THIS REPORT IS NOT A FINAL ORDER OF DISCIPLINE*

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

In the Matter of:	:	
	:	
WILLIAM F. BURTON,	:	Board Docket Nos. 19-BD-046 &
	:	19-BD-054
Respondent.	:	
	:	Disciplinary Docket Nos. 2017-D190,
A Suspended Member of the Bar of the	:	2018-D189, 2018-D342, 2018-D348,
District of Columbia Court of Appeals	:	2018-D349, & 2019-D099
(Bar Registration No. 431812)	:	

REPORT AND RECOMMENDATION OF THE AD HOC HEARING COMMITTEE

Respondent William F. Burton is charged with violating Rules 8.1(b) and 8.4(d) of the District of Columbia Rules of Professional Conduct and D.C. Bar R. XI, § 2(b)(3) (collectively the "Rules"), arising from his alleged failure to respond to Disciplinary Counsel's inquiry letters, and alleged failure to comply with a Board order compelling him to respond. Disciplinary Counsel contends that Respondent committed all of the charged violations, and should be suspended for at least 90 days with a fitness requirement. Respondent denies the charged Rule violations.

As set forth below, the Hearing Committee finds that Disciplinary Counsel has proven each of the charged Rule violations by clear and convincing evidence and recommends that Respondent receive a suspension of his license to practice of 30 days with a requirement that Respondent demonstrate his fitness to practice law before reinstatement.

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

I. RELEVANT PROCEDURAL HISTORY

On June 11, 2019, Disciplinary Counsel served Respondent with the Specification of Charges concerning Docket Nos. 2017-D190, 2018-D189, 2018-D342, 2018-D348, and 2018-D349. The Hearing Committee issued an order permitting Respondent to late file his Answer, and it was accepted as filed on July 2, 2019.

On August 9, 2019, Disciplinary Counsel served Respondent with the Specification concerning Docket No. 2019-D099. Respondent did not file an Answer to this Specification.[1] Both Specifications were consolidated for all purposes by the Board on August 20, 2019.

A hearing was held on October 22, 2019. Assistant Disciplinary Counsel H. Clay Smith, Esquire, represented the Office of Disciplinary Counsel and Respondent appeared *pro se*. Disciplinary Counsel offered the following exhibits, which were admitted without objection: DX A-D and 1-36, and SX1.[2] Respondent offered no exhibits into evidence. Disciplinary Counsel called Angela Thornton as a witness at the hearing. Respondent called no witnesses but testified on his own behalf.

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[1] Because Respondent failed to file an Answer in Docket No. 2019-D099, his ability to present evidence on those charges was restricted by Board Rule 7.7. While this rule was not specifically referenced during the hearing, it operated to permit Respondent to cross-examine Disciplinary Counsel's witness at the hearing, testify on his own behalf (but not present the testimony of others or non-testimonial evidence), and present a plea or testimony in mitigation of sanction.

[2] "DX" refers to Disciplinary Counsel's exhibits; "SX1" refers to Disciplinary Counsel's Supplemental Exhibit. "Tr." refers to the transcript of the hearing held on October 22, 2019.

Upon conclusion of the hearing, the Hearing Committee made a preliminary non-binding determination that Disciplinary Counsel had proven at least one of the alleged Rule violations set forth in the Specifications of Charges. Tr. 107-08; *see* Board Rule 11.11. Neither party presented additional evidence in aggravation or mitigation.

Disciplinary Counsel submitted its Proposed Findings of Fact, Conclusions of Law, and Recommendation as to Sanction on November 15, 2019. Respondent did not submit a post-hearing brief.

II. FINDINGS OF FACT

The following findings of fact are based on the testimony and documentary evidence admitted at the hearing, and these findings of facts 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))).

1. Respondent's primary business address of record with the D.C. Bar is 5425 Wisconsin Avenue, Suite 600, Chevy Chase, Maryland 20815. His secondary address of record with the Bar is his home address at 11400 December Way, Apartment 102, Silver Spring, Maryland 20904. Tr. 55 (Respondent); SX 1.

COUNT I

Virginia State Bar Interim Suspension Order
Disciplinary Docket No. 2018-D189

2. On June 26, 2018, Disciplinary Counsel sent a letter to Respondent at his business address, informing him that an investigation of his conduct had been opened based upon an Interim Suspension Order issued by the Virginia State Bar (VSB) Disciplinary Board suspending him from the practice of law in Virginia. Tr. 26 (Thornton); DX 14. A copy of the VSB order was enclosed. DX 14. In the letter, Respondent was asked to provide a substantive written response to each allegation of misconduct on or before July 6, 2018, and was cautioned that his failure to comply with the request could constitute a violation of Rule 8.4(d) (conduct that seriously interferes with the administration of justice). *Id*.

3. Respondent did not submit a response as requested. Tr. 25-27 (Thornton)[3]; DX 17.

4. On July 18, 2018, Disciplinary Counsel sent another letter enclosing the VSB Order to Respondent at his business address by first-class and certified mail, asking him to respond by July 30, 2018. Tr. 27 (Thornton); DX 15. This letter also cautioned Respondent that his failure to comply with the request could constitute a violation of Rules 8.1(b) (knowing failure to respond to a disciplinary authority) and 8.4(d). DX 15.

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[3] Ms. Thornton testified that the Office of Disciplinary Counsel's chronology report reflects whether correspondence from a respondent is received by the office. If there is no entry reflecting receipt, the item was not received. Tr. 14-16.

5. A certified mail receipt, confirming delivery, was returned to the Office of Disciplinary Counsel. Tr. 27-28 (Thornton); DX 16.

6. Respondent did not submit a response as requested. Tr. 14 (Thornton); DX 17.

7. On September 13, 2018, Disciplinary Counsel filed with the Board on Professional Responsibility, and served upon Respondent at his business address and by email, a motion to compel his response to the investigation. Tr. 23-24 (Thornton); DX 9.[4]

8. Respondent did not submit a response to Disciplinary Counsel's motion. Tr. 24 (Thornton); DX 17.

9. On October 1, 2018, the Board issued an order granting the motion and ordered that Respondent provide a response to Disciplinary Counsel's inquiries within ten (10) calendar days. DX 12.

10. Disciplinary Counsel's investigator, Kevin O'Connell, left an envelope with the receptionist at Respondent's business address of record on March 12, 2019. The envelope contained a copy of the Board's order compelling a response in Docket Nos. 2018-D189 and 2017-D190; disciplinary complaints filed in Docket Nos. 2018-D342, 2018-D348, and 2018-D349; initial letters to Respondent; and follow-up

[4] Respondent's email address "William@moawad.com" appears in the D.C. Bar's member profile. SX 1. Respondent acknowledged that he received email at that address at the time. Tr. 77-78 (Respondent).

letters to Respondent requesting a response to those three complaints. DX 34, 35. These additional investigations are discussed below.[5]

11. That same day, Mr. O'Connell delivered another envelope containing copies of the same documents to Respondent's home address. Respondent's son answered the door and, as Mr. O'Connell spoke with the young boy, an older woman - whom Respondent believes was the babysitter - began to close the door. Mr. O'Connell left the envelope on a chair inside the door before the door shut completely. *See* DX 35; Tr. 64-65 (Respondent).

12. Respondent denies receiving either envelope. Tr. 57, 81, 105 (Respondent). At the hearing, he testified that he would have had no incentive to ignore the disciplinary complaints but stated "I have no explanation for the delivery that was made . . . ." Tr. 64-65. He offered no further explanation.

13. Respondent did not submit a response to Disciplinary Counsel's inquiries as ordered by the Board. Tr. 14 (Thornton); DX 17.

COUNT II

The Dunn Complaint
Disciplinary Docket No. 2017-D190

14. On July 31, 2017, Disciplinary Counsel sent a letter to Respondent at his business address informing him that an investigation of his conduct had been opened based upon a complaint filed against him by Brigette D. Dunn. Tr. 11-12

[5] Disciplinary Counsel's unrebutted contention is that Respondent never responded to any of its inquiry letters in any of these investigations. *See* ODC Br. at 17, 19 n.10.

(Thornton); DX 1. The complaint alleged that Respondent had been retained and paid to initiate divorce proceedings on behalf of her father, but failed to do so. DX 1. A copy of Ms. Dunn's complaint was enclosed. *Id*. Respondent was asked to provide a substantive response to each allegation of misconduct on or before August 10, 2017 and cautioned that his failure to comply with the request could constitute a violation of Rule 8.4(d). *Id*.

15. Respondent did not submit a response as requested. Tr. 13-14 (Thornton); DX 13.

16. On August 28, 2017, Disciplinary Counsel sent another letter enclosing Ms. Dunn's complaint to Respondent at his business address by first-class and certified mail, asking him to respond by September 8, 2017. Tr. 14 (Thornton); DX 2. The letter also cautioned Respondent that his failure to comply may constitute a violation of Rules 8.1(b) and 8.4(d). DX 2.

17. Respondent did not submit a response as requested. Tr. 14-16 (Thornton); DX 13.

18. On May 22, 2018, Disciplinary Counsel sent a third letter enclosing Ms. Dunn's complaint to Respondent at his business address, by first-class and certified mail asking him to respond to the letter by June 1, 2018. Tr. 19-20 (Thornton); DX 3.

19. A certified mail receipt, confirming delivery, was returned to the Office of Disciplinary Counsel. Tr. 19-20, 47-48 (Thornton); DX 4.

20. Respondent did not submit a response as requested. Tr. 19-20; DX 13.

21. On May 24, 2018, Disciplinary Counsel issued a subpoena to Respondent at his business address requesting that he produce, *inter alia*, his client file and financial records relevant to Ms. Dunn's complaint by June 4, 2018. DX 5. The subpoena was sent to Respondent at his business address by first-class and certified mail. Tr. 20 (Thornton); DX 5.

22. A certified mail receipt, confirming delivery, was returned to the Office of Disciplinary Counsel. Tr. 21 (Thornton); DX 6.

23. Respondent did not respond to the subpoena, either to contest it or submit the documents as directed. Tr. 21 (Thornton); DX 13.

24. On June 27, 2018, Assistant Disciplinary Counsel Joseph Bowman spoke with Respondent by telephone regarding his overdue response to the investigation of the Dunn complaint. DX 7, 11. Following the conversation, Mr. Bowman sent copies of Disciplinary Counsel's July 31, 2017 letter and Ms. Dunn's complaint to Respondent by email. *Id*. Respondent acknowledged receipt of the correspondence and promised Mr. Bowman that he would respond immediately. *Id.* Tr. 71-73 (Respondent).

25. Respondent contends that he responded to Ms. Dunn's complaint in a letter, dated July 2, 2018, to Disciplinary Counsel. Respondent appended this letter to his Answer. Respondent testified that he mailed the letter "on or about" the same day. Tr. 75 (Respondent). We find that he did not mail this response letter to Disciplinary Counsel for several reasons. First, although the letter was dated July 2, 2018, Respondent sent an email to Disciplinary Counsel, on September 13, 2018,

stating that he would hand-deliver his response to Ms. Dunn's complaint on September 17, 2018 – over two months after the date on the letter (DX 11: "I will hand-deliver my response to the complaint made by Ms. Dunn to your office on Monday, September 17, 2018."). Respondent produced no corroborating evidence that the letter was ever mailed. Further, Disciplinary Counsel's records do not reflect receipt of the letter. DX 13. *See generally* Tr. 15-24 (Thornton). We find that Respondent did not submit this letter to Disciplinary Counsel and failed to provide any written response to Ms. Dunn's complaint.

26. On September 13, 2018, Disciplinary Counsel filed with the Board, and served upon Respondent at his business address, a motion to compel a response to the investigation.[6] Tr. 23-24 (Thornton); DX 9.

27. Respondent did not submit a response to Disciplinary Counsel's motion. Tr. 24 (Thornton); DX 13.

28. On October 1, 2018, the Board issued an order granting the motion and ordered that Respondent provide a response to Disciplinary Counsel's inquiries within ten (10) calendar days. DX 12. A copy of the Board's order was sent to Respondent. Tr. 25 (Thornton).

29. Respondent did not submit a response to Disciplinary Counsel's inquiries as ordered by the Board. Tr. 14 (Thornton); DX 13.

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[6] Docket Number 2017-D190 was included in the motion to compel discussed in FF 7.

30. As discussed above, Mr. O'Connell left a copy of the Board's order with the receptionist at Respondent's business address, as well as at Respondent's home address, on March 12, 2019. *See* FF 10-11; DX 35. Respondent did not submit a response as ordered by the Board. Tr. 14, 37-40 (Thornton); DX 13.

COUNT III

The Hamideh Complaint
Disciplinary Docket No. 2018-D348

31. On December 11, 2018, Disciplinary Counsel sent a letter to Respondent addressed to his home, informing him that an investigation of his conduct had been opened based upon a complaint filed against him by Baha Hamideh. Tr. 30-31 (Thornton); DX 22. The complaint alleged that Respondent had been paid $2,000 for an immigration matter, but that Respondent did no work on the matter, failed to communicate with Mr. Hamideh, and failed to return to the client his file or his money. DX 22. A copy of Mr. Hamideh's complaint was enclosed with Disciplinary Counsel's letter. *Id*. In the letter, Respondent was asked to provide a substantive response on or before December 21, 2018, and cautioned that his failure to comply with the request could constitute a violation of Rule 8.4(d). *Id.*

32. Respondent did not submit a response as requested. Tr. 31 (Thornton); DX 25.

33. On January 17, 2019, Disciplinary Counsel sent another letter enclosing Mr. Hamideh's complaint to Respondent's business address by first-class and certified mail asking him to respond by January 28, 2019. Tr. 31-32 (Thornton);

DX 23. The letter also cautioned Respondent that his failure to comply with the request could constitute a violation of Rules 8.1(b) and 8.4(d). DX 23.

34. A certified mail receipt, confirming delivery, was returned to the Office of Disciplinary Counsel. Tr. 32 (Thornton); DX 24.

35. Respondent did not submit a response as requested. Tr. 32 (Thornton); DX 25.

36. As discussed above, Mr. O'Connell left copies of Disciplinary Counsel's letters dated December 11, 2018, and January 17, 2019, along with Mr. Hamideh's complaint at Respondent's business and home addresses on March 12, 2019. DX 34, 35. Disciplinary Counsel requested a response by March 22, 2019. DX 34.

37. Respondent did not submit a response. Tr. 14, 37-40 (Thornton); DX 25.

COUNT IV

The Davis Complaint
Disciplinary Docket No. 2018-D342

38. On December 4, 2018, Disciplinary Counsel sent a letter to Respondent at his business address informing him that an investigation of his conduct had been opened based upon a complaint filed against him by Daryl M. Davis. Tr. 28, 29 (Thornton); DX 18. The complaint alleged that Respondent was retained to represent Mr. Davis in a civil matter but neglected the case, resulting in a default judgment against the client, and that Respondent had failed to communicate with him. DX 18. A copy of Mr. Davis's complaint was enclosed with Disciplinary

Counsel's letter. *Id*. In the letter, Respondent was asked to provide a substantive written response to each allegation of misconduct on or before December 17, 2018, and cautioned that his failure to comply with the request could constitute a violation of Rule 8.4(d). *Id*.

39. Respondent did not submit a response as requested. Tr. 14, 30 (Thornton); DX 21.

40. On January 17, 2019, Disciplinary Counsel sent another letter enclosing Mr. Davis's complaint to Respondent at his business address, by first-class and certified mail, asking him to respond by January 28, 2019. Tr. 29 (Thornton); DX 19. This letter also cautioned Respondent that his failure to comply with the request could constitute a violation of Rules 8.1(b) and 8.4(d). DX 19.

41. A certified mail receipt, confirming delivery, was returned to the Office of Disciplinary Counsel. Tr. 29-30 (Thornton); DX 20.[7]

42. Respondent did not submit a response as requested. Tr. 30 (Thornton); DX 21.

43. As discussed above, Mr. O'Connell left copies of Disciplinary Counsel's letters of December 4, 2018, and January 17, 2019, and another copy of Mr. Davis's complaint, at Respondent's business and home addresses on March 12,

[7] The certified mail receipt (DX 20) lists only docket number 2018-D349. However, the certified mail Article Number (9414 7266 9904 2129 2004 03) listed on the receipt matches that listed on the letter. Thus, we find that DX 20 demonstrates receipt of Disciplinary Counsel's January 17, 2019 letter (DX 19).

2019. DX 34, 35. Disciplinary Counsel requested his response by March 22, 2019. DX 34.

44. Respondent did not submit a response to Mr. Davis's complaint. Tr. 14, 37-40 (Thornton); DX 21.

COUNT V

The Harb Complaint
Disciplinary Docket No. 2018-D349

45. On December 11, 2018, Disciplinary Counsel sent a letter to Respondent at his business address informing him that an investigation of his conduct had been opened based upon the complaint filed against him by Ahmad Harb. Tr. 33 (Thornton); DX 26. The complaint alleged that Respondent was retained to handle an immigration matter and was paid a total of $14,000. DX 26. The complaint further alleged that Respondent had apparently done no work on the matter and had failed to communicate with the client. *Id*. A copy of Mr. Harb's complaint was enclosed with Disciplinary Counsel's letter. *Id*. In the letter, Respondent was asked to provide a substantive written response on or before December 21, 2018, and was cautioned that his failure to comply with the request could constitute a violation of Rule 8.4(d). *Id.*

46. Respondent did not submit a response as requested. Tr. 33 (Thornton); DX 29.

47. On January 17, 2019, Disciplinary Counsel sent another letter concerning Mr. Harb's complaint to Respondent at his business address by first-class and certified mail, asking him to submit a response by January 28, 2019. Tr. 33-34

(Thornton); DX 27. This letter also cautioned Respondent that his failure to comply with the request could constitute a violation of Rules 8.1(b) and 8.4(d). DX 27.

48. A certified mail receipt, confirming delivery, was returned to the Office of Disciplinary Counsel. Tr. 34 (Thornton); DX 28.

49. Respondent did not submit a response as requested. Tr. 34 (Thornton); DX 29.

50. As discussed above, Mr. O'Connell left copies of Disciplinary Counsel's letters dated December 11, 2018 and January 17, 2019, and another copy of Mr. Harb's complaint at Respondent's business and home addresses on March 12, 2019. DX 34, 35. Disciplinary Counsel requested his response by March 22, 2019. DX 34.

51. Respondent did not submit a response. Tr. 14, 37-40 (Thornton); DX 29.

COUNT VI

The Aldousari Complaint
Disciplinary Docket No. 2019-D099

52. On April 24, 2019, Disciplinary Counsel sent a letter to Respondent at his business address, informing him that an investigation of his conduct had been opened based upon a complaint filed against him by Mr. Nawas Aldousari. Tr. 35 (Thornton); DX 30. The complaint alleged that Respondent was retained and paid $20,000 to handle an immigration matter. DX 30. It further alleged that Respondent appeared to have done no work and that he failed to communicate with Mr. Aldousari. *Id*. A copy of Mr. Aldousari's complaint was enclosed with Disciplinary

Counsel's letter. *Id.* In the letter, Respondent was asked to provide a substantive written response to each allegation of misconduct on or before May 6, 2019, and cautioned that his failure to comply with the request could constitute a violation of Rule 8.4(d) (conduct that seriously interferes with the administration of justice). *Id.*

53. Respondent did not submit a response as requested. Tr. 35 (Thornton); DX 33.

54. On May 9, 2019, Disciplinary Counsel sent another letter enclosing Mr. Aldousari's complaint to Respondent at his business address by first-class and certified mail, asking him to respond by May 20, 2019. Tr. 36-37 (Thornton); DX 31. This letter also cautioned Respondent that his failure to comply with the request could constitute a violation of Rules 8.1(b) (knowing failure to respond to a disciplinary authority) and 8.4(d). DX 31.

55. A certified mail receipt, confirming delivery, was returned to the Disciplinary Counsel. Tr. 36 (Thornton); DX 32.

56. Respondent did not submit a response as requested. Tr. 37 (Thornton); DX 33.

RESPONDENT'S DEFENSE

57. Respondent defends that he never received Disciplinary Counsel's inquiries and that someone has been "tampering" with his mail at his office. Tr. 58-59, 106. He believes that his former law partner, Edward Moawad, Esquire, was removing correspondence from his mailbox. Tr. 55-61 (Respondent). When asked

for the basis for his belief, he stated that an investigator for the Virginia Bar told him that "Mr. Moawad is doing whatever he can to impugn [his] credibility . . . ." Tr. 83.

58. We find that Respondent did receive the correspondence and the order from the Board and that he failed to respond to them. Disciplinary Counsel has proven that Respondent received more than ample notice in each complaint and that he decided to ignore the notice. He further decided not to respond. Respondent's testimony concerning his receipt of the complaints and the subsequent requirement for response was simply and obviously not credible. His testimony and mitigation were so unbelievable that it is difficult to imagine that Respondent really was trying to deceive the Committee. Respondent's explanations were juvenile and sounded more like a child at school claiming that "the dog ate my homework." It is unimaginable that all mail sent to Respondent both regular and certified was somehow confiscated by Mr. Moawad in an attempt to discredit Respondent. It is unbelievable that the documents personally served on a woman at Respondent's home were never received. It is incredible that after an email exchange with Mr. Bowman of the Office of Disciplinary Counsel, Respondent claimed to have both mailed and hand delivered documents that were never received. Respondent seemed to be incapable of facing or doing what was necessary to answer the complaints and also seems to be incapable of explaining why this occurred. Thus, the only conclusion is that Respondent lied to the Hearing Committee and that he did so intentionally.

III. CONCLUSIONS OF LAW

Disciplinary Counsel charged Respondent with violating Rule 8.1(b) (knowingly failing to respond reasonably to a lawful demand for information in connection with a disciplinary matter); Rule 8.4(d) (conduct seriously interfering with the administration of justice); and D.C. Bar R. XI, § 2(b)(3) (failing to comply with a Board order).

A. Respondent Knowingly Failed to Respond Reasonably to Lawful Demands for Information by Disciplinary Counsel, in Violation of Rule 8.1(b).

Pursuant to Rule 8.1(b), a lawyer shall not "knowingly fail to respond reasonably to a lawful demand for information" from a disciplinary authority. *Cater*, 887 A.2d at 17. Thus, a knowing failure to respond to a request from Disciplinary Counsel regarding a disciplinary complaint constitutes a violation of Rule 8.1(b). *See, e.g.*, *In re Lea*, 969 A.2d 881, 888 (D.C. 2009).

Respondent plainly violated this Rule. He received and disregarded Disciplinary Counsel's letters enclosing the clients' complaints and requesting responses to the allegations, as well as a subpoena *duces tecum*. Respondent also received and ignored the Board's order directing compliance with Disciplinary Counsel's investigations in Disciplinary Counsel Docket Nos. 2017-D190 and 2018-D189.

Respondent does not offer any credible explanation for his failure to respond to the Board order or disciplinary complaints. Therefore, the Committee concludes that Respondent did violate Rule 8.1(b).

B. Respondent Engaged in Conduct that Seriously Interfered with the Administration of Justice, in Violation of Rule 8.4(d).

Rule 8.4(d) states: "It is professional misconduct for a lawyer to . . . [e]ngage in conduct that seriously interferes with the administration of justice." Comment [2] elaborates that "[t]he cases under paragraph (d) include acts by a lawyer such as: failure to cooperate with Disciplinary Counsel; [and] failure to respond to Disciplinary Counsel's inquiries or subpoenas . . . ."

"A respondent has an affirmative duty to respond to the legitimate inquiries of [Disciplinary] Counsel during the course of a disciplinary investigation." *In re Jones*, 534 A.2d 336, 340 (D.C. 1987) (per curiam) (appended Board Report). The failure of an attorney to respond to Disciplinary Counsel's inquiries concerning a complaint filed against that attorney has been held repeatedly to constitute conduct that seriously interferes with the administration of justice. *See, e.g.*, *In re Fitzgerald,* 109 A.3d 619 (D.C. 2014)*; In re Lea,* 969 A.2d at 881; *In re Beaman*, 775 A.2d 1063 (D.C. 2001) (per curiam); *In re Nielsen*, 768 A.2d 41 (D.C. 2001) (per curiam); *In re Steinberg*, 761 A.2d 279 (D.C. 2000) (per curiam); *In re Giles*, 741 A.2d 1062 (D.C. 1999) (per curiam); *In re Mattingly*, 723 A.2d 1219 (D.C. 1999) (per curiam); *In re Wright*, 702 A.2d 1251, 1252, 1255-56 (D.C. 1997) (per curiam) (appended Board Report); *In re Lilly*, 699 A.2d 1135 (D.C. 1997) (per curiam); *In re Lockie*, 649 A.2d 546 (D.C. 1994) (per curiam); *In re Smith*, 649 A.2d 299 (D.C. 1994) (per curiam); *see also Cater*, 887 A.2d at 17.

As a member of the Bar, Respondent had a duty and responsibility to respond to Disciplinary Counsel's inquiries. *See In re Kanu*, 5 A.3d 1, 11 (D.C. 2010). His

failure to do so violated this Rule. The Committee thus finds that Respondent violated Rule 8.4(d).

C. Respondent Failed to Comply with a Board Order, in Violation of D.C. Bar R. XI, § 2(b)(3).

Section 2(b)(3) of D.C. Bar R. XI provides that a lawyer's failure to comply with an order of the Board issued pursuant to the Rule shall be grounds for discipline. *Cater*, 887 A.2d at 17. On October 1, 2018, the Board issued an order directing Respondent to respond to Disciplinary Counsel's inquires in Disciplinary Counsel Docket Nos. 2017-D190 and 2018-D189 within 10 days. Respondent never complied with the order.

At no point has Respondent expressly claimed that he was not served with the Board's order. He appears to ask this Hearing Committee to speculate as to whether service occurred. In his Answer, Respondent "question[ed]" whether he was personally served with the Board's order. Answer at 1, 2. He offered no more clarifying explanation at the hearing for his failure to respond and conceded that the Board's order was served at his home address but added that he never received it.

Because we find, by clear and convincing evidence, that Respondent was served with the Board order at his office and at his home and that he failed to respond thereafter, he violated D.C. Bar R. XI, § 2(b)(3).

IV. RECOMMENDED SANCTION

In this case, Disciplinary Counsel has asked the Hearing Committee to recommend that Respondent be suspended for at least 90 days with a fitness requirement. For the reasons described below, we agree Respondent should be

suspended, but for 30 days instead of 90. We further agree that Respondent should be required to demonstrate fitness before being reinstated to practice in the District of Columbia.

A. Standard of Review

The sanction imposed in an attorney disciplinary matter is one that is necessary to protect the public and the courts, maintain the integrity of the legal profession, and deter the respondent and other attorneys from engaging in similar misconduct. *See, e.g.*, *In re Hutchinson*, 534 A.2d 919, 924 (D.C. 1987) (en banc); *In re Martin*, 67 A.3d 1032, 1053 (D.C. 2013); *Cater*, 887 A.2d at 17. "In all cases, [the] purpose in imposing discipline is to serve the public and professional interests . . . rather than to visit punishment upon an attorney." *In re Reback*, 513 A.2d 226, 231 (D.C. 1986) (en banc) (citations omitted); *see also In re Goffe*, 641 A.2d 458, 464 (D.C. 1994) (per curiam).

The sanction also must not "foster a tendency toward inconsistent dispositions for comparable conduct or . . . otherwise be unwarranted." D.C. Bar R. XI, § 9(h)(1); *see, e.g.*, *Hutchinson*, 534 A.2d at 923-24; *In re Berryman*, 764 A.2d 760, 766 (D.C. 2000). In determining the appropriate sanction, the Court of Appeals considers a number of factors, including: (1) the seriousness of the conduct at issue; (2) the prejudice, if any, to the client which resulted from the conduct; (3) whether the conduct involved dishonesty; (4) the presence or absence of violations of other provisions of the disciplinary rules; (5) whether the attorney has a previous disciplinary history; (6) whether the attorney has acknowledged his wrongful

conduct; and (7) circumstances in mitigation or aggravation. *See, e.g.*, *Martin*, 67 A.3d at 1053 (citing *In re Elgin*, 918 A.2d 362, 376 (D.C. 2007)). The Court also considers "'the moral fitness of the attorney' and 'the need to protect the public, the courts, and the legal profession . . . .'" *In re Rodriguez-Quesada*, 122 A.3d 913, 921 (D.C. 2015) (per curiam) (quoting *In re Howes*, 52 A.3d 1, 15 (D.C. 2012)).

B. Sanctions Imposed for Comparable Misconduct

In this case, Respondent's misconduct was serious. He failed to respond to inquiries concerning disciplinary complaints in six different matters and, in doing so, violated three Rules. In this failure, he delayed the investigation of six separate complaints over a period of two years. At the time of the hearing, the complaints had still not been answered and no evidence had been provided to Disciplinary Counsel on the underlying complaints. Respondent's actions indicate an alarming cascade of failures with his violations piling up like a chain reaction traffic wreck. Additionally, he appears unable to acknowledge anything about his wrongful conduct. We find that his testimony before the Hearing Committee was stunning. His demeanor appeared to be open and respectful but the explanation was so far-fetched that it indicates some type of disconnect in Respondent's reasoning.

In similar cases, "a short (usually 30-day) suspensory sanction has usually been imposed, often combined with a condition that the respondent make a response to the underlying ethical complaint before being permitted to resume the practice of law." *In re Godette*, Bar Docket No. 398-01, at 7 (BPR May 2, 2005) (citing *In re Beller*, 802 A.2d 340 (D.C. 2002) (per curiam); *In re Beaman*, 775 A.2d 1063 (D.C.

2001) (per curiam); *Lilly*, 699 A.2d at 1135; *In re Delaney*, 697 A.2d 1212 (D.C. 1997)); *recommendation adopted following a remand on the question of fitness*, 959 A.2d 61 (D.C. 2008); *see also In re Scanlon*, 865 A.2d 534 (D.C. 2005) (per curiam) (30-day suspension with reinstatement conditioned upon his filing a response to the disciplinary complaint and his completion CLE courses).

Disciplinary Counsel cites *Cater* in support of his recommendation that Respondent be suspended for 90 days. The *Cater* Court echoed the Board's recitation that "single instances of failure to cooperate typically have resulted in thirty-day suspensions, while multiple failures have elicited suspensions of longer duration." *Id*. at 18. Thus, the Court adopted the Board's recommended sanction of a 90-day suspension for the respondent's multiple instances of failure to comply. Here, the failures to comply do not constitute separate failures, but rather represent a cascading series of events that built on one another. Based on Respondent's testimony and the facts established at the hearing, it is clear that his failures represent a spiraling out of control that mitigates the severity of his actions. He simply shut down. He did not make separate decisions to violate the Rules. This is why we treat the separate instances as one bundle of failure. Since "mitigating and aggravating circumstances" are part of the factors to be considered in appropriate degree of discipline, *Cater*, 887 A2d at 13 (citing *In re Austin*, 858 A.2d 969, 975 (D.C. 2004)), we find the sanction of a 30-day suspension to be appropriate.

C. Fitness

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

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

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

Cater, 887 A.2d at 22.

The Court has previously imposed fitness in cases involving multiple failures to cooperate with Disciplinary Counsel inquiries. *In re Lea,* 969 A.2d at 890 ("even in a single investigation, an attorney's disregard for the disciplinary process may be so repeated, deliberate, and prolonged that a requirement to prove fitness is entirely

justified."); *In re Burnett*, 878 A.2d 1291, 1292 (D.C. 2005) (per curiam) ("a persistent pattern of indifference toward the disciplinary procedures by which the D.C. Bar regulates itself" warrants the imposition of a fitness requirement); *see also In re Giles*, 741 A.2d 1062, 1062 (D.C. 1999) (per curiam).

We find that Disciplinary Counsel has proven by clear and convincing evidence that there is a serious doubt about Respondent's ability to practice in accord with the Rules, and we thus recommend that he should be required to demonstrate his fitness to practice law prior to reinstatement. Having observed Respondent at the hearing and given his demeanor and testimony, the Committee finds that something is not right with Respondent. He ignored multiple requests for information about his conduct as a lawyer, and attempted to justify his non-response with a far-fetched assertion that his former law partner was intercepting his mail. Of course, that does not explain his failure to respond to the packet left at his home, or his failure to respond to the inquiries he acknowledged receiving by email. The Committee cannot diagnose the reasons for Respondent's failures in this case because Respondent offered no explanation for his conduct. Thus, the record shows only that Respondent received numerous repeated requests from Disciplinary Counsel, yet failed to respond to a single one, and did not even attempt to offer an explanation for his failure.

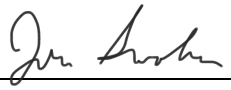
We might be tempted to conclude that certainly, after this proceeding, Respondent would act differently if he received a disciplinary complaint in the future. But that would be sheer speculation, unsupported by any evidence in the

record. Instead, the unbroken pattern of unexplained non-responsiveness described above compels the conclusion that Respondent would repeat his misconduct if he were to receive a similar inquiry in the future. A reinstatement hearing will afford Respondent the opportunity to present evidence that he will not repeat this misconduct in the future.

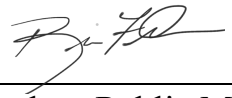
V. CONCLUSION

For the foregoing reasons, the Committee finds that Respondent violated Rules 8.1(b), 8.4(d), and D.C. Bar R. XI § 2(b)(3) and should receive the sanction of 30 days, and that he be required to prove his fitness to practice before reinstatement. We further recommend that Respondent's attention be directed to the requirements of D.C. Bar R. XI, § 14, and their effect on eligibility for reinstatement. *See* D.C. Bar R. XI, § 16(c).

AD HOC HEARING COMMITTEE



John J. Soroka, Chair



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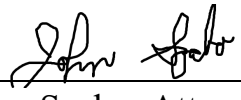

John Szabo, Attorney Member