time-based because it was based on the number of hours she worked on the motion for summary judgment, multiplied by the rate she was charging him for her time. FF 13. Ms. DeLaCruz also testified that if Respondent did not pay her, she had no authority to seek payment from Ms. Bennett, stating “the representation or the entity retaining [her firm] is who [they] would go after for payment.” FF 13. These statements are uncontroverted.

Based upon the record evidence noted above, Disciplinary Counsel has not established by clear and convincing evidence that Ms. DeLaCruz was to be paid via a division of fees, and therefore that Respondent violated Rule 1.5(e) by allegedly not securing Ms. Bennett’s prior consent to his hiring another lawyer to work on her matter. There is at least an equally compelling—if not actually stronger—case to be made that Ms. DeLaCruz was a temporary lawyer per LEO 284, performing a specific task for Respondent, to be compensated by Respondent’s firm with a time-based payment, based upon her history of prior subcontracted legal work for Respondent. As a result, a violation of Rule 1.5(e) cannot be sustained.

F. Disciplinary Counsel Proved that Respondent Violated Rule 1.15(c) by Failing to Promptly Notify and Deliver Ms. Bennett’s Partial Inheritance.

Rule 1.15(c) pertains to the delivery of funds held in trust for a client or third person. This provision “recognize[s] that lawyers often receive funds from third

parties from which the lawyer’s fee will be paid.” Rule 1.15, cmt. [7]. Rule 1.15(c) requires a lawyer to “promptly notify the client or third person” “[u]pon receiving funds . . . in which a client or third person has an interest” and to “promptly deliver to the client or third person any funds or other property that the client or third person is entitled to receive.” A lawyer violates Rule 1.15(c) if he fails promptly to deliver entrusted funds when the purpose for which he holds them has been rendered moot. *See In re Smith*, 70 A.3d 1213, 1215-17 (D.C. 2013) (per curiam); *In re Edwards*, 990 A.2d 501, 520-21 (D.C. 2010) (appended Board Report). There is no bright-line test for what constitutes “prompt” payment. *In re Ross*, 658 A.2d 209, 211 (D.C. 1995). Rather, a case-specific inquiry is required. *In re Martin*, 67 A.3d 1032, 1046 (D.C. 2013); *In re Moore*, 704 A.2d 1187, 1190, 1192 (D.C. 1997) (per curiam) (appended Board Report) (“no doubt” that over a year delay in paying medical provider is not “prompt”); *Ross*, 658 A.2d at 211 (eleven-month delay was not prompt).

Disciplinary Counsel observes that Respondent learned of and received Ms. Bennett’s partial inheritance in September 2018 but waited almost a year to notify her and almost two years to deliver the funds to her. ODC Br. at 8, 33.

Respondent does not directly address this charge (or the Rule 1.16(d) charge discussed below). *See* R. Br. at 18-31 (addressing, in the Proposed Conclusions of Law, all but the Rules 1.15(c) and 1.16(d) charges). Respondent contends, however, that the delay “was an honest administrative oversight, not an intentional or fraudulent action.” R. Br. at 31 (Sanction Section).

We find that Disciplinary Counsel has proven a violation of Rule 1.15(c) by clear and convincing evidence. Respondent concedes that he waited almost a year to notify Ms. Bennett about her partial inheritance, and also that he waited almost two years to deliver those funds. FF 27-28, 32-33, 48. As noted above, *Ross* makes clear that there is no bright-line test for promptness. 658 A.2d at 211. However, Respondent was well aware that Ms. Bennett had retained him for the ultimate purpose of obtaining her partial inheritance. Respondent's delays in notifying her and then in paying her were clearly violative of Rule 1.15(c) in this context, and there is no "administrative oversight" exception that would excuse these violations. Upon due consideration, the Hearing Committee finds that Disciplinary Counsel proved a violation of Rule 1.15(c) by clear and convincing evidence.

G. Disciplinary Counsel Did Not Prove by Clear and Convincing Evidence that Respondent Violated Rule 1.16(d) by Failing to Timely Deliver Ms. Bennett's Case Files, Timely Deliver Ms. Bennett's Inheritance, and Timely Notify Others that He Was Not Representing Her Upon Termination of His Representation.

Rule 1.16(d) sets forth a lawyer's obligations at the end of a representation, such as taking "timely steps to . . . protect a client's interests, . . . 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."

Disciplinary Counsel argues that Respondent failed to satisfy these obligations when Ms. Bennett fired him in a November 7, 2019 email. ODC Br. at 33-34.

However, Disciplinary Counsel failed to prove that Respondent received the email, or knew that he had been terminated before Disciplinary Counsel began its investigation. FF 39-41, 43, 59. As Respondent did not know that he had been terminated, he did not know to take the steps required by Rule 1.16(d). We thus conclude that Disciplinary Counsel failed to prove that Respondent violated Rule 1.16(d).

H. Disciplinary Counsel Did Not Prove by Clear and Convincing Evidence that Respondent Violated Rule 8.4(c) by Engaging in Dishonesty.

Rule 8.4(c) provides that it is professional misconduct for a lawyer to “[e]ngage in conduct involving dishonesty, fraud, deceit, or misrepresentation.” Dishonesty is the most general of these categories. It includes “not only fraudulent, deceitful or misrepresentative conduct, but also ‘conduct evincing a lack of honesty, probity or integrity in principle; a lack of fairness and straightforwardness.’” *In re Samad*, 51 A.3d 486, 496 (D.C. 2012) (per curiam) (quoting *In re Shorter*, 570 A.2d 760, 767-68 (D.C. 1990) (per curiam)). The Court holds lawyers to a “high standard of honesty, no matter what role the lawyer is filling,” *In re Jackson*, 650 A.2d 675, 677 (D.C. 1994) (per curiam) (appended Board Report), because “[l]awyers have a greater duty than ordinary citizens to be scrupulously honest at all times, for honesty is ‘basic’ to the practice of law.” *In re Hutchinson*, 534 A.2d 919, 924 (D.C. 1987) (en banc) (quoting *In re Reback*, 513 A.2d 226, 231 (D.C. 1986) (en banc)).

If the dishonest conduct is “obviously wrongful and intentionally done, the performing of the act itself is sufficient to show the requisite intent for a violation.” *In re Romansky*, 825 A.2d 311, 315 (D.C. 2003). Conversely, “when the act itself

is not of a kind that is clearly wrongful, or not intentional, [Disciplinary] Counsel has the additional burden of showing the requisite dishonest intent.” *Id.*; *see also In re Uchendu*, 812 A.2d 933, 939 (D.C. 2002) (“[S]ome evidence of a dishonest state of mind is necessary to prove an 8.4(c) violation”). Dishonest intent can be established by proof of recklessness. *See Romansky*, 825 A.2d at 315, 317. To prove recklessness, Disciplinary Counsel must establish by clear and convincing evidence that the respondent “consciously disregarded the risk” created by his actions. *Id.*; *see, e.g., In re Boykins*, 999 A.2d 166, 171-72 (D.C. 2010) (finding reckless dishonesty where respondent falsely represented to Disciplinary Counsel that medical provider bills had been paid, without attempting to verify his memory of events from more than four years prior, and despite the fact that he had recently received notice of non-payment from one of the providers). The entire context of the respondent’s actions, including their credibility at the hearing, is relevant to a determination of intent. *See In re Ekekwe-Kauffman*, 210 A.3d 775, 796-97 (D.C. 2019) (*per curiam*).

Disciplinary Counsel argues that Respondent implied that he would charge a flat fee while the retainer agreement he drafted stated otherwise, and that he dishonestly held himself out as Ms. Bennett’s attorney (after the representation ended) when encouraging the successor personal representative to tell the court that Ms. Bennett would not object to the sale of the car. ODC Br. at 34-35.

We conclude that Disciplinary Counsel failed to prove a Rule 8.4(c) violation regarding the nature of the fee because Disciplinary Counsel did not prove that

Respondent implied that he would charge a flat fee. *See* FF 8-11. Further, Respondent did not dishonestly hold himself out as Ms. Bennett’s attorney because he did not know that he had been fired.¹¹ *See* FF 39-43, 59.

I. Disciplinary Counsel Did Not Prove by Clear and Convincing Evidence that Respondent Violated Rule 8.4(d) by Seriously Interfering with the Administration of Justice by his Handling of the Vehicle Estate Issue and by Failing to Give Ms. Bennett Any Portion of Her Partial Inheritance Until 2020.

Rule 8.4(d) provides that it is professional misconduct for a lawyer to “[e]ngage in conduct that seriously interferes with the administration of justice.” To establish a violation of Rule 8.4(d), Disciplinary Counsel must demonstrate by clear and convincing evidence that: (i) Respondent’s conduct was improper, i.e., that Respondent either acted improperly 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 at least potentially had an impact upon the process to a serious and adverse degree. *In re Hopkins*, 677 A.2d 55, 60-61 (D.C. 1996). Rule 8.4(d) can be violated if the attorney’s conduct causes the unnecessary expenditure of time and resources in a judicial proceeding. *See In re Cole*, 967 A.2d 1264, 1266 (D.C. 2009).

¹¹ As discussed above, we recognize that reckless false statements may violate Rule 8.4(c). However, there is no evidence here that Respondent “consciously disregarded the risk” that he was making false statements when he asserted that he continued to represent Ms. Bennett.

Disciplinary Counsel argues that Respondent’s handling of the estate vehicle violated Rule 8.4(d): it was improper to not keep Ms. Bennett informed so she could meaningfully participate in the case, that this failure related to two probate cases, and “it adversely impacted Ms. Edley’s ability to efficiently administer the estates.” ODC Br. at 36. Disciplinary Counsel also asserts that Respondent’s failure to send Ms. Bennett any portion of her partial inheritance was improper, bore upon the same two cases, and impacted the successor personal representative’s ability to close the estate. *Id.*

Respondent appears only to address Disciplinary Counsel’s argument about withholding Ms. Bennett’s partial inheritance. For this charge, Respondent argues that Disciplinary Counsel did not prove “improper” conduct because Respondent was asserting a lien—rightfully withholding money to cover legal fees for services already rendered. R. Br. at 28. Respondent also argues that the purpose of Rule 8.4(d) is not implicated here, and that withholding the funds does not “bear directly upon the judicial process with respect to an identifiable case or tribunal” and does not taint the judicial process in more than a de minimis way. *Id.* at 28-29.

Disciplinary Counsel’s Reply points to Respondent’s own testimony during this disciplinary proceeding in arguing that Respondent was not asserting a lien—instead he was withholding Ms. Bennett’s inheritance until she signed his indemnification agreement. ODC Reply at 20. But even if he was asserting a lien, Disciplinary Counsel argues that he had no basis to withhold the entire amount of

the distribution—only the \$7,000 minimum retainer reflected in his engagement letter. *Id.* at 19-20.

We find Disciplinary Counsel did not prove Respondent violated Rule 8.4(d) because it did not prove Respondent’s misconduct tainted the judicial process in more than a de minimis way.

We agree with Disciplinary Counsel that Respondent’s conduct was wrong in two respects—failing to keep the client reasonably informed about the potential sale of the car (Rule 1.4(a)), and failing to promptly deliver Ms. Bennett’s partial inheritance (Rule 1.15(c)).

We also agree with Disciplinary Counsel that Respondent’s misconduct bore directly upon the judicial process of an identifiable case—the matter of the Toler and Steadman-Toler estates.

But we do not find Disciplinary Counsel has proven Respondent’s conduct tainted the judicial process in more than a de minimis way, meaning, that it did not at least potentially have an impact upon the process to a serious and adverse degree.

We start with the sale of the car. Ms. Edley explained that by August 2019, she had everyone’s written consent except for Ms. Bennett’s, though Respondent, a month or two earlier, said Ms. Bennett “orally consented.” FF 30-31. Disciplinary Counsel points to two emails Ms. Edley sent Respondent thereafter requesting written consent, ODC Br. at 13, ¶ 45; *see* FF 42 (discussing Tr. 391-92, DCX 22, & DCX 23), and argues that Ms. Edley spent “more of her time” on obtaining proper consent for the car “than [on] almost every other issue.” ODC Br. at 36; *see also*

FF 64 (discussing DCX 26—email to interested persons about sale of car and obtaining Ms. Bennett’s consent). And it is true Ms. Edley had multiple responsibilities as successor personal representative, including getting all the accounts approved, taxes, and getting the car sold, and “in hindsight [would not] have wanted to spend five months talking about [receiving] consent for a car.” FF 63. But this is not enough to show an impact on the judicial process in more than a de minimis way.

By contrast, the respondent in *Hargrove* was a personal representative of an estate and caused, in relevant part, 1) “multiple court orders” and “extensive judicial proceedings” for failing to provide her file to successor representative, and 2) “the court to refer the matter to the Auditor Master, requiring additional expenditure of judicial time and resources that would have been unneeded if [the respondent] had closed the Estate and performed her other obligations in a timely and competent manner.” *In re Hargrove*, Board Docket No. 15-BD-060, at 18-19 (HC Rpt. Feb. 22, 2016), *recommendation adopted*, Board Docket No. 15-BD-060 (BPR Apr. 26, 2016), *recommendation adopted*, 155 A.3d 375 (D.C. 2017) (per curiam). *In re Evans* is also instructive, where the Court found the respondent’s conduct had more than a de minimis effect because the “the successor personal representative had to take corrective actions that would not otherwise have been necessary to recapture the value of the estate, including bringing a suit against the [r]espondent and his former client.” 902 A.2d 56, 69 (D.C. 2006) (per curiam) (appended Board Report). We do not have facts here rising to the levels in *Hargrove* and *Evans*, and we do not

have enough proof that Respondent violated Rule 8.4(d) relating to the sale of the car.

We next address Respondent's failure to distribute Ms. Bennett's partial inheritance. Disciplinary Counsel argues that it tainted the judicial process in more than a de minimis way "by raising questions about the administration of the estate and impacting the successor personal representative's ability to close the estates." ODC Br. at 36. Disciplinary Counsel does not cite case law supporting its view; it instead relies on the fact that Ms. Edley "felt that she could not close the estates until the issue of the appropriate distribution of Ms. Bennett's inheritance was resolved." *Id.* at 23, ¶ 84; *see id.* at 36 (citing ¶ 84).

But it is unclear why or how Respondent's delay prevented Ms. Edley from closing the estate. Indeed, it cites Ms. Edley's testimony that she believed her job as personal representative was to make sure that the estate is administered properly before it is closed, and that in her mind it was something that prevented her from closing the estate until Ms. Bennett received the distribution. *See* FF 65; ODC Br. at 23, ¶ 84 (citing Tr. 420-21), 36. We do not think this is clear and convincing evidence that Respondent's delay caused the estate to remain open. *Cf. In re Travers*, 764 A.2d 242, 249-250 (D.C. 2000) (holding that the respondent's refusal to satisfy the judgment was more than de minimis because "the personal representative of the estate had to make repeated demands for payment, had to file a complaint with the Clients' Security Trust Fund, and, most importantly, has been unable to close the estate and distribute its assets for several years").

But even if Ms. Edley could not close the estate, we believe Disciplinary Counsel still needs to prove Respondent’s actions impacted Ms. Edley’s ability in more than a de minimis way. The respondent in *Hargrove* “unnecessarily extend[ed] the estate proceedings, which prevented the Estate from closing during her thirteen years as personal representative.” Board Docket No. 15-BD-060, at 16 (BPR Apr. 26, 2016). And she did so by attempting to sell the property, moving to intervene in a foreclosure action, and seeking to resolve delinquent real estate taxes owned on the property. *Id.* at 7, 16-17. And though the Court’s language in *Travers* could suggest the opposite—that merely a failure to close the estate is sufficient—the Court also pointed to the personal representative’s “repeated demands for payment.” 764 A.2d at 249-50; *see also In re Travers*, Bar Docket No. 463-93, at 6 (HC Rpt. May 28, 1996) (noting that respondent “has made no effort to respond to [successor personal representative’s] demands.”).¹²

In sum, we find Disciplinary Counsel has not proven a Rule 8.4(d) violation because it has not proven Respondent’s conduct affected the judicial process in more than a de minimis way.

¹² We recognize that Ms. Bennett emailed Respondent twice about Ms. Bennett’s partial distribution and received no response. FF 46. We find this is not clear and convincing evidence of impacting Ms. Edley’s ability to a serious and adverse degree.

J. Disciplinary Counsel Did Not Prove by Clear and Convincing Evidence that Respondent Violated Rules 8.1(b) and 8.4(d) by Knowingly Failing to Respond Reasonably to Disciplinary Counsel and Seriously Interfering with the Administration of Justice During its Investigation.

Rule 8.1(b) provides that “a lawyer . . . in connection with a disciplinary matter, shall not . . . knowingly fail to respond reasonably to a lawful demand for information from . . . [a] disciplinary authority.” “Knowingly” “denotes actual knowledge of the fact in question. A person’s knowledge may be inferred from circumstances.” Rule 1.0(f). Thus, a knowing failure to respond reasonably to a request from Disciplinary Counsel regarding an ethical complaint constitutes a violation of Rule 8.1(b). *See, e.g., In re Lea*, 969 A.2d 881, 888 (D.C. 2009). Note that “Rule 8.1(b) specifically addresses the requirement of responding to [Disciplinary] Counsel as opposed to the more general requirements of Rule 8.4(d).” *In re Rivlin*, Bar Docket Nos. 436-96 *et al.*, at 40 n.20 (BPR Oct. 28, 2002), *recommendation adopted*, 856 A.2d 1086 (D.C. 2004) (per curiam).

Failure to respond to Disciplinary Counsel’s inquiries and orders of the Board can violate Rule 8.4(d). Rule 8.4, cmt. [2]; *see, e.g., In re Doman*, 314 A.3d 1219, 1231 (D.C. 2024) (per curiam) (failure to respond to Disciplinary Counsel’s subpoenas and inquiries); *In re Daniels*, 299 A.3d 541, 542 (D.C. 2023) (per curiam) (failure to comply with Board order compelling a response).

Disciplinary Counsel argues that Respondent violated these Rules on two different occasions: first when delaying to respond to the disciplinary complaint and provide Ms. Bennett’s case file, and second when Respondent failed to respond to its subpoena and related written requests. ODC Br. at 37-38. Disciplinary Counsel

also notes that in both instances, it obtained an order from the Board compelling Respondent to reply. *Id.*; see FF 75-76, 89.

Respondent argues that he produced all documents to Disciplinary Counsel, except one which Respondent asserts he never had. R. Br. at 29-30. Respondent also notes that Mr. Anderson (Disciplinary Counsel's investigator) "found no blemishes in the document production and voiced complaint that there was a delay in the production of some of the documents." *Id.* at 30.

Disciplinary Counsel's Reply reiterates that Respondent's delays caused a burden on the disciplinary system, including Disciplinary Counsel twice needing to obtain orders to compel. ODC Reply at 22.

We find that Disciplinary Counsel has not proven either violation because it has not proven Respondent was at fault for its elongated investigation. The facts establish only that Respondent participated at the beginning (before hiring Mr. Howard or when Disciplinary Counsel did not know he had hired Mr. Howard), and then provided materials to Mr. Howard and reasonably relied on him to satisfy Disciplinary Counsel's requests.

At the beginning of the investigation, Respondent apologized for his late response and requested an extension because he was engaging counsel, to which Disciplinary Counsel agreed. FF 67. Disciplinary Counsel followed up with an email about two months later, to which Respondent replied the next day. FF 68-69. In that reply, Respondent explained he had hired Mr. Howard and provided his contact information. FF 69. Respondent also noted that he had sent Mr. Howard the

Complaint, that he will also send him Disciplinary Counsel's most recent email, and that he was under the impression Mr. Howard was in contact with Disciplinary Counsel. FF 69.

Consistent with Respondent's last email, Respondent then reasonably relied on Mr. Howard to comply with Disciplinary Counsel's requests and the corresponding Board Orders. *See, e.g.*, FF 70, 75-76. This does not mean Respondent was uncooperative—Respondent provided Mr. Howard a box of files to give to Disciplinary Counsel, he provided Mr. Howard with dates and times to meet with Disciplinary Counsel, and he expressed to Mr. Howard his concerns when knowing Mr. Howard did not timely respond to a request. FF 70, 79, 92. Indeed, Disciplinary Counsel has not proven Respondent had a role (much less, how large of a role) in Mr. Howard's numerous requests for extensions, which were based on, for example, Mr. Howard's neck injury, his vacation schedule, and his encountering of "some issues with the assembly of the documents." FF 73, 84, 88.

To be sure, an almost three-year investigation spanning two Board orders to compel production is very serious. However, these serious circumstances do not constitute sufficient proof that Respondent either knowingly failed to respond reasonably to Disciplinary Counsel, or that Respondent seriously interfered with the investigation. For this reason, we cannot find Disciplinary Counsel proved a violation of either Rule 8.1(b) or Rule 8.4(d).

IV. RECOMMENDED SANCTION

In this case, Disciplinary Counsel has asked the Hearing Committee to recommend a one-year suspension, with fitness. Respondent has requested that the Hearing Committee recommend an informal admonition if any sanction is warranted. For the reasons described below, the Hearing Committee recommends the sanction of informal admonition, with PMAS as described below.¹³

A. Standard of Review

The sanction imposed in an attorney disciplinary matter is one that is necessary to protect the public and the courts, maintain the integrity of the legal profession, and deter the respondent and other attorneys from engaging in similar misconduct. *See, e.g., In re Hutchinson*, 534 A.2d 919, 924 (D.C. 1987) (en banc); *In re Martin*, 67 A.3d 1032, 1053 (D.C. 2013); *In re Cater*, 887 A.2d 1, 17 (D.C. 2005). “In all cases, [the] purpose in imposing discipline is to serve the public and professional interests . . . rather than to visit punishment upon an attorney.” *In re*

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D.C. Bar Rule XI, § 3 generally permits imposition of three lesser sanctions than disbarment or suspension: censure by the court (public censure), reprimand by the Board, and informal admonition by [Disciplinary] Counsel. Rule XI, § 3(3), (4), and (5). Although these lesser sanctions are similar in that they all involve some degree of public disclosure, they nevertheless reflect a descending order of severity from public censure to informal admonition.

In re Schlemmer, 870 A.2d 76, 80 (D.C. 2005).

Reback, 513 A.2d 226, 231 (D.C. 1986) (en banc) (citations omitted); *see also In re Goffe*, 641 A.2d 458, 464 (D.C. 1994) (per curiam).

The sanction also must not “foster a tendency toward inconsistent dispositions for comparable conduct or . . . otherwise be unwarranted.” D.C. Bar R. XI, § 9(h)(1); *see, e.g., Hutchinson*, 534 A.2d at 923-24; *In re Berryman*, 764 A.2d 760, 766 (D.C. 2000). In determining the appropriate sanction, the Court of Appeals considers a number of factors, including: (1) the seriousness of the conduct at issue; (2) the prejudice, if any, to the client which resulted from the conduct; (3) whether the conduct involved dishonesty; (4) the presence or absence of violations of other provisions of the disciplinary rules; (5) whether the attorney has a previous disciplinary history; (6) whether the attorney has acknowledged his wrongful conduct; and (7) circumstances in mitigation or aggravation. *See, e.g., Martin*, 67 A.3d at 1053 (citing *In re Elgin*, 918 A.2d 362, 376 (D.C. 2007)). The Court also considers “‘the moral fitness of the attorney’ and ‘the need to protect the public, the courts, and the legal profession.’” *In re Rodriguez-Quesada*, 122 A.3d 913, 921 (D.C. 2015) (per curiam) (quoting *In re Howes*, 52 A.3d 1, 15 (D.C. 2012)).

B. Application of the Sanction Factors

1. The Seriousness of the Misconduct

Respondent’s misconduct was serious. Respondent did not notify Ms. Bennett that he received her partial inheritance for over a year, and then waited almost another year to deliver it. Respondent moreover did not keep Ms. Bennett reasonably informed in several ways.

2. Prejudice to the Client

We have not found Disciplinary Counsel to have proven (intentional) prejudice or harm, in violation of Rule 1.3(b)(2). But we note here the stresses and frustrations Ms. Bennett felt resulting from Respondent's misconduct.

3. Dishonesty

We have found that Disciplinary Counsel has not proven Respondent was dishonest in violation of Rule 8.4(c).

4. Violations of Other Disciplinary Rules

"The 'violation of other disciplinary rules' prong of the analysis considers how many rules were violated." *In re Dobbie*, 305 A.3d 780, 812 (D.C. 2023). Here, we have found Disciplinary Counsel to have proven violations of Rules 1.4(a) and 1.15(c). However, even if we had found that Respondent's conduct in connection with the two issues underlying those two violations violated other Rules, it would not change our view of the appropriate sanction.

5. Previous Disciplinary History

Respondent has no previous disciplinary history in the District of Columbia. The Hearing Committee is aware of one instance in which Respondent was subjected to professional discipline in another state. In 2009, Respondent was found to have violated three rules of the Maryland Attorneys' Rules of Professional Conduct (MRPC) in connection with his representation of a client in a personal injury matter: (1) MRPC 1.1 – Competence, for inadequate thoroughness and preparation; (2) MRPC 1.3 – Diligence, for not acting with reasonable diligence and promptness;

and (3) MRPC 8.1(b) – Disciplinary Matters, for not responding to Bar Counsel in a timely manner. *See Att’y Grievance Comm’n v. Queen*, 967 A.2d 198, 200-04 (Md. 2009); DCX 71; ODC Br. at 40. Respondent’s sanction for these violations consisted of a public reprimand. *Queen*, 967 A.2d at 203, 207.

6. Acknowledgement of Wrongful Conduct

Respondent agrees that he did not provide Ms. Bennett with her first distribution. Respondent admits he did not send Ms. Bennett her partial inheritance for the first year because he “lost focus” that her funds were in the account. FF 32. Respondent explained this was due to all the activity going on in the estate and his other caseload. In September 2020, Respondent sent Ms. Bennett a letter enclosing a check for \$5,000, approximately double the rate of interest computed based on Mr. Hagans’ figure. FF 50.

7. Other Circumstances in Aggravation and Mitigation

The parties have not identified other circumstances in aggravation or mitigation of Respondent’s conduct in this matter. The Hearing Committee notes that the conduct at issue did not involve dishonesty, fraud, deceit, or misrepresentation.

C. Sanctions Imposed for Comparable Misconduct

As noted above, the Hearing Committee recommends that for his violations of Rules 1.4(a) and 1.15(c), Respondent receive the sanction of an informal admonition, with PMAS as described below. This recommended sanction is broadly consistent with sanctions imposed previously by the D.C. Court of Appeals, the

Board on Professional Responsibility (Board), and the Office of Disciplinary Counsel for comparable misconduct, including matters in which at least one of these two rule violations was found to have occurred.

The Board and Disciplinary Counsel have issued varying sanctions in prior cases in which Rule 1.4(a) violations were only one of multiple violations. For example, the Board in *In re Mudd* directed Disciplinary Counsel to issue an informal admonition upon an attorney whose three violations included a Rule 1.4(a) violation for not complying promptly with his client's requests for her case file and information regarding her probate case. Bar Docket No. 458-02, at 4, 6-8 (BPR Nov. 10, 2004). One of the non-Rule 1.4(a) violations involved conduct similar (though a different violation) to here: a failure to timely inform his client whether she had all of the case file (upon termination of his representation in violation of Rule 1.16(d)). *Id.* at 6. The Board held that the misconduct at issue could not be considered "serious" because it had not prejudiced the client's legal interests. *Id.* at 5-6. And Disciplinary Counsel has even issued an informal admonition when an attorney's Rule 1.4(a) violation was shown to have actually compromised a complainant's legal interests.¹⁴ In *In re Annand*, an attorney's failure to timely notify a potential client that his firm would decline the representation prior to the applicable statute of

¹⁴ Informal admonition letters, even when issued without a formal hearing, "may contain sufficient detail to be useful to [the] court in determining the range of sanctions appropriate in similar circumstances." *In re Schlemmer*, 840 A.2d 657, 662 (D.C. 2004).

limitations' expiration deprived the potential client of the opportunity to bring a particular cause of action. Bar Docket No. 2009-D303, at 2 (Letter of Informal Admonition Mar. 5, 2012). This failure was found to violate Rule 1.4(a). *Id.* at 3. Considered along with two other violations, this Rule 1.4(a) violation prompted the Office of Disciplinary Counsel to issue an informal admonition. *Id.* at 3-4.

Similar cases involving Rule 1.15(c) also guide our decision. The respondent in *Anderson* received a Board Reprimand (and referral to the D.C. Bar's Practice Management Advisory Service) for violating the same Rules as Respondent—Rule 1.4(a) and Rule 1.15(b) (now Rule 1.15(c))—in addition to Rules 1.4(b) and 1.17(a) (trust account). Bar Docket No. 224-98, at 23-24, 33, 38 (BPR Jul. 21, 2006). In cases where Rule 1.15(b) is “the principal violation,” the Board explained, “most . . . involve either a public censure by the Court or an informal admonition by [Disciplinary] Counsel.” *Id.* at 35. The Board recognized that though a public censure “might . . . be appropriate,” a Board reprimand is more so because of the delay in “bringing this matter to the disciplinary system and by the discipline to which [the respondent] has already been subjected” by the Court. *Id.* at 3, 35-38.

We do not have this type of mitigation here. But with less serious misconduct committed, one client involved, and prior discipline in Maryland over 15 years ago for different misconduct, we find an informal admonition more appropriate. *Cf. In re Millstein*, 855 A.2d 1137, 1137-38 (D.C. 2004) (per curiam) (public censure and a requirement to consult with Lawyer Practice Assistance Program, for violating Rule 1.15(a) (recordkeeping), D.C. Bar R. XI, §19(f) (recordkeeping), and Rule

1.15(b), coupled with prior discipline for “handling settlement funds”); *In re Graham*, 795 A.2d 51, 52 (D.C. 2002) (per curiam) (public censure for violating Rules 1.15(a) (commingling), 1.17(a) (trust account), and Rule 1.15(b), stemming from three separate cases); *In re Bettis*, 855 A.2d 282, 283-84, 290 (D.C. 2004) (public censure with probation for violating Rules 1.5(c) (contingency fee agreement), 1.15(b), and 1.17(a) (trust account), stemming from two matters, and probation because he was previously disbarred for mishandling funds).

We also find *In re Brazil* instructive. Like here, the respondent in *Brazil* violated Rule 1.15(c) for not promptly sending his client settlement funds for a significant amount of time—over one year. Bar Docket No. 2013-D123, at 2 (Letter of Informal Admonition Jul. 1, 2014). Though *Brazil* also violated Rule 1.15(a) (failure to deposit client check in trust account) and Rules 1.3(a) and (c) (diligence and promptness), he received an informal admonition. *Id.* The Letter noted mitigating circumstances, such as no misappropriation (as is here), cooperation with the investigation, acceptance of responsibility, and no prior discipline “although [he had] been practicing in [D.C.] since 1976.” *Id.* Respondent has admitted to losing focus and has no prior discipline in this jurisdiction since the establishment of the D.C. Bar in 1972, though he has prior discipline in Maryland for violations different than here. But any difference does not persuade us to recommend a different, elevated sanction, especially when *Brazil* committed four violations compared to Respondent’s two. *See also In re Mitchell*, Bar Docket No. 2012-D309 (Letter of Informal Admonition Mar. 14, 2014) (violations of Rules 1.15(a), 1.15(c), and

1.16(d) with cooperation, acceptance of responsibility, and no prior discipline since beginning practicing in 2004). We also recommend that Respondent be required to consult with PMAS, which we believe will help address what appeared to us to be some practice management issues that underlie Respondent's misconduct and help him comply with the Rules in future matters. *See, e.g., Anderson*, Bar Docket No. 224-98, at 38.

V. CONCLUSION

For the foregoing reasons, the Committee finds that Respondent violated Rules 1.4(a) and 1.15(c) and should receive the sanction of an informal admonition. In addition, and no later than 60 days after issuance of the final disposition in this matter, Respondent shall consult with Dan Mills, Esquire, and the D.C. Bar's Practice Management Advisory Service to conduct a review of his practices and shall waive confidentiality regarding all aspects of that review. A failure to do so may be grounds for future disciplinary action.

HEARING COMMITTEE NUMBER EIGHT



Brian Baker, Chair



Lisa Harger, Public Member



Jonathan Shaw, Attorney Member