DISTRICT OF COLUMBIA COURT OF APPEALS
BOARD ON PROFESSIONAL RESPONSIBILITY

In the Matter of:	:	
	:	
LESLIE SILVERMAN,	:	
	:	Board Docket No. 11-BD-090
Respondent.	:	Bar Docket No. 2011-D017
	:	
A Member of the Bar of the	:	
District of Columbia Court of Appeals	:	
(Bar Registration No. 448188)	:	

REPORT AND RECOMMENDATION OF THE BOARD ON PROFESSIONAL RESPONSIBILITY

I. INTRODUCTION

Respondent, Leslie Silverman, is charged with violations of District of Columbia Rules of Professional Conduct (the "Rules") 1.1(a) and/or (b) (competence, skill, and care); Rules 1.4(a) and (b) (failure to communicate and explain matter to client); Rule 3.1 (pursuing an action or claim that had no basis in law and fact); Rule 3.3(a)(1) (knowing false statement to a tribunal); Rule 8.1(a) (false statement in connection with a disciplinary matter); Rule 8.4(c) (dishonesty, fraud, deceit, and/or misrepresentation); and Rule 8.4(d) (conduct seriously interfering with the administration of justice) arising from her representation of Michael Lawson in a bankruptcy matter.

In its November 25, 2015 Report and Recommendation ("HC Rpt."), which is incorporated herein, the Ad Hoc Hearing Committee found that Respondent's violations of the above-specified Rules were proved by clear and convincing

evidence and recommended a three-year suspension with a requirement to prove her fitness to practice law as a condition of reinstatement as the appropriate sanction. On February 22, 2016, Respondent filed her Brief in which she "by and large" did not challenge the factual findings of the Hearing Committee and conceded the violations of Rules 1.1(a) and (b), Rules 1.4(a) and (b), and "perhaps Rule 3.1." Respondent disagrees with the Hearing Committee's conclusion that her false statements in the bankruptcy matter and in this disciplinary matter were knowing and intentional, and with its rejection of Respondent's mitigation evidence. Respondent also disagrees with the Hearing Committee's recommended sanction. Disciplinary Counsel took no exception to the Report and Recommendation of the Hearing Committee. On March 11, 2016, Disciplinary Counsel filed its Brief in Support of the Hearing Committee's Report and Recommendation.

On April 6, 2016, Respondent filed a Motion for Leave to File a Motion for Remand, which she withdrew on April 7, 2016. On April 29, 2016, Respondent filed an Amended Motion for Leave to File an Amended Motion for Remand. On May 2, 2016, Respondent filed a Supplement to Amended Motion for Leave to File an Amended Motion for Remand and a Notice Withdrawing Respondent's Exceptions to the Report and Recommendation of Ad Hoc Committee, in which she waived oral argument. On May 6, 2016, Disciplinary Counsel filed its Opposition to Respondent's Amended Motion for Remand. In the Board's May 6, 2016 Order, the Board ordered that it would take Respondent's Amended Motion for Remand under advisement and decide the matter on the available record.

For the reasons set forth below, having reviewed the record, the Board denies Respondent's Amended Motion for Remand. As Respondent withdrew her exception, and Disciplinary Counsel filed no exception, the Board has considered this matter on the record. *See* Board Rule 13.5. The Board finds that the Hearing Committee's Findings of Fact are supported by substantial evidence in the record, and concurs with its conclusions of law and the recommended sanction of a three-year suspension and a fitness requirement.[1]

II. MOTION FOR REMAND

The Board considers Respondent's Amended Motion for Remand as a threshold issue for making its recommendation. Respondent argues in her Amended Motion for Remand that she did not know that she could have sought mitigation of sanction pursuant to *In re Kersey*, 520 A.2d 321 (D.C. 1987) because she was unfamiliar with the Board on Professional Responsibility Rules ("Board Rules"). In deciding Respondent's Amended Motion, the Board considers two issues: First, whether Respondent waived her right to present *Kersey* evidence at the hearing and, second, if she did not waive her right, whether her *Kersey* proffer is adequate for mitigation of any sanction. Respondent fails on both issues.

Pursuant to Board Rule 7.6, Respondent should have given notice of her intent to seek *Kersey* mitigation when she filed her Answer. *See* Board Rule 7.6(a) ("Failure to file a notice of intent to raise an alleged disability in mitigation shall

[1] In making this recommendation, that Board has considered Respondent's misconduct in another disciplinary proceeding, *In re Szymkowicz*, Bar Docket Nos. 2005-D179 *et al.* (BPR May 19, 2017).

operate as a waiver of the right to raise an alleged disability in mitigation, subject to the provisions of subparagraph (d).”). However, Board Rule 11.12 provides that a respondent who fails to offer *Kersey* evidence at a hearing may avoid a waiver of presenting such evidence by showing “good cause” in a motion filed at least five days before oral argument before the Board. We recognize that Board Rule 11.12 could be read to apply only when a respondent gives timely *Kersey* notice pursuant to Rule 7.6 but then fails to present *Kersey* evidence at the hearing, and not where the respondent fails to even provide pre-hearing notice of an intent to seek *Kersey* mitigation. We conclude that Board Rule 11.12 allows a respondent to show “good cause” for failing to present *Kersey* evidence, even if the respondent did not provide timely notice pursuant to Board Rule 7.6. Therefore, although Respondent did not present provide timely notice, or present *Kersey* evidence at the hearing, Respondent’s Motion for Remand, which was predicated on showing good cause for a non-waiver, is timely under Board Rule 11.12, and we consider whether there is good cause for finding that Respondent did not waive her ability to submit *Kersey* evidence.

As Disciplinary Counsel points out it its Opposition Brief, Respondent’s sole reason for not submitting *Kersey* evidence is that she did not know that she could attempt to avail herself of a *Kersey* mitigation defense. Respondent’s reason for not presenting *Kersey* evidence is not persuasive and does not meet the good cause

standard. Respondent's motion and her proffer fall squarely within *In re Zeiger*, 692 A.2d 1351, 1358-59 (D.C. 1997) (per curiam):

> First, Respondent was represented by competent counsel at the hearing, an attorney familiar with the disciplinary system. Respondent does not explain why neither he nor his counsel raised the issue of his disability at the hearing. Second, we conclude that Respondent's proffer is inadequate to prove mitigation under *In re Kersey*, 520 A.2d 321 (D.C.1987). *Kersey* and Board Rule 11.11 require a respondent to demonstrate by clear and convincing evidence that he had a disability or addiction, that he show by a preponderance of the evidence the causal link between the misconduct and the disability or addiction, and that he show by clear and convincing evidence significant rehabilitation or recovery. *See In re Temple*, 596 A.2d 585 (D.C.1991); *In re Kersey*, 520 A.2d at 326-27. The depression from which Respondent was said to suffer, characterized as an "adjustment disorder," has not been recognized by the Court as available to attorneys for *Kersey*-type mitigation. *Cf. In re Peek*, 565 A.2d 627 (D.C.1989) (chronic depression may be used as mitigating factor).

See also In re Edwards, 870 A.2d 90, 96 (D.C. 2005) (Board did not "abuse its discretion in concluding that respondent waived her right to present *Kersey* mitigation evidence by failing to offer it before the Hearing Committee[,]" where there was no showing of "good cause to excuse the default").

Similarly, Respondent was represented by counsel who was familiar with the Board Rules at the time her Answer was filed (the due date for her *Kersey* notice under Board Rule 7.6), and Respondent herself was familiar with the disciplinary system.[2] HC Rpt. at 49-50 (discussing prior discipline). Also, Respondent was

[2] As noted in footnote 1, *supra*, Respondent is involved in another pending disciplinary matter, *In re Szymkowicz*, Bar Docket Nos. 2005-D179 *et al*. The Specification of Charges in *Szymkowicz* was served on Respondent in June 2009, approximately two-and-a-half years before the Specification of Charges was served in this matter.

personally served with a copy of the Board Rules when she was served with the Specification of Charges. *See* Disciplinary Counsel's Exhibit 3 (return of service). She has not met her burden of showing good cause why she failed to raise *Kersey* mitigation at the hearing.

Even if Respondent had shown good cause, we find that her *Kersey* proffer is inadequate. Respondent argues that the strain of taking care of her terminally ill mother during the period of misconduct contributed to her disciplinary violations. Although Respondent did not offer *Kersey* evidence as such during the hearing, she presented the same evidence in mitigation that she now proffers in her motion. The Hearing Committee considered that evidence and concluded that "Respondent did not establish mitigation by clear and convincing evidence because she did not establish any causal link that established how the strain of caring for her mother contributed to her misconduct. Moreover, even if the strain of caring for her mother contributed to her [misconduct], it does not excuse her subsequent dishonesty . . . ." HC Rpt. at 50. Despite the Hearing Committee's conclusion, Respondent has not provided any proffer of evidence to fill this gap. Dr. Tellefesen's report, submitted with Respondent's Amended Motion for Remand, does not address the causal link between Respondent's condition and her dishonest conduct. Thus, even if Respondent's motion is granted and the case is remanded for further fact finding, there is no additional evidence for the Hearing Committee to consider as to the critical factor of causation. The Board denies Respondent's Amended Motion for Remand.

III. FACTUAL SUMMARY

The Board accepts the Hearing Committee's "'evidentiary findings, including credibility findings, if they are supported by substantial evidence in the record.'" *In re Ukwu*, 926 A.2d 1106, 1115 (D.C. 2007) (quoting *In re Cleaver-Bascombe*, 892 A.2d 396, 401 (D.C. 2006)). As detailed by the Hearing Committee, the key facts in Respondent's case may be summarized as follows.

Respondent was retained by Theresa Lawson to represent Ms. Lawson and her husband, Michael Lawson, in a bankruptcy matter. HC Rpt., Finding of Fact ("FF") 17. The draft engagement letter named Theresa Lawson as the client and the would-be-debtor in a Chapter 13 bankruptcy petition to be filed by Respondent. FF 19. The fee for the representation was $3,500 in addition to a filing fee of $274. *Id.* Theresa Lawson paid Respondent $2,274. FF 20. After a September 10, 2010 meeting, Respondent and Theresa Lawson decided that the bankruptcy petition should name Michael Lawson as the debtor instead of Theresa Lawson. FF 21. Michael Lawson subsequently signed the engagement letter with his name written in as the client and Theresa Lawson's name stricken out. FF 24. Respondent or someone else had prepared a power of attorney (POA) for Michael Lawson to sign in favor of Theresa Lawson. FF 22. However, Michael Lawson signed the POA in favor of Herman Wooden, after Theresa Lawson's name was crossed out. FF 26-27. At this point, Respondent had not met with Michael Lawson. FF 25. During the period of these events, Michael Lawson suffered from drug addiction. FF 14, 17.

As a requirement of filing the bankruptcy petition, the debtor must take an online credit counseling course. FF 28. Theresa Lawson took the course and identified herself as Michael Lawson, the debtor on the bankruptcy petition. *Id.* She also printed out the certificate of completion for the course in the name of Michael Lawson. *Id.*

On September 13 or 14, 2010, Theresa Lawson provided Respondent with the POA in favor of Mr. Wooden, the certificate of completion, and other documents necessary for filing with the bankruptcy petition. FF 29-30. Respondent filed the bankruptcy petition on September 14, 2010, with Michael Lawson as the sole debtor and with his purported e-signature. FF 32. However, at the time that the petition was filed, Respondent still had not met with Michael Lawson and neither Theresa Lawson nor Michael Lawson had signed the original petition, as required. FF 33-35. Michael Lawson had not seen the petition or the schedules accompanying the petition. FF 36. There were several inaccuracies and deficiencies in the petition, which was "signed" under penalty of perjury. FF 37. The petition indicated that Michael Lawson had no income and no personal property (other than a GMC Envoy), even though Respondent knew that Michael Lawson received income from three rental properties and a landscaping business. FF 38-39. Respondent also knew that the representation that Michael Lawson had no income made Mr. Lawson ineligible for Chapter 13 bankruptcy protection. FF 41. Further, the property ownership interests and the property values listed in the petition were inaccurate,

and the amount of secured claims listed exceeded the limit allowed for Chapter 13. FF 42-44. Finally, the schedules to the petition were incomplete. FF 45.

Respondent failed to keep Michael Lawson informed of any of the important events in the bankruptcy proceeding. FF 46. Although Respondent received a notice and orders regarding the missing documents with a deadline for filing them, Respondent did not advise Michael Lawson of the notice and orders, and did not provide the missing documents by the court-ordered deadlines. *Id.* In her only written communication to Michael Lawson, Respondent informed him of the October 18, 2010 creditor's meeting in a September 27, 2010 letter, but Mr. Lawson did not see the letter. FF 48. In fact, at the time of the hearing, Michael Lawson was not even aware that the bankruptcy petition had been filed, and on October 17, 2010, the day before the creditor's meeting, Mr. Lawson entered a thirty-day drug treatment program. FF 48-49. Although Respondent had received the POA in favor of Mr. Wooden by September 14, 2010, she did not even inform Mr. Wooden of the meeting. FF 50. Instead, Respondent continued to communicate with Theresa Lawson (and rely on her direction). FF 51.

Respondent did not attend the creditors' meeting and, instead, had a colleague attend. FF 53. On October 19, 2010, the Bankruptcy Trustee filed a motion to dismiss the bankruptcy petition with prejudice because Michael Lawson was ineligible for Chapter 13 bankruptcy based on the filed schedules, and that the petition violated the debt limits and was filed in bad faith. FF 54. Michael Lawson did not appear at the creditors' meeting, and he failed to timely commence plan payments within thirty

days of filing the petition. *Id.* The Trustee also filed a motion for Respondent to disgorge her attorney's fees and to impose sanctions on her. FF 55. The Trustee filed an amended motion to dismiss on October 20, 2010, and a hearing on the amended motion was scheduled on November 19, 2010. FF 56-57. Respondent did not inform Michael Lawson of the motion or the hearing, and on November 12, 2010, she accepted another $1,000 in fees from Theresa Lawson and filed an opposition to the motion to dismiss. FF 58-59. On November 15 and 16, 2010, Respondent filed amended schedules and statements with the Bankruptcy Court with Michael Lawson's electronic signature even though she knew that he did not sign or review the filing. FF 60.

Respondent met Michael Lawson for the first time at the hearing on the amended motion to dismiss. FF 63. At the hearing, Respondent continued her misrepresentations about the circumstances of the bankruptcy and misled the Bankruptcy Court. FF 68-71. Respondent told the court that Theresa Lawson had the power of attorney even though she knew that it was signed in favor of Mr. Wooden. FF 69. She also informed the court that Theresa Lawson informed her that Michael Lawson authorized submission of the petition and provided her with the property valuations that the Trustee said were undervalued. FF 68-69. Respondent never told the Bankruptcy Court that she had never seen a power of attorney in favor of Theresa Lawson and that the only power of attorney that she had seen was in favor of Mr. Wooden. FF 72. Even when the judge attempted to clarify the confusion about who had Michael Lawson's power of attorney, Respondent made repeated

misrepresentations that Theresa Lawson had the power of attorney, and she did not correct the record. FF 70-72.

The Bankruptcy Court granted the motion to dismiss and ordered Respondent to disgorge $500 in attorney's fees based on ineligibility and bad faith. FF 73. Respondent did not inform Michael Lawson of the dismissal. FF 77. On February 2, 2011, Respondent filed a motion to reopen the case and requested a clarification of the order with respect to who should receive the fee refund. FF 79. On February 7, 2011, the Bankruptcy Court ordered Respondent to refund the fees to Theresa Lawson and ordered Respondent to disgorge $3,000 in fees. FF 80. On March 5, 2011, Respondent sent Theresa Lawson a check a check for $3,000 with the notation "refund Michael Lawson Bky." FF 82.

On January 4, 2011, the Bankruptcy Court referred Respondent to the Committee on Grievances of the United States District Court for the District of Columbia. FF 83. In the referral, the court noted that Respondent had filed at least seven documents that she misrepresented were filed by the debtor when she knew that the debtor had not signed the documents. *Id.* The Bankruptcy Court viewed the misconduct as serious, but not fraudulent. FF 84.

IV. RULE VIOLATIONS

The Hearing Committee concluded that Respondent violated Rules 1.1(a) and (b) by filing the petition and associated schedules without her client's signature or in reliance upon an accurate POA, filing inaccurate and incomplete schedules, and failing to correct the inaccuracies or supplement the schedules. HC Rpt. at 32-35.

The Hearing Committee concluded that Respondent also violated Rule 3.1 by filing the Chapter 13 petition "after it was clear that she had no authority to maintain a petition" and "there was no factual basis for establishing her client's eligibility for Chapter 13 relief." HC Rpt. at 40.

The Hearing Committee concluded that Respondent violated Rules 1.4(a) and (b) by failing to communicate with her client, Michael Lawson, while the bankruptcy petition was being prepared or to explain the proceedings to him, failing to find or communicate with Michael Lawson after receiving the POA issued to another person and continuing to rely on Theresa Lawson's representations, failing to advise him of the dismissal of the bankruptcy petition or advise him of the consequences of the dismissal, and failing to send him the court order or other documents to which he was entitled. HC Rpt. at 35-37.

The Hearing Committee concluded that Respondent violated Rule 3.3(a)(1) by making false representations to the Bankruptcy Court, including: "represent[ing] that the petition and other documents were signed by and sworn to by Michael Lawson," filing and pursuing the petition "at the direction of Theresa Lawson without disclosing that she was doing so[,]" filing "schedules with information about Michael Lawson's income and his ownership interests in the four real properties" when she knew the "information was inaccurate," and making "false statements about the POA at the November 2010 hearing." HC Rpt. at 41.

The Hearing Committee concluded that Respondent's "false representations to the Bankruptcy Court and her filing and pursuit of a case that had no legal or

factual basis, particularly with the respect to the choice to file under Chapter 13" seriously interfered with the administration of justice in violation of Rule 8.4(d). HC Rpt. at 46-47.

The Hearing Committee concluded that Respondent's false statements to Disciplinary Counsel, violated Rule 8.1. HC Rpt. at 43-44. The Hearing Committee further concluded that Respondent's conduct in violation of Rules 3.3 and 8.1 was recklessly dishonest in violation of Rule 8.4(c), in that Respondent "'consciously disregarded the risk' created by her actions." *Id.* at 45 (quoting *In re Romansky*, 825 A.2d 311, 317 (D.C. 2003)). Finally, the Hearing Committee determined that at times, Respondent's testimony during the hearing was "deliberately false." FF 94; HC Rpt. at 51.

We agree with all of these conclusions, and adopt them as our own, for the reasons set forth in the attached Hearing Committee report.

V. SANCTION

The Hearing Committee recommended that Respondent be suspended for three years, with fitness. Disciplinary Counsel argues that Respondent should be suspended for "at least" three years, with fitness. Respondent argued in her brief (now withdrawn), that the sanction should be no more than a six-month suspension, without fitness.

The Board has reviewed the Hearing Committee's thorough and thoughtful sanction analysis, and we agree with the Hearing Committee that a three-year suspension is consistent with the sanctions imposed for cases involving comparable

misconduct. As the Hearing Committee noted, while Respondent's misconduct is extremely serious, it does not involve flagrant dishonesty, for which disbarment is the appropriate sanction. We further agree with the Hearing Committee that Respondent's dishonesty and her failure to appreciate the seriousness of her misconduct constitutes clear and convincing evidence of a serious doubt as to Respondent's ability to practice law in the future, and thus, we recommend that she be required to prove fitness as a condition of reinstatement.

In recommending a sanction here, we have considered Respondent's conduct in another matter pending in the discipline system, *In re Szymkowicz, et al*., Bar Docket Nos. 2005-D179, *et al.* (BPR May 19, 2017), where we recommended that Respondent receive, at most, a thirty-day suspension for the misconduct in that case. In *In re Thompson*, the Court directed that when different cases are at different steps of the disciplinary process, the Board should recommend a sanction as if all matters were before the Board simultaneously. 492 A.2d 866, 867 (D.C. 1985). We do not find the misconduct in the *Szymkowicz* matter sufficient to increase to disbarment the sanction for Respondent's collective misconduct. *See* D.C. Bar R. XI, § 3(a) (disciplinary suspensions are "not to exceed three years"; disbarment is the next most serious sanction). Thus, we recommend that Respondent be suspended for three years, with fitness, for her misconduct in both cases.

VI. CONCLUSION

The Board, having reviewed the record, concurs with the Hearing Committee's factual findings as supported by substantial evidence in the record, with its conclusions of law, and with the recommended sanction. For these and other reasons set forth in the Report and Recommendation of the Ad Hoc Hearing Committee, which we adopt and append hereto, the Board recommends that Respondent be suspended for three years with a requirement to prove her fitness to practice law as a condition of reinstatement as the appropriate sanction.

BOARD ON PROFESSIONAL RESPONSIBILITY

By: /PGB/
Patricia G. Butler

Dated: May 19, 2017

All members of the Board concur in this Report and Recommendation.

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

In the Matter of:	:	
LESLIE SILVERMAN,	:	
	:	Board Docket No. 11-BD-090
Respondent.	:	
	:	Bar Docket No. 2011-D017
A Member of the Bar of the District of Columbia Court of Appeals.	:	
D.C. Bar Number: 448188.	:	
Date of Admission: October 2, 1995	:	

REPORT AND RECOMMENDATION OF
AD HOC HEARING COMMITTEE

I. INTRODUCTION AND SUMMARY

This disciplinary proceeding arises out of Leslie Silverman's ("Respondent's") handling of a bankruptcy matter. Respondent was contacted by Theresa Lawson for bankruptcy advice and ultimately filed a Chapter 13 bankruptcy petition as counsel for Theresa Lawson's then-husband, Michael Lawson. However, Respondent never spoke with Michael Lawson before filing the petition and did not communicate with him thereafter about the status of the bankruptcy matter. She communicated primarily with Theresa Lawson and filed the petition on her instruction. Moreover, Respondent filed the petition knowing that information therein was inaccurate and/or incomplete, knowing that information contained therein made the petitioner ineligible for Chapter 13 relief, and without having obtained Michael Lawson's signature on the original petition and other documents as required by the Bankruptcy Court rules. While Respondent claims to have acted pursuant to a power of attorney in favor of Theresa Lawson, there is no evidence that such a document ever existed. The only power of attorney in Respondent's client file was in favor of a

different person, with whom Respondent never communicated.

These initial problems with the bankruptcy filing spiraled into multiple instances of dishonesty. Respondent made representations to the Bankruptcy Court regarding her authority to file the petition, which the Bankruptcy Court accepted as true. Such representations, however, were not true. After the Bankruptcy Court dismissed the petition, sanctioned Respondent for filing "inappropriate papers," and filed a complaint against her, Respondent made similar representations to Bar Counsel during its investigation of this matter. Those representations also were not true.

After an investigation, Bar Counsel charged Respondent with violating the following District of Columbia Rules of Professional Conduct (the "Rules"): 1.1(a) and/or (b) (competence, skill and care); Rule 1.4(a) and (b) (communication and failure to explain matter to client); Rule 3.1 (pursuing an action or claim that had no basis in law and fact); Rule 3.3(a)(1) (knowing false statement to a tribunal); Rule 8.1(a) (false statement in connection with a disciplinary matter); Rule 8.4(c) (dishonesty, fraud, deceit, and/or misrepresentation); and Rule 8.4(d) (conduct seriously interfering with the administration of justice).

For the reasons stated below, the Hearing Committee finds by clear and convincing evidence that Respondent violated each of these rules. We recommend that she be suspended for three years and that she be required to prove her fitness to practice prior to reinstatement.

II. PROCEDURAL HISTORY

On December 30, 2011, Bar Counsel filed a Petition Instituting Formal Disciplinary Proceedings and Specification of Charges against Respondent. BX 2.[1] A process server personally

[1] "BX" refers to Bar Counsel's exhibits and the page citations are to the Bates numbers on the exhibit. "Tr." refers to the consecutively paginated transcript of the hearing on June 12, July 18, and September 28, 2012. "BFF" refers to Bar Counsel's numbered Proposed Findings of Fact; Conclusions of Law, and Recommendations as to Sanction"; "RFF" refers to Respondent's

served Respondent with the Petition and Specification of Charges on January 4, 2012. BX 3. Respondent filed her answer, through counsel, on January 25, 2012, in which she admitted a number of the factual allegations. BX 4.

This matter was assigned to an Ad Hoc Hearing Committee composed of Justin G. Castillo, Esquire, Chair, Sherry Weaver, and Roger Adelman, Esquire.[2] At the hearing on June 12, 2012, Bar Counsel called four witnesses: (1) Respondent; (2) Michael Lawson; (3) Herman Wooden, a close friend of Michael Lawson who was designated as his attorney-in-fact in a power of attorney; and (4) Cynthia Niklas, Esquire, the Trustee for Chapter 13 bankruptcy cases filed in the United States Bankruptcy Court for the District of Columbia. Bar Counsel also offered Bar Exhibits 1-44, which were admitted without objection. Tr. 307. Respondent did not call any witnesses, but she was examined by her counsel. Respondent did not offer any exhibits. Neither party called Theresa Lawson to testify.

After these four witnesses had testified, the Hearing Committee continued the hearing in order to call Theresa Lawson as the Committee's witness, and scheduled July 18, 2012, as the next hearing date. Tr. 314-17. Bar Counsel arranged for a process server to serve Ms. Lawson with a subpoena to testify on that date, but she failed to appear. She later told Bar Counsel that she "forgot" about the hearing.[3] On September 13, 2012, Bar Counsel arranged for a process server

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"Proposed Findings of Fact; Conclusions of Law, and Recommendations as to Sanction"; and "BCR" refers to Bar Counsel's Reply Brief.

[2] After the close of the hearing, Mr. Adelman withdrew from the proceedings. He took no part in the drafting of this Report and Recommendation. Mr. Adelman died on September 13, 2015.

[3] Letter from Julia Porter, Senior Assistant Bar Counsel, to James Phalen, Assistant Executive Attorney, Board on Professional Responsibility (July 18, 2012).

to serve Ms. Lawson with a second subpoena to testify on September 28, 2012. She appeared and testified on that date.

At the hearing on September 28, 2012, Bar Counsel offered BX 47, which was admitted into evidence. Tr. 508. Bar Counsel also offered BX 45 and BX 46, which it had previously filed on June 19, 2012. Tr. 508. Respondent did not object to either exhibit, and she stipulated that BX 45 includes all written communications between Respondent and either Michael or Theresa Lawson that were found in Respondent's file. Tr. 508-10. The Committee hereby accepts BX 45 and 46 into evidence.

At the conclusion of the first phase of the hearing, the Hearing Committee made a preliminary finding that Bar Counsel had proven at least one rule violation, and then proceeded to consider evidence in aggravation or mitigation of sanction. Tr. 511; *see* Board Rule 11.11. In mitigation, Respondent referred to her previous testimony about her mother's illness, in which she testified that during the events in question she was the primary caregiver for her mother, who was dying of lung cancer, and that her mother's condition occupied her time and caused her "personal stress and emotional discomfort." Tr. 511; *see* Tr. 93, 151 (Respondent). In aggravation, Bar Counsel offered BX 48, which reflects Respondent's prior discipline.[4] Without objection, BX 48 was admitted into evidence. Tr. 514.

[4] During the September 28, 2012 hearing, Bar Counsel noted – presumably in aggravation – that the alleged misconduct in this matter occurred after Respondent was the subject of another pending disciplinary matter. Tr. 512. Later that same day, however, a Hearing Committee issued a report in that earlier matter involving Respondent and other lawyers, which was tried between October 2009 and March 2010. *See In re Szymkowicz*, Bar Docket Nos. 2005-D179 *et al.* (H.C. Rpt. Sept. 28, 2012). On July 25, 2014, the Board recommended that the Court affirm the Hearing Committee's conclusion that the charges against Respondent and two other attorneys should be dismissed. *See In re Szymkowicz*, Bar Docket Nos. 2005-D179 et al. at 4 (BPR July 25, 2014), *remanded*, App. No. 14-BG-0884 (D.C. Sept. 17, 2015). Bar Counsel filed an exception to the Board's report with the D.C. Court of Appeals. On September 17, 2015, the Court remanded the matter to the Board.

After the hearing, Bar Counsel filed a motion to admit two new exhibits, BX 49 and 50. These exhibits consist of the charges brought against Respondent by the Committee on Grievances of the United States District Court for the District of Columbia and Respondent's answer to those charges, respectively. Respondent did not oppose this motion, and the Committee hereby accepts BX 49 and 50 into evidence.

III. STANDARD OF REVIEW

Bar Counsel must establish by clear and convincing evidence that Respondent violated the Rules of Professional Conduct. "This more stringent standard expresses a preference for the attorney's interests by allocating more of the risk of error to Bar Counsel, who bears the burden of proof." *In re Allen*, 27 A.3d 1178, 1184 (D.C. 2011) (citation and internal quotations omitted). 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." *In re Cater*, 887 A.2d 1, 24 (D.C. 2005) (citation omitted). On the basis of the record as a whole, the Hearing Committee makes the following findings of fact and conclusions of law.

IV. FINDINGS OF FACT

A. Respondent's Bar Admission

1. Respondent, a member of the Bar of the District of Columbia Court of Appeals, was admitted by motion on October 2, 1995 and assigned Bar number 448188. BX 1. Respondent also is a member of the Maryland Bar and maintains her office in Olney, Maryland. Tr. 26-27 (Respondent); *see* BX 6 at 1.

B. Background: Principles of, and Respondent's Familiarity with, Chapter 13 Bankruptcy Law

2. When filing for bankruptcy under the repayment provisions of Chapter 13, debtors use current income and resources to repay their creditors under a plan over a set period. Tr. 243-

44, 247 (Niklas).[5] Chapter 13 imposes certain eligibility requirements. Among other things, debtors must have a regular and stable source of income to make payments pursuant to a plan, and their debts must fall within specified limits. Tr. 249-51, 254 (Niklas). These debt limits for secured and unsecured debt for Chapter 13 debtors are set forth in the Bankruptcy Code. Tr. 250-51, 253 (Niklas). In 2010, to be eligible for relief under Chapter 13, a debtor could not have secured debts in excess of $1,081,400 or unsecured debts in excess of $360,475. 11 U.S.C. § 109(e); Tr. 250, 253 (Niklas).

3. Initiating a Chapter 13 case entails filing a petition, along with required schedules that set forth, among other things, the debtor's assets, sources of income, unsecured and secured debts and a list of creditors. Tr. 254-56 (Niklas).

4. Within 20-45 days after the filing of the petition, there is a meeting of the creditors at which the Trustee examines the debtor under oath about the accuracy of the information set forth in the debtor's schedules. The Trustee also determines whether the debtor meets the eligibility requirements of Chapter 13 and has a plan that is confirmable. Tr. 260-61 (Niklas); 11 U.S.C. §§ 1324(b), 1325(a). Before the creditors' meeting begins, the debtor (who must attend the meeting) must produce a photo ID and Social Security number to verify his or her identity. Tr. 261, 263 (Niklas); BX 46; *see also* 11 U.S.C. § 343. The debtor must provide proof or testify that he or she has filed tax returns for the last four years, and must also provide a copy of his latest federal tax return or transcript at least one week before the meeting of creditors. Tr. 264 (Niklas); *see* 11

[5] In a Chapter 7 or liquidation case, the debtor's non-exempt assets are liquidated and distributed to his creditors, and the debtor receives a discharge (except for debts that are non-dischargeable). Tr. 246-47.

U.S.C. § 1308(a). If the debtor does not produce the required tax information, dismissal is mandatory. Tr. 264 (Niklas); 11 U.S.C. § 521(i)(1).

5. Cynthia Niklas, Esquire, has been the standing Chapter 13 Trustee for the United States Bankruptcy Court of the District of Columbia since 1975. Tr. 242-43 (Niklas). In that capacity, she reviews debtors' petitions and schedules when filed, attends meetings of creditors where she questions debtors under oath, makes recommendations to the Bankruptcy Court about debtors' proposed plans, and files reports with the Bankruptcy Court. Tr. 244 (Niklas). The Trustee will file a motion to dismiss a bankruptcy case if the debtor's debts exceed the statutory debt limits; if the debtor fails to satisfy other eligibility requirements; or if the debtor acts in bad faith. Tr. 244-45, 253-54 (Niklas); *see* 11 U.S.C. § 1307. If the case goes forward and the debtor's plan is confirmed, the Trustee then collects money from the debtor's employer and other sources, and uses it to pay the creditors pursuant to the plan over a period not to exceed five years. Tr. 245 (Niklas); *see* 11 U.S.C. § 1322(a)(4).

6. The Chapter 13 debtor must personally sign the petition and schedules and must declare, under penalty of perjury, to the truth and correctness of the information contained therein. *See* BX 7, Fed. R. Bankr. P. 1008. Requiring debtors to "declare under penalty of perjury that the information provided in this petition is true and correct" is designed to impress upon them the seriousness of the matter, to provide the court and creditors with an assurance of the reliability of the information and to provide the courts and creditors with the ability to hold the debtor responsible for false or incorrect statements. *See* BX 34 at 5 (Bankruptcy Court referral letter).

7. Respondent has represented hundreds of debtors in filing for bankruptcy, approximately fifty of which have been in the District of Columbia; bankruptcy comprises approximately twenty percent of her practice. Tr. 27-28 (Respondent).

8. Respondent knew that the debtor must be earning an income to be eligible to file for protection under Chapter 13 of the Bankruptcy Code, and she also knew about the debt limits under Chapter 13 and how to determine them. Tr. at 28-29 (Respondent).

9. Respondent understood the importance of the meeting of creditors and knew that the debtor "must appear to be examined under oath about his financial status and the valuations of property and his ability to fund a plan." Tr. 72-73 (Respondent).

C. The Retention of Respondent to File a Bankruptcy Petition

10. In 2010, Michael Lawson had been working in the landscaping business for 25 years; he also worked as a glazier. Tr. 156, 161 (M. Lawson); Tr. 394, 451 (T. Lawson). Mr. Lawson owned property at 4112 Belt Road, Capitol Heights, Maryland, where he and his then-wife Theresa lived with their daughter. Tr. 159, 205-06 (M. Lawson); Tr. 233-34 (Wooden). Mr. Lawson also had three rental properties in Washington, D.C.: 1427 E Street, N.E., 1149 Owen Place, N.E., and 1424 Ives Place, S.E. Tr. 156-58 (M. Lawson). Theresa Lawson's name was on the deeds for the E Street and Owen Place properties; she did not have an ownership interest in either their home on Belt Road or the Ives Place rental property. Tr. 158-59, 206 (M. Lawson); Tr. 402 (T. Lawson).

11. Michael Lawson also ran a business called the Lawson Group, which he and Ms. Lawson established as an LLC after they were married. Tr. 160, 223-24 (M. Lawson). In 2010, Ms. Lawson was responsible for the financial aspects of the Lawson Group, the principal focus of which was managing the three District of Columbia rental properties (including collecting the rents of approximately $8,000 per month and paying the mortgage and other bills associated with the properties). Tr. 161-62, 182-83, 226, 228 (M. Lawson).

12. Theresa Lawson was also responsible for managing the Lawsons' personal finances and for submitting their tax returns. Tr. 226-27 (M. Lawson); *see also* BX 23 at 9-10. She graduated from law school in 1990, but had not been licensed to practice. Tr. 392, 451 (T. Lawson).[6]

13. The Lawsons regularly argued about finances. Tr. 164-65, 171 (M. Lawson); Tr. 235 (Wooden). At some time in or before September 2010, the Lawsons started having marital problems. Tr. 159 (M. Lawson). At Theresa Lawson's request, Michael Lawson moved to the basement, while she and their minor daughter lived upstairs. Tr. 159 (M. Lawson).

14. Michael Lawson had a drug problem and was planning to go into in-patient treatment, which he did on or about October 17, 2010. Tr. 185, 230-31 (M. Lawson); Tr. 236 (Wooden); BX 23 at 8. Until October 17, 2010, Michael Lawson continued to live at the Lawsons' home on Belt Road. Tr. 180 (M. Lawson).

15. Because Theresa Lawson was not making the required mortgage payments on the rental properties or on their home on Belt Road, the institutions holding mortgages on the properties threatened to foreclose on all of the properties. Tr. 163, 204, 207, 228-29 (M. Lawson); Tr. 235 (Wooden).

16. In or around September 2010, Theresa and Michael Lawson discussed filing for bankruptcy. Tr. 164-65, 228 (M. Lawson). Mr. Lawson regarded bankruptcy as a "bad thing" because he was "raised to pay [his] bills and take care of [his] responsibilities," but he ultimately deferred to his wife about the bankruptcy because she knew more about business matters. Tr. 165-66, 227-28 (M. Lawson).

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[6] Theresa Lawson sat for the Maryland Bar in July 2012, shortly after the first hearing date scheduled to take her testimony. Tr. 393 (T. Lawson).

17. In early September, 2010, Theresa Lawson, who had been referred by a colleague, met with Respondent and retained her to file a petition for bankruptcy. Tr. 30-32 (Respondent); Tr. 399 (T. Lawson). Michael Lawson's drug usage was also discussed. Theresa Lawson claimed she told Respondent that her husband was abusing drugs. Tr. 441, 446, 470-71 (T. Lawson). Respondent testified that Theresa told her that Michael Lawson had had a problem with drugs, but he was fine and looking for a job. Tr. 80 (Respondent). According to Theresa, Michael was not capable of filing for bankruptcy or of completing the requisite paperwork. Tr. 443-44 (T. Lawson).

18. Theresa Lawson next met with Respondent on September 10, 2010, when Respondent provided her with a draft Engagement Letter for representation in connection with a Chapter 13 bankruptcy petition. Tr. 35 (Respondent); Tr. 413-14 (T. Lawson).

19. The draft Engagement Letter named Theresa Lawson as the client and contemplated that the petition would be filed in the United States Bankruptcy Court for the District of Maryland, Greenbelt Division. BX 43 at 5-6. The draft Engagement Letter stated that Respondent would charge Theresa Lawson "$3,500" plus $274 for the court filing fee; it also noted that Respondent had received "[$]2,274.00 9/10/2010" and that the client would pay "[$]500 per month beginning Oct. 10, 2010." BX 43 at 5; Tr. 33, 36 (Respondent); Tr. 411-12, 461-62 (T. Lawson).

20. Ms. Lawson gave Respondent gave a check for $2,274 on September 10, 2012, which Respondent deposited that same day. Tr. 36 (Respondent); BX 42 at 2.

21. Although the draft Engagement Letter named Theresa Lawson as the client and would-be-debtor, Respondent and Theresa Lawson decided either during or shortly after their meeting on September 10, 2012, that Michael Lawson should be the debtor. Tr. at 36-37 (Respondent). Respondent instructed Theresa Lawson to have Michael Lawson sign the Engagement Letter. Tr. 41-42 (Respondent).

22. There was conflicting testimony as to whether Respondent also gave Theresa Lawson a draft power of attorney ("POA") when they met on September 10, 2012. Theresa Lawson testified that Respondent gave her the draft POA for Michael Lawson to sign. Tr. 415, 467, 469 (T. Lawson). Respondent testified that she did not do so. According to Respondent, Theresa Lawson told Respondent that she already had a signed POA from Michael Lawson. She recalled that Theresa told her that, in light of Michael's drug problems and sporadic employment, he had given Theresa the POA so that they could acquire properties and she could handle the couple's financial affairs. Tr. 129-37 (Respondent). The Hearing Committee need not resolve this conflict, however, as the identity of the POA's author is not germane to any of the charges against Respondent.

23. Later on September 10, 2012, after her meeting with Respondent, Theresa Lawson met with Michael Lawson and asked him to execute the Engagement Letter and POA.

24. Michael Lawson did not understand the Engagement Letter. Tr. 403-04, 463-64 (T. Lawson). When she gave the letter to him, Theresa Lawson already had struck through her name as the client and, at her instruction, Michael Lawson wrote in his name, signed the second page, and dated it September 10, 2010. BX 42 at 5-6; Tr. 169-70 (M. Lawson). They then initialed the changes they made to the Engagement Letter. Tr. 170, 225 (M. Lawson); Tr. 406, 476-77 (T. Lawson). Michael Lawson did not know why his name was being substituted for his wife's name as the client, but was "trying to trust" his wife. Tr. 170 (M. Lawson).

25. When he signed the Engagement Letter, Michael Lawson had not met with or spoken to Respondent, and he had little understanding of what Respondent and Theresa Lawson were doing. Tr. 168-69, 171 (M. Lawson). Mr. Lawson believed that bankruptcy proceedings had

started, but he did not know how they worked and had no understanding that he would be the only listed debtor. Tr. 171-72, 209 (M. Lawson).

26. The POA that Theresa Lawson presented to Michael Lawson would have appointed her as his attorney-in-fact to conduct his affairs and to perform a list of enumerated acts on his behalf, none of which specifically included filing for bankruptcy. Tr. 167, 173-74, 224-25 (M. Lawson); Tr. 403, 415 (T. Lawson); BX 43 at 1-4. Michael Lawson declined to sign the POA in favor of Theresa Lawson because "that wasn't the right thing to do." Tr. 173 (M. Lawson). Their marriage was in trouble, they were "getting ready to go through a divorce," and Mr. Lawson believed it was "going to be a nasty one, [because] it's about money." Tr. 173 (M. Lawson). Mr. Lawson told Ms. Lawson he would sign the POA, but only in favor of Herman Wooden, "my friend I've known all my life." Tr. 173-75, 215-16 (M. Lawson).

27. Because Michael Lawson refused to sign the draft POA in her favor, Theresa Lawson struck out her name and, in her presence and at her direction, Michael Lawson substituted the name and address of Herman Wooden on the POA. Tr. 175-76, 225 (M. Lawson). Mr. Wooden, along with Theresa and Michael Lawson, initialed the changes on the POA appointing Mr. Wooden. The three of them then went to Kay Cee Drugs, where Michael Lawson executed the POA in favor of Mr. Wooden before a notary. Tr. 176-78 (M. Lawson); Tr. 236-38 (Wooden); Tr. 416-17 (T. Lawson). Each received a copy of the executed and notarized POA. Tr. 178, 224 (M. Lawson); Tr. 238 (Wooden); Tr. 419 (T. Lawson).

28. On September 13, 2010, Theresa Lawson took the online credit counseling course that is a prerequisite for a debtor to file for bankruptcy. Tr. 267-68 (Niklas); *see* 11 U.S.C. § 109(h)(1). Using Michael's Social Security number and other identifying information, Theresa Lawson took the course as "Michael Lawson" and printed out a certificate that reflected that

"Michael Lawson" had completed the course. BX 10; Tr. 184-85 (M. Lawson); Tr. 429-30, 483 (T. Lawson).

29. Theresa Lawson then sent a nine-page fax to Respondent that included the following documents needed for the bankruptcy case: (1) the Engagement Letter that Michael Lawson had executed; (2) the POA in which Michael Lawson designated Mr. Wooden as his attorney-in-fact; (3) the Certificate of Counseling from the online course; and (4) a notice of intent to repossess from the credit union that had financed the purchase of Michael Lawson's GMC Envoy showing a balance due of $13,589.02, which documents appeared in Respondent's client file. BX 43 (nine-page fax, page 9 of which was missing from Respondent's file); *see also* Tr. 419, 430-31, 477-79 (T. Lawson) (testifying that the four documents listed above were sent to Respondent by fax in a single installment). The exact date of the fax transmission is unknown because the fax machine that Theresa Lawson used to send these and other documents to Respondent was not set to reflect the actual transmission date. Tr. 38 (Respondent); Tr. 179 (M. Lawson); Tr. 419-20, 480-81 (T. Lawson). As a result, the date header on the fax that she sent to Respondent on September 13 or 14, 2010, read February 5, 2005.[7] BX 43. The pages of the fax, however, were consecutively marked with the same date and time, reflecting that they were sent contemporaneously. Tr. 63 (Respondent).

30. Other evidence establishes that Theresa Lawson transmitted the nine-page fax to Respondent on either September 13 or 14, 2010. It could not have been sent earlier than September 13, 2010, because it included the Certificate of Counseling that was dated September 13, 2010. It could not have been sent later than September 14, 2010, because the bankruptcy petition was filed

[7] Respondent received at least two other faxes from Ms. Lawson's fax machine, and both had the same header and erroneous date information. BX 42 11-15; BX 45 9.

on September 14, 2010, and the petition included the following document and information contained in the nine-page fax: (a) the Certificate of Counseling that was included at page 7 of the fax, and (b) the exact amount of the balance owed for Michael Lawson's GMC Envoy reflected in the repossession notice, from page 8 of the fax. *See* BX 10 (Certificate of Counseling, dated September 13, 2010); BX 7 at 4-5 (filed Statement of Compliance with Credit Counseling Requirement); BX 7 at 13 (listing balance on GMC Envoy); BX 43 at 8 (nine-page fax); Tr. 43-44, 49 (Respondent); Tr. 59-62 (Respondent) (admitting that repossession notice was in her file, and confirming the $13,589.02 debt reflected on the notice was what she included in the schedule). Additionally, Respondent testified that the executed Engagement Letter, which comprised pages 5-6 of the fax, was part of her file when she filed the bankruptcy petition on September 14, 2010. Tr. 37 (Respondent).

31. The POA in favor of Herman Wooden (BX 43 1-4) was the only POA Respondent ever received from Theresa Lawson. Tr. 64 (Respondent).

D. Respondent's Filing with the Bankruptcy Court

32. On September 14, 2010, Respondent electronically filed a Voluntary Petition for bankruptcy under Chapter 13 with the Bankruptcy Court captioned *In re Lawson*, Case No. 10-00897. BX 7. This filing included attached schedules, and other documents. BX 7-10. In the petition, Respondent designated Michael Lawson as the sole debtor and included his electronic signature ("/s/ Michael A. Lawson") on the petition. BX 7 at 3.

33. The Bankruptcy Court rules and the Administrative Order Relating to Electronic Case Filing required that any documents that Respondent filed with the Bankruptcy Court that needed an original signature – *e.g.*, petitions, schedules, and statements – had to be signed by the debtor before they were filed, and Respondent was required to retain the original signed documents

for five years from the date of their filing. BX 5 at 16-17; BX 34 at 3-4; *see also* Tr. 259-60 (Niklas).

34. Respondent knew that debtors had to sign the petition and schedules, which she described as a "very basic bankruptcy concept." Tr. 96 (Respondent).[8] Respondent also knew that she had to maintain the original signed documents. Tr. 35 (Respondent). Respondent admitted that she did not have Michael Lawson – or Theresa Lawson – sign any of the original version of the documents that she electronically filed with the Bankruptcy Court. Tr. 34-35, 113 (Respondent).

35. Respondent had not discussed with Michael Lawson the petition, its contents or any of the schedules thereto, before she filed them with the Bankruptcy Court on September 14, 2010, she did not discuss with him any of the filings she made thereafter, and she did not even speak to him until November 19, 2010. Tr. 29, 40, 68, 79-80, 88 (Respondent); Tr. 179-80, 188 (M. Lawson) (testifying that he first learned that the bankruptcy was filed in his name the day before the November 19, 2010 hearing). Respondent also did not provide Michael Lawson copies of the

[8] There was some discussion at the hearing regarding whether a bankruptcy petition could be filed pursuant to a POA. Respondent's counsel asserted that in the United States Bankruptcy Court for the District of Maryland (a jurisdiction in which Respondent frequently handled bankruptcy matters), filing a petition pursuant to a POA is permissible if it includes a specific authorization to do so. Tr. at 23, 299. After the hearing, the Trustee for the District of Columbia submitted a letter stating that because bankruptcy is a "personal exercise in privilege," a POA cannot extend to authorizing a person to file and pursue a bankruptcy case on behalf of another (absent specific court-authorization for an incapacitated debtor). BX 46 (citing cases). This is another dispute that the Hearing Committee need not resolve. As the Bankruptcy Court stated in its complaint to the Committee on Grievances for the United States District Court for the District of Columbia, "[p]ut aside the question of whether a person holding a power of attorney can sign bankruptcy papers on behalf of a debtor. Assuming that such a person can sign papers on behalf of the debtor, Ms. Silverman did not obtain the wife's signature on the documents. (If she had, Ms. Silverman would have been required to indicate that it was the wife signing the papers pursuant to a power of attorney, not the debtor himself.)" BX 34 at 5.

documents that she had filed with the court on his behalf. BX 45; Tr. 509-10 (stipulation concerning documents in Respondent's file).

36. Michael Lawson never saw the petition and schedules before they were filed and had no understanding that Respondent had filed them in his name or what they contained. Tr. 171-72, 179-82, 186-87 (M. Lawson); Tr. 34, 113 (Respondent) (admitting that Michael Lawson did not see or sign the documents). Michael Lawson never authorized Respondent or Theresa Lawson to sign any documents in his name. Tr. 181 (M. Lawson).

37. By using Michael Lawson's electronic signature, Respondent represented to the Bankruptcy Court that he had signed the following documents under penalty of perjury: (a) the Voluntary Petition (BX 7 at 1-3); (b) Exhibit D to the Petition – Individual Debtor's Statement of Compliance with Credit Counseling Requirement (BX 7 at 4-5); (c) the Declaration Concerning Debtor's Schedules (BX 7 at 21); (d) the Statement of Financial Affairs (BX 7 at 22-29); (e) the Certification of Notice to Consumer Debtor(s) Under § 342(b) of the Bankruptcy Code (BX 7 at 33); (f) the List of Creditors and Mailing Matrix (BX 7 at 34-35); (g) the Statement of Social Security Number (BX 34 at 24); and (h) the Chapter 13 Statement of Current Monthly Income and Calculation of Commitment Period and Disposable Income (BX 9). *See also* BX 34 at 7-27 (exhibits to Bankruptcy Court's referral letter).[9]

38. The documents that Respondent prepared and filed with the Bankruptcy Court on September 14, 2010, also included information that Respondent knew to be wrong: that Michael

[9] Although Respondent testified that she prepared the petition, the attached schedules, and other documents with the assistance of her paralegal, she acknowledged that whatever the paralegal did was pursuant to Respondent's direction and under her supervision. Tr. 33-34 (Respondent).

Lawson's income was $0, that his current monthly income was $0, that he had no personal property with the exception of the GMC Envoy, and that he had no expenses. BX 7 at 9-12, 19-29; BX 9.

39. Respondent knew that Michael Lawson had income from the three rental properties, and she admitted that the information that she included in the schedules, including that he had $0 income from real property (BX 7 at 19), was "inaccurate." Tr. 67-68, 70-71 (Respondent); BX 23 at 13; Tr. 183-84, 227 (M. Lawson had income from rental properties and landscaping business; he never approved false representations); *see also* BX 23 at 13.

40. Respondent testified that she relied on Theresa Lawson for the information that Respondent included in the schedules about Michael Lawson's income, stating that she "kept asking and asking and asking" Theresa Lawson for information, but that Theresa Lawson failed to provide it. Tr. 69-70, 73, 76, 83 (Respondent). Respondent also claimed that she had "extensive discussions" with Theresa Lawson about the income reflected in these schedules and Theresa Lawson approved the multiple $0 entries Respondent set forth in the schedules. Tr. 69 (Respondent); BX 23 at 19 (Respondent made same representation to court). However, Respondent admitted that she "should have indicated that the income was to be determined" and that she "should not have put zero for income." Tr. at 66 (Respondent).

41. Respondent also knew that the $0 income amounts she included in the schedules– even if true – would have rendered Michael Lawson ineligible to seek protection under Chapter 13. Tr. 28-29, 65-66 (Respondent); FF 2, *supra* (Chapter 13 imposes certain eligibility requirements: debtors must have a regular and stable source of income to make payments pursuant to a plan, and their debts must fall within specified limits).

42. Respondent also inaccurately stated the ownership interest that Theresa Lawson had in the Lawsons' residence and the three rental properties in the bankruptcy petition. BX 7 at

8. Respondent represented to the Bankruptcy Court that Michael and Theresa Lawson were "Tenants by entirety" in all four properties. *Id.* However, Respondent admitted to knowing "in the beginning" that Michael was sole owner of one property in the District of Columbia, which was the reason that the bankruptcy petition was filed in the District of Columbia. Tr. 71-72 (Respondent). Respondent never filed an amended schedule to correct the mistake. Tr. at 71 (Respondent).

43. The property values that Respondent assigned to the four properties were less than the values assessed by the District of Columbia for tax purposes. BX 23 at 4-6, 20 (Respondent valued Belt Road residence at $195,000, when the assessed value was $340,000, and she understated the values of other properties). Respondent later admitted that she did not investigate the property values, but told the court she relied on Theresa Lawson's valuations. BX 23 at 7, 9, 20. *But see* Tr. 496 (T. Lawson denied reviewing valuations in schedules, but said she provided "property amounts"); BX 42 at 11-15 (T. Lawson sent Respondent five-page fax including tax assessment values for properties).

44. Respondent represented to the Bankruptcy Court that the total amount of secured claims on the four properties was $1,213,500 (BX 7 at 8) which, if true, would have provided additional grounds for rendering Michael Lawson ineligible for protection under Chapter 13. BX 14 at 1.

45. Finally, the schedules and documentation that Respondent filed in support of the Chapter 13 bankruptcy petition were incomplete. *See* BX 11 (Bankruptcy Court Notice of Deadline for Filing Required Documents, indicating missing documents); BX 13 (Bankruptcy Court Order to File Missing Documents, indicating missing document).

46. Respondent did not advise Michael Lawson of the notice and orders regarding the missing documents or otherwise communicate with him. Tr. 180-81 (M. Lawson) (Respondent never called Michael Lawson or sent him e-mails or letters, and never spoke with him until November 19, 2010). Respondent never filed all of the missing documents by the court deadlines. BX 6 (Bankruptcy Court docket sheet).

E. The Meeting of Creditors and Trustee's Motions to Dismiss and for Sanctions

47. Shortly after the petition was filed, the Bankruptcy Court scheduled the meeting of creditors for October 18, 2010, and a hearing on the confirmation of the plan for November 19, 2010. BX 12; Tr. 260-61 (Niklas). As set forth in the notice of the meeting of creditors (BX 12 at 3), the Trustee's letter to Respondent of September 24, 2010 (BX 45 at 2), and § 341 of the Bankruptcy Code, the debtor must attend the meeting of creditors to be examined under oath and must provide certain documents, including his tax returns, prior to the meeting.

48. On September 27, 2010, Respondent sent a letter addressed to Michael Lawson about the meeting of creditors scheduled for October 18, 2010. BX 45 at 3-6. This was the only letter or written communication Respondent sent to Michael Lawson. BX 45 at 3-6; Tr. 75-76 (Respondent). However, Michael Lawson testified that he never saw the letter and was not aware of its contents. Tr. 180-81 (M. Lawson). When the meeting occurred Michael Lawson did not know about the meeting of creditors or even that a bankruptcy petition had been filed in his name. Tr. 179, 188 (M. Lawson).

49. On October 17, 2010, Michael Lawson began a 30-day drug treatment program. Michael Lawson told Theresa Lawson and Mr. Wooden that he was going for treatment and provided them information about how to reach him while he was away. Tr. 185-86 (M. Lawson); *see also* Tr. 236 (Wooden)*; but see* Tr. 398, 431-32, 442 (Theresa Lawson claimed she did not

know Michael Lawson was in treatment, but admitted he called and talked to their daughter with information about how to contact him). Michael Lawson was not aware of any effort by Theresa or Mr. Wooden to reach him while he was in treatment. Tr. 186 (M. Lawson).

50. Although Respondent had received by September 14, 2010 (and therefore presumably knew the contents of) the POA that Michael Lawson had executed in favor of Mr. Wooden (*see* FF 30, *supra*), Respondent never communicated with or tried to contact Mr. Wooden. Tr. 239-40 (Wooden); Tr. 125, 127 (Respondent) (testifying that she did not know and never met Wooden); *see also* Tr. 181-82 (M. Lawson). Theresa Lawson also never sought Mr. Wooden's consent to take any action on behalf of Michael Lawson in the bankruptcy case. Tr. 239, 241 (Wooden); *see also* Tr. 422-23 (T. Lawson) (testifying that Wooden had no involvement in bankruptcy; Wooden "didn't have a clue"). Mr. Wooden first learned of the bankruptcy case from Michael Lawson after Michael came out of treatment on November 18, 2010, around the time of a hearing in bankruptcy court. Tr. 240-41 (Wooden).

51. Prior to the meeting of creditors, Respondent took no steps to amend the schedules she had filed (*see* BX 6 (court docket)), or advise the Trustee that the Lawsons had not filed their taxes for the last two years. Tr. 74-75 (Respondent); BX 23 at 6, 9-10. On October 13, 2010, Respondent's paralegal sent Theresa Lawson an e-mail requesting bank statements and information about their income; she also sought an explanation as to why Michael could not attend the October 18, 2010 meeting of creditors so that she could try to reschedule it, and asked for an additional $1,500 in fees. BX 45 at 7.

52. Theresa Lawson knew about the meeting of creditors on October 18, 2010, but did not attend because she "forgot" about it. Tr. 502-03 (T. Lawson). Respondent testified that she

did not ask Theresa Lawson to attend the meeting because she knew the Trustee would not accept her testimony (Tr. 82-83) (Respondent).

53. Robert King, Esquire, whom Respondent described as "an independent colleague, attorney friend of [hers]" attended the October 18, 2010 meeting of creditors in place of Respondent. Tr. 80 (Respondent); *see also* Tr. 275, 295 (Niklas); BX 44. When the Trustee asked Mr. King why Michael Lawson was not present, Mr. King said he did not think he was coming and "something about being on drugs." Tr. 275 (Niklas); *see also* BX 44.

54. On October 19, 2010, the day after the meeting of creditors, the Trustee filed a motion to dismiss Michael Lawson's bankruptcy case with prejudice because (1) the debtor was ineligible because the schedules Respondent had filed reflected that his income was $0, and because he had non-contingent, liquidated, secured debts in excess of the debt limits; (2) the petition violated the debt limits and was filed in bad faith; (3) the debtor had failed to appear and submit to an examination at the meeting of creditors; and (4) the debtor failed to timely commence plan payments within 30 days of filing the petition. BX 14 at 129-31; Tr. 277 (Niklas). The Trustee described the deficiencies as "violations of very elementary rules." BX 23 at 15.

55. On October 19, 2010, the Trustee filed a motion pursuant to 11 U.S.C. § 329 and Bankruptcy Rule 9011 to review and disgorge all attorney's fees paid to Respondent or, alternatively, to impose sanctions based on Respondent's filing of the petition and schedules when the debtor was "undeniably ineligible for Chapter 13 relief." BX 15 at 1; Tr. 278-80 (Niklas) (it wastes everybody's time to file a Chapter 13 when there is debt limit ineligibility).

56. On October 20, 2010, the Trustee filed an amended motion to dismiss stating that in addition to the grounds set forth above, the debtor also had failed to file a copy of his federal

income tax return for the most recent tax year and his tax returns for earlier years, as required by the Bankruptcy Code. BX 16; Tr. 277-78 (Niklas).

57. The hearing on the Trustees' motions to dismiss, to disgorge attorney's fees, and to impose sanctions was scheduled for November 19, 2010. BX 14 at 2; BX 15 at 2. Prior to the hearing, Respondent did not advise Michael Lawson of the Trustee's motions or send him copies of them. 193-95 (M. Lawson); BX 45.

58. On or about November 12, 2010, Theresa Lawson paid Respondent an additional $1,000 by way of a personal money order. BX 42 at 4.

59. On the same date, Respondent filed with the Bankruptcy Court an opposition to the motion to dismiss, contending, among other things, that: the "Debtor" whom she identified as "Michael A. Lawson" had "recently provided undersigned counsel with an accurate current monthly income and expenses"; amended schedules would be filed forthwith; and the "Debtor" had met with an accountant so that tax returns would be filed within two weeks. BX 17 at 1-2. These statements were substantially false: Respondent had not met or spoken with Michael Lawson, and whatever additional or new information she was provided came from Theresa Lawson, Respondent's sole source of information and documents. Tr. 87 (Respondent); Tr. 229-30 (M. Lawson); Tr. 425-26 (T. Lawson).

60. On November 15 and 16, 2010, Respondent filed with the Bankruptcy Court amended schedules and statements, all of which contained Michael Lawson's electronic signature, falsely declaring yet again the truth and correctness of the information contained therein under penalty of perjury. BX 18-20.[10] As Respondent knew, Michael Lawson did not sign or review

[10] The amended income schedule Respondent filed was incomplete. Despite the court's notice and request to file the required summaries (BX 22), Respondent failed to do so, and the court later struck the filing. BX 26.

the amended schedules that Respondent filed with the Bankruptcy Court. Tr. 86-87 (Respondent); Tr. 186-87 (M. Lawson). In the amended Statement of Financial Affairs, Respondent represented that her firm, "King & Silverman, LLC," had received $2,000 in fees. BX 20 at 4.

61. On November 16, 2010, Respondent filed an opposition to the Trustee's motion to disgorge attorney's fees or for sanctions. BX 21. In her opposition, Respondent stated that she had met with the debtor's wife for several hours, compiling and reviewing the debtor's financial situation. *Id.* at 1. Respondent did not disclose that she had never met with the debtor or that she had been pursuing the matter pursuant to a purported POA in favor of Theresa Lawson. Tr. 87 (Respondent) (admitting that she did not disclose that she was acting pursuant to POA). The Trustee did not learn that Respondent was purporting to act pursuant to a POA until the hearing on November 19, 2010, when the Bankruptcy Judge questioned Respondent. Tr. 281-83 (Niklas) ("I had no idea that Mr. Lawson didn't file the case or that he wasn't around . . . ."); *see also* Tr. 297 (Niklas); BX 23 at 11, 14.

F. The November 19, 2010 Hearing in the Bankruptcy Court

62. On November 18, 2010, Michael Lawson was discharged from the drug treatment facility and returned to his home on Belt Road. Tr. 187 (M. Lawson). Theresa Lawson told him that they had a hearing in the Bankruptcy Court the following day. Tr. 398, 432 (T. Lawson); Tr. 188 (M. Lawson). Theresa did not tell him what the hearing was about, and Michael did not know that the case had been filed in his name, and only his name. Tr. 179, 186-89 (M. Lawson).

63. On November 19, 2010, Michael Lawson attended the hearing before the Bankruptcy Court with Theresa Lawson. Tr. 189 (M. Lawson). Respondent also was there, and was introduced to Michael Lawson. This was the first time that Michael Lawson had spoken with Respondent. Tr. 168, 189 (M. Lawson); Tr. 79-80, 88 (Respondent).

64. Michael Lawson had little or no understanding of the purpose of the hearing before it commenced. He believed that because Theresa had filed the case, she (and Respondent) would handle things. Michael Lawson might have learned about the possibility of a dismissal, but knew nothing about sanctions until they were discussed at the hearing. Tr. 190-94 (M. Lawson learned at the hearing that "something wasn't right").

65. Before the court called the case, Theresa Lawson left the courthouse. Tr. 190.

66. Respondent testified that Michael Lawson told her at the hearing "that he and his wife are completely at odds and fighting and distrusting each other." Tr. 79 (Respondent). Respondent did not, however, advise the Bankruptcy Court of the conflict between the Lawsons or take any steps to withdraw or to protect Michael's interests. *See generally* BX 23 (transcript of November 19, 2010 hearing).

67. At the hearing, the Bankruptcy Court asked Respondent why the debtor failed to attend the meeting of creditors. Respondent said the debtor "had significant health problems" and contended that his "health issues" had "resulted in him being hospitalized on October 17, a day or two prior to the meeting of creditors in the case." BX 23 at 8. Respondent also said: "He [Michael Lawson] just got out of the hospital last night, and came to the court this morning." *Id.*

68. When the Bankruptcy Court questioned Respondent about the valuations of the real properties listed in the debtor's schedules, which the Trustee said had been undervalued, Respondent represented that the valuations had been provided by the debtor's wife whom she claimed to have met "post the filing of the case, when we couldn't get in touch with Mr. Lawson directly." BX 23 at 9-10.

69. The Bankruptcy Court then asked Respondent how the debtor signed the schedules if he was not available. Respondent stated that "[t]he Debtor's wife had a power of attorney and

she represented to me that he authorized this petition to be submitted . . . ." BX 23 at 10. However, Respondent had not seen or received a copy of any POA in favor of Theresa Lawson. The only POA that Respondent received – which was faxed at the beginning of the representation, and Respondent admitted having before the November 19, 2010 hearing (Tr. 90) (Respondent) – appointed Mr. Wooden, not Theresa Lawson, as the debtor's attorney-in-fact. *See* FF 31, *supra*.

70. Respondent made repeated representations to the Bankruptcy Court about the POA that she claimed gave Theresa Lawson authority to act for Michael Lawson. For example, when the Bankruptcy Court commented that it was a "horrible practice" for an attorney to file schedules purporting to bear the debtor's signature when he did not sign them, Respondent stated: "Well, his wife appeared at my office with a signed power of attorney on behalf of Mr. Lawson." BX 23 at 11. The Court stated "[b]ut you didn't indicate that [his wife was acting pursuant to a power of attorney] when you filed the schedules." *Id.* Respondent responded "No, I didn't, but I do have it in my file, Judge, a copy of the POA. I told her that I wouldn't submit this case without it." *Id.*

71. When Bankruptcy Judge Teel subsequently asked for further clarification, Respondent, rather than clarifying that she had no POA in favor of Ms. Lawson, said: "I just want to make your Honor aware that Mr. Lawson was aware that this [petition] was being submitted and had authorized it. It wasn't as if she [Ms. Lawson] just decided to do this and he had no knowledge." Judge Teel asked Respondent to confirm his understanding of her statement:

> The Court: Ms. Niklas is not disputing that she [Ms. Lawson] came to the office with her power of attorney with . . . the intent . . . that you would file on his behalf, a bankruptcy petition. Ms. Niklas is accepting that proffer.
>
> Ms. Silverman: There's nothing --
>
> The Court: That's the point you're trying to make.
>
> Ms. Silverman: Yes, Judge.
>
> . . . .

> The Court: The Debtor's attorney has proffered facts that I will accept as being true for the purposes of ruling [on] the motions.
>
> The Debtor was facing a foreclosure sale and his wife came into Ms. Silverman's . . . office for the purpose of Ms. Silverman preparing a petition to stop the foreclosure sale, and the Debtor had granted his wife a power of attorney for the purpose of having a bankruptcy petition filed.

BX 23 at 16, 17-18; *see also* BX 23 at 22 (Court: "the Debtor's wife … had the power of attorney").

72. Respondent did not correct or clarify her statements to the Bankruptcy Court regarding the POA, even after obtaining a transcript of the November 19, 2010 hearing. Tr. 94-95 (Respondent). Initially Respondent claimed that she could not correct her false statements because the case was over. Tr. 94 (Respondent). She conceded, however, that she could have sought to reopen the case and indeed did so later, to obtain the court's permission to disgorge the fee to Theresa, rather than Michael Lawson. Tr. 97-98 (Respondent); BX 30 (Motion to Reopen).

73. In a written order signed on November 20, 2010, and filed on November 22, 2010, the Bankruptcy Court granted the Trustee's motion to review and disgorge attorney's fees; it also directed Respondent to pay the Clerk of the Court $500 as a sanction for violating Bankruptcy Rule 9011, and disgorge to the debtor all the fees that she had received in the case. BX 25; Tr. 286. At the hearing, the Bankruptcy Judge Teel stated that "[t]he filing scheduling showing zero income, and zero expenses, and injecting an obvious issue as to ineligibility when it should not have been injected into the case ha[d] resulted in a disruption of the case and ha[d] caused unnecessary work for the Court and the Trustee" (BX 21) and that "there [were] more than adequate grounds to impose sanctions against [Respondent]." BX 23 at 21-22.

F. Dismissal of the Bankruptcy Case and Respondent's Disgorgement of Fees

74. On December 13, 2010, Respondent filed a document entitled "Line" with the Bankruptcy Court stating that she had paid the Clerk $500, and that she had "this date mailed to

the debtor a check in the amount of $3,000.00, which represents the complete fee received in this case." BX 27; Tr. 105.

75. On January 5, 2011, the Bankruptcy Court dismissed the Chapter 13 petition filed in Michael Lawson's name, based on ineligibility and bad faith. BX 28.

76. Trustee Niklas testified that even a dismissal of a bankruptcy petition without prejudice can have negative repercussions on a debtor, including a prohibition on refiling for bankruptcy for six months, a limited stay if the debtor files another bankruptcy case, and an adverse effect on a debtor's credit that could affect employment prospects. Tr. 287-90 (Niklas).

77. Respondent did not advise Michael Lawson of the dismissal or provide him a copy of the Bankruptcy Court's order. He later went to the court and obtained a copy on his own. Tr. 194, 197 (M. Lawson); BX 45; and Tr. 509-10 (Stipulation).[11]

78. In the first part of January 2011, Respondent met with Michael and Theresa Lawson at a Dunkin' Donuts to discuss whether and how they could file another bankruptcy case. By this time, Theresa Lawson had hired her own lawyer for the divorce. Tr. 198-200, 219-20; *see also* Tr. 99 (Respondent) (Michael and Theresa "were fighting" and "contentious" and the situation was "too acrimonious"). Michael told Respondent and Theresa that before deciding whether to file for bankruptcy, he wanted to talk to his family. Tr. 218-19 (M. Lawson).

79. On February 2, 2011, Respondent filed a motion to reopen the bankruptcy case requesting a clarifying order so she could refund the fees to Theresa Lawson. BX 30. In the motion, Respondent represented that she had sent the debtor a check for $3,000, but that the check was not cashed. *Id.* at 2. Respondent further stated that subsequent to the Bankruptcy Court's

[11] Michael Lawson eventually obtained a complete copy of the bankruptcy case filings from Bar Counsel. Tr. 203 (M. Lawson).

ruling, Respondent became aware that the relationship between the debtor and his wife had become "highly combative" and that each had sought a protective order against the other. *Id.* Respondent stated that both the debtor and his wife had requested the funds and represented that, although the Court had directed her to reimburse the debtor, the "monies tendered to undersigned counsel came from Debtor's wife." Respondent "request[ed] the Court's guidance as to whom to properly reimburse." *Id.*

80. On February 7, 2011, the Bankruptcy Court granted Respondent's motion to reopen and, based on Respondent's representation that she had received her $3,000 fee from the debtor's wife, ordered Respondent to disgorge that amount to the debtor's wife within 21 days. BX 31.

81. That same day, February 7, 2011, Michael Lawson filed three praecipes with the Bankruptcy Court seeking to reopen the case to stop further legal proceedings and prevent Theresa Lawson from collecting rent from the three D.C. properties. BX 32; Tr. 201-03 (M. Lawson). The court denied the requests because Mr. Lawson had not presented any reason to reopen the case, and the court had no jurisdiction to grant the other relief he requested. BX 33.

82. On or about March 5, 2011, Respondent provided Theresa Lawson a check for $3,000 with the notation "refund Michael Lawson Bky." BX 42 at 3; Tr. 434-335 (T. Lawson).

G. The Bankruptcy Court's Complaint

83. By letter dated January 4, 2011, the Bankruptcy Court referred Respondent to the Committee on Grievances of the United States District Court for the District of Columbia (Federal Court), and to Bar Counsel. BX 34. The Bankruptcy Court reported that Respondent had filed at least seven documents (attached to the letter) that she represented were signed by the debtor when she admittedly knew that that was not the case. BX at 2.

84. The complaint explained in detail the electronic filing process and why, when Respondent filed the petition and other documents with an "/s/" in the signature block, she was representing that the documents had been signed, and that she would maintain the original signed document for five years. BX 34 at 2-3. The complaint noted that Respondent had acknowledged at the November 19, 2010 hearing that Mr. Lawson had never actually signed the petition. BX 34 at 2. Although Respondent had been fined $500 by the court, Bankruptcy Judge Teel still "view[ed] her misconduct as quite serious, although not an attempt to perpetrate a fraud on the court." BX 34 at 1.

85. According to the complaint, it was the court's understanding – based on Respondent's statements – that "Mr. Lawson's wife had come to [Respondent's] office with a power of attorney to act on Mr. Lawson's behalf; and that the wife had authorized the filing of the documents." BX 34 at 4.

86. The complaint noted that Respondent's "demeanor at the hearing suggests that she did not consciously engage in misconduct," but Bankruptcy Judge Teel nevertheless requested "some additional discipline" beyond the $500 fine because Respondent's "conduct was egregious: when attorney represents that a document has been signed by the debtor under penalty of perjury, the creditors and the government must be able to count on the document actually having been signed by the debtor." BX 34 at 5.

H. Respondent's Interactions with Bar Counsel and Testimony at the Hearing

87. On January 10, 2011, Bar Counsel sent Respondent a letter requesting her response to Bankruptcy Judge Teel's complaint. BX 35 ¶ 2. Respondent did not submit a response to Bar Counsel for more than two and a half months, and did so only after Bar Counsel had filed a motion to compel with the Board. BX 35. Her response incorporated by reference and relied on the

transcript of the November 19, 2010 hearing in the Bankruptcy Court. BX 36 at 4. Her response concealed from Bar Counsel that the POA from Theresa Lawson was in favor of Mr. Wooden, not Ms. Lawson. BX 36. Respondent also made other misrepresentations and omitted material information in her response. For example, in explaining the Trustee's motions to dismiss and for sanctions, Respondent said Michael Lawson did not attend the meeting of creditors and that the schedules were "incomplete," but failed to disclose that the schedules she filed contained false information, had forged signatures, and set forth false income amounts and excessive secured debt that rendered the debtor ineligible for protection under Chapter 13. BX 36 at 3.

88. Respondent claimed to Bar Counsel that she had been "candid" with the Bankruptcy Court (BX 36 at 3), when she in fact had made misleading representations to the court about the POA that she never corrected. BX 36. Respondent submitted the identical response to the Federal Court's Grievance Committee. BX 45 at 12-14.

89. On May 18, 2011, Bar Counsel sent Respondent a subpoena directing her to provide copies of the original, signed documents that she had filed with the Bankruptcy Court and the POA that she advised the Bankruptcy Court existed and upon which she purportedly relied. BX 39.

90. In response to the subpoena, Respondent represented:

> In response to your subpoena *duces tecum*, I do not have in my possession original signed documents of any of the documents requested in the subpoena. The Power of Attorney upon which Ms. Lawson relied, and upon which I proceeded was never sent to me.

BX 40. At best, these statements were misleading. Respondent had a POA in favor of Mr. Wooden, not Theresa Lawson – a fact Respondent had known since September 14, 2010. *See* FF 30-31, *supra*. Respondent failed to disclose that POA to Bar Counsel. BX 40.

91. In response to a second subpoena from Bar Counsel for her client file and all documents relating to her representation of Michael Lawson (BX 41), Respondent produced a copy

of the POA that Michael Lawson had executed in favor of Mr. Wooden. BX 42 (first 19 pages of Respondent's file); POA at 16-19.

92. After Respondent had responded to Bar Counsel's subpoena for her entire file, (BX 41) and the Federal Court had sent Respondent a follow-up letter questioning the representations in her April 15, 2011 response (BX 45 at 19-20), Respondent admitted that there was a "discrepancy" between what she represented to the Bankruptcy Court and what actually had occurred. BX 45 at 21. Although Respondent admitted that the POA she "ultimately" received from Theresa was not in her favor (BX 45 at 22), Respondent made other knowing false statements in her response, including: that Respondent had repeatedly requested Theresa Lawson to fax it to Respondent; that Respondent had asked and Theresa had promised to provide it "several times"; and that Respondent did not receive the POA until after filing the bankruptcy petition. BX 45 at 21-22.[12]

93. Respondent continued these misrepresentations during her testimony in this disciplinary matter. She testified that she "repeatedly" asked Theresa Lawson to provide her the POA, but that Theresa Lawson allegedly failed to do so until some point in late October 2010, although Respondent failed to specify exactly when and how. Tr. 63, 123-24, 138-39 (Respondent). Respondent's testimony is directly contradicted by the documentary record, which shows that Theresa Lawson faxed a POA to Respondent on September 13 or 14, 2010, not October 2010. FF 30. Furthermore, the two written communications to Theresa Lawson in Respondent's file did not request or even mention the POA *see also* BX 45 at 7-8. Finally, Theresa Lawson testified that she had no recollection of Respondent asking for the POA. Tr. 482 (T. Lawson). Ms.

[12] The Federal Court's Grievance Committee filed charges against Respondent on September 19, 2012. BX 49.

Lawson's testimony on this issue is consistent with the documents and makes sense, as there would have been no reason for Respondent to have done so since she provided Respondent the executed POA on September 13 or 14, 2010. *See* FF 30, *supra*.

94. Respondent's position that she was "candid" with the Bankruptcy Court (Tr. 114) and her efforts to explain away her knowing false statements at the November 2010 hearing by claiming that she was mistaken because she was "going from recollection" (Tr. 91) were deliberately false. Given Respondent's claim about the importance of the POA, her claim that she was repeatedly asking Theresa Lawson for it (FF 92), her contention that if she had the POA in favor of Mr. Wooden she would not have gone forward (Tr. 126), and her admission that she had the POA in Mr. Wooden's favor before the November 2010 hearing (Tr. 138-39, 143), it is inconceivable that Respondent could not recollect the two critical points regarding the POA – whether she received it before or after filing the petition, and whether it was in favor of Theresa Lawson or someone else.

V. CONCLUSIONS OF LAW

Respondent admits to violating Rules 1.1 and 1.4, but denies violating any other Rules. As discussed below, we find that Bar Counsel has proved each charged Rule violation by clear and convincing evidence.

A. Rules 1.1(a) and (b)

Bar Counsel charges that Respondent violated Rules 1.1(a) and (b) by failing to provide competent representation to her client and/or failing to serve her client with the skill and care commensurate with that generally afforded clients by other lawyers in similar matters. For her part, Respondent concedes that she violated Rules 1.1(a) and (b) in the "overall manner in which she handled the Lawson bankruptcy." RFF at 12.

Rule 1.1(a) "requires not merely legal knowledge and skill but 'thoroughness and preparation' reasonably necessary for the representation." *In re Shorter*, Bar Docket No. 194-96 at 6 (BPR Oct. 31, 1997), *adopted*, 707 A.2d 1305 (D.C. 1998) (*per curiam*). "The competency of the lawyer must be evaluated in terms of the representation required and provided in the particular case, including the 'thoroughness and preparation' reasonably necessary for competent representation in that case." *Id.*; *see also In re Nwadike*, 905 A.2d 221, 228-29 (D.C. 2006); *In re Douglass*, 745 A.2d 307 (D.C. 2000) (per curiam) (violation of 1.1(a) where the respondent failed to file any responsive pleading in response to a civil complaint, failed to oppose entry of default judgment, failed to file a timely motion to vacate entry of default judgment, and failed to perfect the appeal of a court order denying the motion to vacate).

The Comments to Rule 1.1 provide that the relevant factors for determining whether a lawyer employed the requisite knowledge and skill in a particular matter include the relative complexity and specialized nature of the matter, the lawyer's general experience, the lawyer's training and experience in the field in question, the preparation and study the lawyer is able to give to the matter, and whether it is feasible to refer the matter to, or associate with, a lawyer with established competence in the field in question. The Comments also provide that competent handling of a matter requires inquiry into and analysis of the factual and legal elements of the issue, using methods and procedures meeting the standards of competent practitioners, as well as adequate preparation and continuing attention to the needs of the representation.

Although many Rule 1.1(a) cases involve attorneys who have no experience in the relevant substantive and/or procedural law and who fail to educate themselves adequately, *see, e.g.*, *Nwadike*, Bar Docket No. 371-00 at 18 (BPR July 30, 2004), experienced lawyers also may violate Rule 1.1(a) by failing to exercise their skill via thoroughness and preparation. *Id.* at 19 ("attorneys

who are capable of providing competent representation but fail, for some reason, to do so, may also violate Rule 1.1(a)").

There is clear and convincing evidence that Respondent failed to provide competent representation in violation of Rule 1.1(a). Respondent filed a petition under Chapter 13 of the Bankruptcy Code without having her client sign the petition and associated schedules. FF 34. Moreover, putting aside the issue raised at the hearing about whether filing a petition based on a POA in favor of Theresa Lawson would have been legally permissible (*see supra* at 15 n.8), Respondent never received such a POA. FF 26-29. Respondent also included information on the schedules that made him clearly ineligible for Chapter 13 relief. FF 41, 44. She filed schedules that were inaccurate and incomplete. FF 38-39, 42-43, 45-46. And she never corrected inaccuracies or supplemented schedules with the correct and/or missing information. FF 42, 45-46, 51. Such evidence, together with Respondent's concession, establishes a violation of Rule 1.1(a).

To determine whether Respondent violated her duty of skill and care under Rule 1.1(b), we must consider the standard of care generally afforded to clients by other lawyers in similar matters. *See In re Vohra*, 68 A.3d 766, 780 (D.C. 2013) (appended Board Report). Although Bar Counsel did not identify an expert to testify as to the standard of care, expert testimony is not necessary where the respondent's conduct is "obviously lacking." *Nwadike*, Bar Docket No. 371-00 at 28 (expert testimony not necessary in case where the respondent failed to file an expert report within the time allowed under the rules, and did not know whether she had the proof to sustain her case). We conclude that this is such a case. As the Bankruptcy Judge noted, it was a "horrible practice" to have "an attorney file schedules purporting to bear the Debtor's signature when he didn't sign 'em." FF 70. The Bankruptcy judge concluded, and we concur, that Respondent committed

"admitted violations of very elementary rules" governing bankruptcy law, violations that resulted in dismissal of the petition. FF 54. Based on the evidence discussed above regarding the Rule 1.1(a) violation, the comments of the Bankruptcy Judge, and Respondent's concession at the hearing and in her brief, we find clear and convincing evidence that Respondent's conduct was "obviously lacking" and that she violated Rule 1.1(b).

B. Rules 1.4(a) and 1.4(b)

Bar Counsel charges that Respondent violated Rule 1.4(a) by failing to keep her client reasonably informed about the status of his matter and failing to comply promptly with reasonable requests for information, and that she violated Rule 1.4(b) by failing to explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation. Respondent concedes that she violated Rules 1.4(a) and (b) by failing to communicate adequately with Michael Lawson and by depending on Theresa Lawson for information. RFF at 12 (stating that Respondent "should have taken independent steps to find Michael Lawson").

Rule 1.4(a) states that "[a] lawyer shall keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information." Under the rule, an attorney must not only respond to client inquiries, but must also initiate contact to provide information when needed. *In re Bernstein*, 707 A.2d 371, 376 (D.C. 1998). The purpose of this rule is to enable clients to "participate intelligently in decisions concerning the objectives of the representation and the means by which they are to be pursued." Comment [1] to Rule 1.4. "The guiding principle for evaluating conduct under Rule 1.4(a) is whether the lawyer fulfilled the client's reasonable expectations for information." *In re Hallmark*, 831 A.2d 366, 374 (D.C. 2003) (appending Board Report) (finding a Rule 1.4(a) violation); *cf. In re Edwards*, 990 A.2d 501, 522-

23 (D.C. 2010) (appended Board Report) (no Rule 1.4(a) violation found where the Hearing Committee determined that the respondent's level of communication was not unreasonable, given the nature of the case and the client's behavior).

Under Rule 1.4(b), "[a] lawyer 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 record contains clear and convincing evidence that Respondent violated Rules 1.4(a) and 1.4(b). Her client was Michael Lawson, the person who signed the engagement letter and in whose name Respondent filed the bankruptcy petition. FF 32. However, Respondent did not communicate with her client while the bankruptcy petition was being prepared. FF 25, 35-36, and she did not explain the proceedings to him thereafter. FF 25, 46. Prior to November 19, 2010, she did not communicate directly with him at all, except for sending him a single letter about the meeting of creditors. FF 35, 46, 48. Michael Lawson could not remember Respondent ever trying to communicate with him by telephone, email, mail, or otherwise and, specifically, that she never communicated with him regarding the filing of a bankruptcy petition. FF 46. He had little understanding of the proceedings. FF 36, 64. Respondent admitted that she never met with nor spoke to Mr. Lawson until the hearing before Bankruptcy Judge Teel on November 19, 2010. FF 35, 46, 63. She concedes that she depended on Theresa Lawson for all her communications with him regarding the bankruptcy. RPP at 12, FF 59. Regardless of the whether or not it was permissible to proceed in that manner at the outset, it was clearly insufficient once Respondent

discovered that Theresa Lawson could not provide a power of attorney in her favor signed by her husband. Yet she took no independent steps to find or communicate with Michael Lawson after receiving the POA issued to someone other than Theresa Lawson, and continued to rely on Theresa Lawson's representations about Michael Lawson's whereabouts. RFF 12-13; FF 59. She did not advise him of the dismissal of the bankruptcy petition or advise him of the consequences of the dismissal, and she did not send him the court order or other documents to which he was entitled. FF 46, 77-79.

We recognize Michael Lawson's reliance on Theresa Lawson with respect to the couple's financial affairs and his problems with drugs. FF 11, 14, 17, 22. Nonetheless, based on the evidence and on Respondent's own admissions, we find clear and convincing evidence that Respondent failed keep her client, Michael Lawson, adequately informed about the status of his matter and explain the matter sufficiently to allow him to make informed decisions about his matter, in violation of Rules 1.4(a) and 1.4(b).

C. Rule 3.1

Rule 3.1 provides, in relevant part, that "a] lawyer shall not bring or defend a proceeding, or assert or controvert an issue therein, unless there is a basis in law and fact for doing so that is not frivolous, which includes a good-faith argument for an extension, modification, or reversal of existing law."

Whether a pleading violates Rule 3.1 is determined by an objective standard: A pleading is frivolous if, after an "objective appraisal of merit," a reasonable attorney would conclude that there was "not even a faint hope of success on the legal merits." *In re Spikes*, 881 A.2d 1118, 1125 (D.C. 2005) (citing *Tupling v. Britton*, 411 A.2d 349, 352 (D.C. 1980) and *Slater v. Biehl*, 793 A.2d 1268, 1278 (D.C. 2002)). The Court found Superior Court Civil Rule 11 to be instructive

when considering the scope of Rule 3.1. As the Court noted, "[i]n determining whether a pleading is frivolous and subject to sanction under Superior Court Civil Rule 11 we have said that "consideration should be given to the clarity or ambiguity of the law." *Spikes*, 881 A.2d at 1125. Moreover, Superior Court Civil Rule 11 makes clear that an attorney's written submissions to the Court constitute a certification that "to the best of the attorney's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances . . . the allegations and other factual contentions have evidentiary support or, if specifically so identified, are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery." Super. Ct. Civ. R. 11(b)(3).

Respondent filed a clearly inadequate petition that was dismissed with prejudice and for which she was sanctioned by the Bankruptcy Court. FF 73, 75. However, she argues that there is a distinction between a merely inadequate petition and a frivolous one, and that her filing of a petition in this case was not frivolous because the law on filing a bankruptcy petition pursuant to a POA is unclear. RFF at 13. That argument fails to address the numerous problems with the petition that Respondent filed in this matter.

First, Respondent's argument regarding lack of clarity in the law does not apply to the situation here. She did not proceed pursuant to a POA based on a legal argument that she was – or should be – permitted to proceed in that matter. Prior to November 19, 2010, she never indicated – in the petition or otherwise – that the bankruptcy case had been filed pursuant to a POA. FF 32, 61, 70. In fact, she never had a proper POA. She never received a POA in favor of Theresa Lawson, the person with whom she communicated and from whom she took direction. FF 30-31; 40, RFF at 12. The only POA she ever received was in favor of Herman Wooden, a person with whom Respondent never even communicated. FF 31, 50. Accordingly, regardless of any

purported lack of clarity about whether the law may permit the filing of a bankruptcy petition in the Bankruptcy Court for the District of Columbia pursuant to a POA, Respondent was not trying to exercise her prerogative and advance a potentially viable legal position. She did not have such a position to start with.

Furthermore, on the face of the petition that Respondent filed, Michael Lawson was ineligible for Chapter 13 relief. Although a debtor must have income sufficient to make payments pursuant to an approved Chapter 13 plan (FF 2), the petition that Respondent filed listed his income as zero. FF 38. The secured debts that Respondent listed in the petition exceeded the maximum amount for Chapter 13 eligibility. FF 2, 44. Required income tax returns were not submitted in support of the petition. FF 4, 47, 56. Respondent later corrected some of the information she had provided by disclosing that the debtor had rental income, but she did so only after learning that the case could not proceed for other reasons, *e.g.*, the Lawsons had not filed tax returns in the last two years and Michael Lawson had not attended the meeting of creditors (because he did not know about it and could not have attended even if he had known about it). FF 47-48, 51.

Respondent also contends that the Rule 3.1 charge should be dismissed because Bar Counsel presented no expert testimony to establish that the filing was frivolous. RFF at 13. While there may be cases where there is a need for expert testimony to distinguish between a frivolous filing and an inadequate one, this case is not one of them. In short, Respondent filed a petition without authority and that failed to meet eligibility requirements for relief, and without making any legal argument for why the original signature and eligibility requirements should not apply to Michael Lawson. While the Bankruptcy Court did not make an explicit finding that Respondent's filing was frivolous, it characterized her non-compliance with the Chapter 13 eligibility requirements as "an obvious issue" that "should not have been injected in the case[.]"

FF 73. Moreover, despite the manifest defects of taking the Chapter 13 route, Respondent persisted even after it was clear that she had no authority to maintain a petition purporting to contain factual representations by her client and that there was no factual basis for establishing her client's eligibility for Chapter 13 relief. As a result, we find clear and convincing evidence that Respondent violated Rule 3.1.

D. Rule 3.3(a)(1)

The obligation to speak truthfully to a tribunal is one of a lawyer's "fundamental obligations." *In re Ukwu*, 926 A.2d 1106, 1140 (D.C. 2007) (appended Board Report).

However, unlike Rule 8.4(c), where reckless conduct can cause a violation, Rule 3.3 requires the Respondent to "knowingly" make a false statement. Rule 3.3(a)(1) prohibits a lawyer from knowingly[13] "[m]ak[ing] a false statement of fact or law to a tribunal or fail[ing] to correct a false statement of material fact or law previously made to the tribunal by the lawyer, unless correction would require disclosure of information that is prohibited by Rule 1.6." Under *Ukwu*, to find a violation of Rule 3.3(a)(1), we must make a two-pronged inquiry and determine 1) whether Respondent's statements or evidence were false, and 2) whether Respondent knew that they were false. *Id.* at 1140. "A person's knowledge may be inferred from the circumstances." Rule 1.0(f).

Bar Counsel contends that Respondent engaged in multiple violations of Rule 3.3(a)(1) in the Lawson bankruptcy case, including knowing false statements to the Bankruptcy Court in the written submissions she filed and at the hearing on November 19, 2010. BFF at 46. Bar Counsel

[13] The term "knowingly" "denotes actual knowledge of the fact in question." *See* D.C. Rule of Prof. Conduct, 1.0(f); *see also In re Spitzer*, 845 A.2d 1137, 1138 n.3 (D.C. 2004) (Respondent could not "knowingly" violate Rule 8.1(b) without actual knowledge of a Bar Counsel investigation).

adds that Respondent failed to disclose information she was obligated to provide to ensure the statements she made were not misleading and deceitful and to correct her previous known false statements. *Id.* Respondent counters that Rule 3.3(a)(1) requires proof that the statements were intentional, rather than merely negligent, and that the evidence does not establish intentional misconduct. RFF at 16 (Referring to discussion at RFF 14-15 regarding Rule 8.4(d).

We find that Respondent violated Rule 3.3(a)(1) because her representations to the Bankruptcy Court were false, and she knew they were false at the time she made them.

In connection with the filing of the initial petition and supporting documents and subsequent amendments thereto, Respondent represented that the petition and other documents were signed by and sworn to by Michael Lawson, which she knew was not true. FF 36-37, 61. She filed and pursued the bankruptcy case at the direction of Theresa Lawson without disclosing that she was doing so. She knew she had not received from Theresa Lawson a POA from the debtor in her favor, yet nevertheless filed based on Theresa Lawson's purported authority. FF 34, 59-61, 69-71. She knew when she filed schedules with information about Michael Lawson's income and his ownership interests in the four real properties that such information was inaccurate, yet she filed the schedules anyway. FF 38-40, 42. These were not mistakes. They were intentional actions by Respondent with knowledge of the true state of affairs. Even if Respondent had hoped that the missing authorization and the missing/correct information would be forthcoming, and that the initial filings could then be corrected or supplemented, it would not change the nature of the initial filings as knowingly false.

Respondent also made false statements about the POA at the November 2010 hearing in the Bankruptcy Court. She told Judge Teel that she had a copy of "it" in her file and that she would not have filed the petition without "it." FF 70. We think it is clear from the transcript of the

hearing (*see* BX 23) that "it" refers to the POA in favor of Theresa Lawson. Even if Respondent initially misspoke (and we do not think that she did), it was clear from the Bankruptcy Judge's repeated statements at the November 19, 2010 hearing that the Bankruptcy Judge believed that Respondent had, in her file or possession, a POA executed by the debtor in favor of his wife. FF 69-71; *see also* FF 87. The U.S. Trustee in attendance at the hearing also believed, based on Respondent's representations to the Bankruptcy Court, that the POA to which Respondent referred was executed in favor of Ms. Lawson. FF 71. Respondent knew at the time that this was not true, but she did not disclose to the Bankruptcy Court that she had did not have a POA in favor of Ms. Lawson and that the only POA she had received was in favor of Mr. Wooden – someone she had never met. FF 31, 50. After obtaining a transcript of the hearing, Respondent failed to correct her false statements to the Bankruptcy Court. FF 72.

Respondent contends that there is no evidence that her responses to Bankruptcy Judge Teel were designed to conceal information from him, but instead were negligently made, and that she had no reason to be disingenuous with Judge Teel. RFF at 15. We find this argument unconvincing. Respondent did have a reason to be disingenuous: she had a strong incentive to hide the embarrassing fact that Herman Wooden, not Theresa Lawson, held the POA.

Respondent also points out (*see* RPP at 15) that when Bankruptcy Judge Teel submitted a complaint against Respondent to the Committee on Grievances, he stated that he did not view Respondent's conduct as an attempt to perpetrate a fraud on the Court. FF 86, 88. However, Judge Teel had accepted Respondent's representations that she had "it" [a POA in favor of Theresa Lawson]. He apparently did not know, when he submitted his complaint, that Respondent did not have "it" in her file and had misled him regarding the POA and her lack of authority to file the complaint. Because the Bankruptcy Judge did not know the extent to which he had been misled

by Respondent, his comment is neither dispositive nor instructive with respect to the Rule 3.3(a)(1) violation that this Committee now finds based on the record developed in this disciplinary proceeding. -

E. Violation of Rule 8.1

Bar Counsel charges that Respondent violated Rule 8.1, in that, in connection with a disciplinary matter, she knowingly made false statements of fact. Neither Bar Counsel nor Respondent independently addressed Rule 8.1 in their post-hearing briefs. *See* BFF at 47; RFF at 16. Rather, the parties' positions seem to be that if Respondent's representations about the POA to the Bankruptcy Court were (or were not) false, then her representations about the POA to Bar Counsel must also have been (or not been) false.

Rule 8.1 provides, in relevant part, that in connection with a disciplinary matter, a lawyer shall not (a) knowingly make a false statement of fact; or (b) fail to disclose a fact necessary to correct a misapprehension known by the lawyer . . . to have arisen in the matter, or knowingly fail to respond reasonably to a lawful demand for information from an admissions or disciplinary authority.

In her response to Bar Counsel, Respondent incorporated by reference the transcript of the November 19, 2010 hearing before Bankruptcy Judge Teel and relied on her statements therein. FF 87. As explained above, Respondent made knowing false statements to the Bankruptcy Court at that hearing. *See supra* at 67-72

When she submitted those same false statement to Bar Counsel (by incorporating and relying on the transcript in her response), she violated Rule 8.1. Also, based on the proceedings that had taken place in the Bankruptcy Court, Respondent knew that her authority to file the bankruptcy petition pursuant to a POA – which included whether she had a POA prior to filing

and in whose favor the POA was given – was of concern to the Bankruptcy Court. Respondent attempted to perpetuate the same misapprehension regarding her authority to file the bankruptcy petition in her response to Bar Counsel. Accordingly, she withheld information regarding the POA that she was obligated to disclose to correct the known misapprehension that the POA in her possession was not in favor of Theresa Lawson. Respondent also failed to produce the POA in response to Bar Counsel's initial subpoena, claiming that it was never sent to her, without disclosing that she had received a POA in favor of Herman Wooden on September 13 or 14, 2010. *See* FF 90.

Respondent subsequently admitted to a "discrepancy" between what she represented to the Bankruptcy Court and what actually had occurred. FF 92. However, while she admitted that the POA she "ultimately" received was not in her favor of Theresa Lawson, Respondent falsely stated that Respondent did not receive the POA until after filing the bankruptcy petition. FF 92.

Accordingly, the Committee concludes the Respondent made false statements and failed to correct misapprehensions (of which she was well aware) in violation of Rule 8.1.

F. Violations of Rule 8.4(c)

Bar Counsel charges that Respondent violated Rule 8.4(c) by engaging in conduct involving "fraud, deceit, misrepresentation and/or dishonesty." Respondent responds that any misrepresentations she made did not violate Rule 8.4(c) because they were made negligently and without the requisite intent. RFF at 15.

Rule 8.4(c) prohibits "conduct involving dishonesty, fraud, deceit, or misrepresentation." The Court has held that "Rule 8.4(c) is not to be accorded a hyper-technical or unduly restrictive construction." *In re Ukwu*, 926 A.2d 1106, 1113 (D.C. 2007); *see also In re Hager*, 812 A.2d 904, 916 (D.C. 2002) (citing *In re Arneja*, 790 A.2d 552, 557 (D.C. 2002)) (noting that the Court has

"given a broad interpretation to Rule 8.4(c)"). Nonetheless, each of the four terms encompassed within Rule 8.4(c) "should be understood as separate categories, denoting differences in meaning or degree." *In re Shorter*, 570 A.2d 760, 767 (D.C. 1990) (per curiam). Each category of Rule 8.4(c) requires proof of different elements. *See In re Romansky*, 825 A.2d 311, 315 (D.C. 2003).

The most general of the Rule 8.4(c) categories is "dishonesty," which is defined as:

> fraudulent, deceitful or misrepresentative behavior [and] conduct evincing a lack of honesty, probity or integrity in principle; [a] lack of fairness and straightforwardness . . . . Thus, what may not legally be characterized as an act of fraud, deceit or misrepresentation may still evince dishonesty.

Shorter, 570 A.2d at 767-68 (internal quotation marks and citation omitted); *see also In re Scanio*, 919 A.2d 1137, 1142-43 (D.C. 2007). When the conduct is "obviously wrongful and intentionally done, the performing of the act itself is sufficient to show the requisite intent for a violation." *Romansky*, 825 A.2d *Id.* at 315. Conversely, "when the act itself is not of a kind that is clearly wrongful, or not intentional, Bar Counsel has the additional burden of showing the requisite dishonest intent." *Id.*

A violation of Rule 8.4(c) may be established by sufficient proof of recklessness. *See id.* at 317. To prove recklessness, Bar Counsel must prove by clear and convincing evidence that the respondent "consciously disregarded the risk" created by her actions. *Id.*

We find that the same conduct that violated Rules 3.3 and 8.1 also violated Rule 8.4(c), particularly given the broader definition of the term "dishonesty" and the less stringent recklessness mental state that applies to Rule 8.4(c).

G. Violations of Rule 8.4(d)

Bar Counsel alleges that Respondent violated Rule 8.4(d) by engaging in conduct that seriously interferes with the administration of justice.

Establishing a violation of Rule 8.4(d), entails demonstrating, by clear and convincing evidence, that (i) Respondent's conduct was improper, *i.e.*, that Respondent either acted or failed to act when she should have[14]; (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 a manner that is more than *de minimis*; in other words, it must have potentially had an impact upon the process to a serious and adverse degree. *In re Hopkins*, 677 A.2d 55, 60-61 (D.C. 1996). Rule 8.4(d)'s strictures apply not only to activities which may cause a tribunal to reach an incorrect decision, but also to conduct that taints the decision-making process. *In re Keiler*, 380 A.2d 119, 125 (D.C. 1977). Alternatively, if the attorney's conduct causes the unnecessary expenditure of time and resources in a judicial proceeding, Rule 8.4(d) is violated. *In re Cole*, 967 A.2d 1264, 1266 (D.C. 2009).

We find that Bar Counsel established that Respondent's conduct met all three elements of Rule 8.4(d). First, her false representations to the Bankruptcy Court and her filing and pursuit of a case that had no legal or factual basis, particularly with the respect to the choice to file under Chapter 13, were improper. Respondent's knowing false statements and concealment of material information also were improper. Second, Respondent's misconduct bore directly upon the judicial process – the proceedings before the Bankruptcy Court in the case filed in Michael Lawson's name, Case No. 10-00897, and this disciplinary proceeding, which was the result of the

[14] "Improper" conduct is not limited to that which is "prohibited by a statute, court rule or procedure, or other disciplinary rule." It also extends to acts that, "considering all the circumstances in a given situation, the attorney should know that he or she would reasonably be expected to act in such a way as to avert any serious interference with the administration of justice." *In re Ukwu*, 926 A.2d 1106, 1144 (D.C. 2007) (appended Board report), quoting *Hopkins*, 677 A.2d at 60-61; *see also In re Evans*, 902 A.2d 56, 69 (D.C. 2006) (Respondent engaged in improper conduct when he "took shortcuts and made mistakes without fully considering the propriety of such actions or the effect they might have in the probate proceeding.).

Bankruptcy Court's referral. Third, Respondent's misconduct tainted the judicial process and did so in more than a *de minimis* way. As the Bankruptcy Court found, Respondent's filing and pursuit of the case, without the debtor's involvement and where the debtor's ineligibility was obvious, disrupted the case and wasted the time and resources of both the Bankruptcy Court and the Trustee. FF 73; *see In re Grant*, 635 F.3d 1227, 1230-31 (D.C. Cir. 2011) (frivolous complaints and frivolous appeals '"tie up the courts, waste valuable judicial and legal resources, and affect the quality of justice enjoyed by the law-abiding population'") (citation omitted)). By submitting a frivolous petition supported by false and incomplete documents, and by making knowing false representations at the November 19, 2010 hearing, Respondent also tainted the process and actually misled the Bankruptcy Court. *Reback*, 513 A.2d at 232 (after divorce case was dismissed, lawyers refiled the identical complaint to which they affixed the client's signature; Court found lawyers' dishonesty prejudiced the administration of justice even though the second complaint was identical to the complaint actually signed by the client and the client suffered little, if any, prejudice).

VI. RECOMMENDATION AS TO SANCTION

The appropriate sanction is one that is necessary to protect the public and the courts, to maintain the integrity of the profession, and to deter Respondent and other attorneys from engaging in similar misconduct. *See In re Martin*, 67 A.3d 1032, 1053 (D.C. 2013) (citing *In re Scanio*, 919 A.2d 1137, 1144 (D.C. 2007)). As the Court has stated: "The purpose of imposing discipline is to serve the public and professional interests identified and to deter similar conduct in the future rather than to punish the attorney. . . . What is the appropriate sanction necessarily turns on the nature of the respondent's misconduct." *In re Austin*, 858 A.2d 969, 975 (D.C. 2004).

The sanction imposed must also be consistent with cases involving comparable misconduct. *See* D.C. Bar R. XI, § 9(h)(1); *In re Elgin*, 918 A.2d 362, 373 (D.C. 2007*); In re Berryman*, 764 A.2d 760, 766 (D.C. 2000). The determination of a disciplinary sanction takes into account: (1) the seriousness of the conduct at issue; (2) the prejudice, if any, to the client which resulted from the conduct; (3) whether the conduct involved dishonesty and/or misrepresentation; (4) the presence or absence of violations of other provisions of the disciplinary rules; (5) whether the attorney had a previous disciplinary history; (6) whether or not the attorney acknowledged his or her wrongful conduct; and (7) circumstances in mitigation of the misconduct. *See In re Vohra*, 68 A.3d 766, 784 (D.C. 2013) (citing *In re Hutchinson*, 534 A.2d 919, 924 (D.C. 1987) (en banc)).

While Bar Counsel initially sought the sanction of a three-year suspension and the imposition of a fitness requirement, it raised the possibility of disbarment in its Reply Brief. BCR at 11. However, Bar Counsel made no argument in support of disbarment and cited no authority in support of disbarment. Respondent submits that she should receive a public censure. For the reasons described below, we recommend a three-year suspension, with a fitness requirement.

A. Seriousness of the Misconduct and Sanctions for Comparable Misconduct

Respondent's misconduct was serious. She filed a frivolous bankruptcy petition on behalf of an individual she had never met, while taking direction from a different person. She then made knowingly false representations to the Bankruptcy Court and to Bar Counsel, including that Michael Lawson had signed a POA in favor of Theresa Lawson, and aggravated her misconduct by offering false testimony at the hearing.

B. Prejudice to the Client

As explained above, Respondent's misconduct caused Michael Lawson to suffer prejudice. Specifically, when the Bankruptcy Court dismissed his bankruptcy petition, it resulting in a

prohibition on refiling for bankruptcy for six months, a limited stay if he files another bankruptcy case, and an adverse impact on his credit. FF 75-76.

C. Whether the Conduct Involved Dishonesty and/or Misrepresentation

Respondent's misconduct involved dishonesty: As explained above, Respondent made knowing false statements to the Bankruptcy Court and to Bar Counsel.

D. Violation of Other Disciplinary Rules

Respondent's most serious violations are dishonesty and serious interference with the administration of justice. Respondent also violated Rules 1.1, 1.4, and 3.1. Sanctions for single violations of Rules 1.1 and 1.4 have resulted in non-suspensory sanctions. *E.g.*, *Nwadike*, Bar Docket No. 371-00 (informal admonition for violation of Rule 1.1(b)), *recommendation adopted*, 905 A. 2d 221 (D.C. 2006); *In re Hanny*, Bar Docket No. 31-97 (BPR June 13, 2000) (Board reprimand for violations of Rules 1.1(a), 1.3(a), and 1.4(a)). A violation of Rule 3.1, combined with serious interference with the administration of justice, has resulted in a brief suspension. *E.g.*, *In re Yelverton*, 105 A.3d 413, 431 (D.C. 2014) (30-day suspension with fitness); *In re Spikes*, 881 A.2d 1118, 1128 (D.C. 2005) (30-day suspension). The full scope of Respondent's misconduct warrants a lengthy suspension.

E. Prior Discipline

Respondent received prior discipline on three occasions between 2003 and 2009, all prior to Respondent's misconduct at issue in the instant case. Specifically, Respondent received an informal admonition in 2003 for failure to respond to inquiries from Maryland Bar Counsel, in violation of Maryland Rule 8.1(b). BX 48. She also received a public censure in the District of Columbia in 2006 for failure to respond to Bar Counsel, in violation of Rule 8.1(b), and conduct that seriously interfered with the administration of justice, in violation of Rule 8.4(d), and failure

to comply with an order of the Court or the Board, in violation of D.C. Bar R. XI, § 2(b)(3). *Id.* Finally, in May 2009, Respondent entered into a negotiated disposition in Virginia whereby she received a 60-day suspension for violating Virginia Rules 1.3(a) (diligence and promptness), 1.15(a)(2) (commingling), and 5.5(a) (unauthorized practice of law). *Id.* The fact that Respondent had been disciplined three times in the seven years prior to the conduct in this matter is a significant aggravating factor supporting a lengthy suspension.

F. Other Circumstances in Aggravation and Mitigation

Respondent argued that a mitigating factor was the strain of caring for her terminally ill mother, who was living with Respondent at the time of the bankruptcy filing. The Hearing Committee finds that Respondent did not establish mitigation by clear and convincing evidence because she did not establish any causal link that established how the strain of caring for her mother contributed to her misconduct. Moreover, even if the strain of caring for her mother contributed to her initial lack of care and attention in proceeding with the bankruptcy filing without a valid POA in favor of Theresa Lawson, it does not excuse her subsequent dishonesty, which happened later.

In aggravation of sanction, as explained in Part V.E, *supra*, Respondent made false statements to Bar Counsel during the course of its investigation, in violation of Rule 8.1. Dishonesty to Bar Counsel is a serious aggravating factor. *See In re Chapman*, 962 A.2d 922, 924 (D.C. 2009) (per curiam) ("Under the umbrella of aggravating and mitigating circumstances, we often factor in the respondent's veracity when assessing the appropriate sanction.").

We also find that Respondent testified falsely at the hearing regarding the POA. She testified that she did not receive the POA until "much later" in the representation, which could not have been true given the documentary evidence to the contrary. FF 94. And as we also found,

Respondent's position that she was "candid" with the Bankruptcy Court and her efforts to explain away her knowing false statements at the November 2010 hearing by claiming that she was mistaken because she was "going from recollection" were deliberately false. FF 94. Such false testimony before the Hearing Committee is a significant aggravating factor. *See In re Cleaver-Bascombe*, 892 A.2d 396, 411-13 (D.C. 2006) ("*Cleaver-Bascombe I*"); *see also In re Silva*, 29 A.3d 924, 926 (D.C. 2011) (adopting the Board's recommended sanction of three-year suspension with fitness requirement where Board "view[ed] respondent's dishonesty and misrepresentations during the disciplinary proceedings as a significant aggravating factor in making its sanction recommendation").

G. Sanctions for Comparable Misconduct

The sanction imposed must not "foster a tendency toward inconsistent dispositions for comparable conduct or . . . otherwise be unwarranted." D.C. Bar R. XI, § 9(h)(1) (2008). Sanctions in cases involving lack of competence, inadequate communication, frivolous claims, dishonesty, and/or conduct seriously interfering with the administration of justice have ranged from moderate suspensions to disbarment.

The Court has imposed disbarment in cases of dishonesty "of the flagrant kind," typically involving extremely pervasive dishonesty, or dishonesty for a selfish motive or personal gain. *See In re Pelkey*, 962 A.2d 268, 281 (D.C. 2008) (quoting *In re Pennington*, 921 A.2d 135, 142 (D.C. 2007)). Flagrant dishonesty "reflect[s] a continuing and pervasive indifference to the obligations of honesty in the judicial system . . . ." *Pennington*, 921 A.2d at 141 (quoting *In re Corizzi*, 803 A.2d 438, 443 (D.C. 2002)); *see, e.g.*, *In re Baber*, 106 A.3d 1072, 1074-75 (D.C. 2015) (demanding an unlawful fee, then withdrawing from the representation, making false accusations against the client, and filing a frivolous suit against her, which was "in large part driven by a desire

for personal gain," and was aggravated by false testimony during the disciplinary hearing); *In re Kanu*, 5 A.3d 1, 16-17 (D.C. 2010) (disbarment for filing fraudulent visa applications, evading client requests for promised refunds after failure to achieve the clients' goals, and lying to Bar Counsel with respect to her promised refunds); *In re Cleaver-Bascombe*, 986 A.2d 1191, 1199-1200 (D.C. 2010) ("*Cleaver-Bascombe II*") (disbarment for submitting fraudulent CJA vouchers and false testimony at the hearing); *In re Corizzi*, 803 A.2d 438, 443 (D.C. 2002) (disbarment for counseling two clients to lie, retaliating against a client, and lying to Bar Counsel, reflecting a "continuing and pervasive indifference to the obligations of honesty in the judicial system").

By contrast, cases involving dishonesty and other serious misconduct not rising to the level of flagrant dishonesty have resulted in suspensions of up to three years with fitness. *See, e.g.*, *Silva*, 29 A.3d at 925-26 (three-year suspension with fitness for neglect, compounded by falsely signing and notarizing signatures on an easement agreement to cover up the neglect, and false testimony); *In re Slaughter*, 929 A.2d 433, 436-39 (D.C. 2007) (three-year suspension with fitness for creating a false contingency fee agreement, forging a signature, and misleading his firm about the identity of a client); *In re Daniel*, 11 A.3d 291, 300 (D.C. 2011) (three-year suspension with fitness for concealing funds from the IRS by exploiting his position as an attorney and failed to demonstrate recognition or remorse); *In re Kline*, 11 A.3d 261, 267 (D.C. 2011) (three-year suspension for misrepresenting a proposed settlement agreement to a client, forging a client's signature, and concealing the agreement from the client where the dishonesty was "grounded in weakness, not in malice" and where his ill-fated strategy was "self-destructive, not vile or predatory") (quoting Board Report).

Dishonesty to cover up other misconduct is especially serious, even when it does not rise to the level of flagrant dishonesty. *See Chapman*, 962 A.2d at 925 (per curiam) ("The Bar is a

noble calling; and an attorney deliberately attempting to cover up misconduct is absolutely intolerable, regardless of whether it is under oath or during an investigation."). Thus, it is a significant aggravating factor, with suspensions varying according to the severity of the underlying conduct. *See, e.g.*, *In re Scott*, 19 A.3d 774 (D.C. 2011) (three-year suspension with fitness for covering up prior discipline, which warranted a one-year reciprocal suspension on its own, with a false statement in connection with a bar application); *Chapman*, 962 A.2d at 927 (60-day suspension, with 30 days stayed in favor of one year of probation, for neglect of a single case, aggravated by dishonest statements to Bar Counsel and testimony at the hearing).

Although no single case is perfectly on point, we find that Respondent's misconduct is most similar to the cases in which the Court has imposed three-year suspensions. As in those cases, Respondent's misconduct arose from sloppiness, not pecuniary gain. *See Kline*, 11 A.3d at 267. Specifically, Respondent breached her duties of honesty and communication with her clients and strained judicial resources by filing a frivolous claim and testifying falsely. Cutting corners and covering up that misconduct through dishonesty is very serious, but does not rise to the level of "flagrant dishonesty" for which the Court has imposed disbarment. Thus, we agree with Bar Counsel and recommend the imposition of a lengthy suspension.

H. Fitness Requirement

Bar Counsel recommends imposition of a fitness requirement. Specifically, Bar Counsel contends that Respondent's dishonesty, failure to recognize the seriousness of her misconduct, and lack of remorse establish "clear and convincing evidence that casts a serious doubt on Respondent's continued fitness to practice law after serving a period of suspension" under *In re Cater*, 887 A.2d 1, 22-23 (D.C. 2005), because it involved extensive dishonesty and Respondent has not recognized the seriousness of her misconduct.

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

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

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

Cater, 887 A.2d at 22.

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

(a) the nature and circumstances of the misconduct for which the attorney was disciplined;

(b) whether the attorney recognizes the seriousness of the misconduct;

(c) the attorney's conduct since discipline was imposed, including the steps taken to remedy past wrongs and prevent future ones;

(d) the attorney's present character; and

(e) the attorney's present qualifications and competence to practice law.

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

Here, Bar Counsel has demonstrated by clear and convincing evidence that there are serious doubts concerning Respondent's fitness to practice law. Respondent engaged in multiple acts of dishonesty during the underlying misconduct, during Bar Counsel's investigation, and during this disciplinary hearing, thus demonstrating that she has not corrected her pattern of dishonest behavior, making it an ongoing concern. This factor in particular casts doubt upon her present qualifications to practice law. Furthermore, she has not acknowledged her misconduct or expressed remorse. Therefore, we agree with Bar Counsel that a fitness requirement is necessary to ensure that Respondent can be "entrusted with professional and judicial matters, and to aid in the administration of justice as an attorney and an officer of the Court." *Id.* at 22 (quoting D.C. Bar R. XI, § 2(a)).

VII. CONCLUSION

Rule XI, § 2(a) states that "[t]he license to practice law in the District of Columbia is a continuing proclamation by this Court that the holder is fit to be entrusted with professional and judicial matters, and to aid in the administration of justice as an attorney and an officer of the Court." Respondent's misconduct has been established by clear and convincing evidence. There are no unique and compelling circumstances here. Accordingly, suspension for three years with a fitness requirement is appropriate in this case.

For these reasons, we recommend that Respondent be suspended for three years with a requirement to prove her fitness to practice law as a condition of reinstatement.

AD HOC HEARING COMMITTEE

By: /JGC/
Justin G. Castillo, Esq.
Chair

/SW/
Ms. Sherry Weaver

Dated: November 25, 2015