THIS REPORT IS NOT A FINAL ORDER OF DISCIPLINE*

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

In the Matter of:	:	
	:	
DENI-ANTIONETTE MAZINGO-MAYRONNE,	:	**Board Docket Nos. 14-BD-060 and 15-BD-014**
Respondent.	:	
	:	**Bar Docket Nos. 2007-D466, 2011-D047, and 2014-D405**
A Member of the Bar of the District of Columbia Court of Appeals (Bar Registration No. 479656)	:	

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

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REPORT AND RECOMMENDATION
OF THE AD HOC HEARING COMMITTEE

Disciplinary Counsel[1] has charged Respondent, Deni-Antionette Mazingo-Mayronne, with violations of both the D.C. Rules of Professional Conduct ("D.C. Rules") and Maryland Rules of Professional Conduct ("MD Rules") in several different matters.

The first matter (Bar Docket No. 2007-D466), arises from Respondent's conduct in several matters in Maryland. Disciplinary Counsel alleges that Respondent (1) made a false statement on her application for admission to the United States District Court for the District of Maryland; (2) failed to identify herself as an attorney in preparing, signing, and filing certain bankruptcy court petitions as required by 11 U.S.C. §§ 110(a)(1); (3) failed to file a statement of fees as required by 11 U.S.C. § 110(h)(2); (4) negotiated the sale of a property that was the subject of bankruptcy proceedings without notifying the Trustee or obtaining authority from the District of Maryland Bankruptcy Court ("Bankruptcy Court"); deposited proceeds from this sale into her business checking account; and (5) failed to return the funds to the Trustee when the Bankruptcy Court entered judgment against her. Disciplinary Counsel charged Respondent with violating Maryland Rules of Professional Conduct 1.15(a), 1.15(d), 3.3(a)(1), 3.4(c), 4.1(a)(1) and/or (2), 5.5(a)

[1] The Petition was filed by the Office of Bar Counsel. The District of Columbia Court of Appeals changed the title of Bar Counsel to Disciplinary Counsel, effective December 19, 2015. We use the current title herein.

and (b)(1), 8.1(a), 8.4(b), and 8.4(c). *See* Second Am. Specification of Charges (Jan. 28, 2015).

The second matter (Bar Docket No. 2011-D047), arises from Respondent's representation of Kimberly Simmonds in (1) the establishment of an LLC, and (2) a personal injury settlement. In the LLC matter, Disciplinary Counsel alleges that Respondent represented that she was licensed to practice in Maryland when she was not, and accepted $2,500 for legal services that she was not authorized to perform. In the personal injury matter, Disciplinary Counsel alleges that Respondent (1) failed to advise Ms. Simmonds or the insurer that she was not licensed to practice in Maryland; (2) falsely advised Ms. Simmonds that she was affiliated with another attorney; (3) disclosed client confidences to an insurer; (4) improperly placed a lien on Ms. Simmonds' settlement funds following termination in order to extract a fee to which Respondent was not entitled; and (5) falsely represented to Ms. Simmonds the amount of time spent on her matter. Disciplinary Counsel charged Respondent with violating D.C. Rules 1.4(a) and (b), 1.6(a)(1)-(3), 5.5(a), 7.1(a)(1), and 8.4(c). *See* Second Am. Specification of Charges (Jan. 28, 2015).

The third matter (Bar Docket No. 2014-D405), which was charged separately but consolidated with the first two matters before the disciplinary hearing, arises from Respondent's own Chapter 7 Voluntary Petition filed with the Bankruptcy Court in May 2005. Disciplinary Counsel alleges that Respondent knowingly failed to disclose (1) that she was the principal and/or president of Legal Forms Fitted and Filed, LLC ("Legal Forms"); (2) multiple bank accounts she held at Lafayette Credit

Union; (3) payments made to Lafayette; and (4) a Lafayette home equity line loan. Disciplinary Counsel charged Respondent with violating Maryland Rules 3.3(a)(1) and 8.4(b)-(d). *See* Specification of Charges (Jan. 27, 2015).

Disciplinary Counsel argues that it proved all of the charged Rule violations by clear and convincing evidence (except as to the alleged violations of Maryland Rules 5.5(a) and 5.5(b)(1) in Count I), and recommends that Respondent be disbarred. Respondent argues that Disciplinary Counsel did not prove any of the alleged Rule violations by clear and convincing evidence, but if it did, asks that any sanction be no greater than a ninety-day suspension, and that the suspension be stayed for a period of supervised probation.

As set forth below, the Hearing Committee finds clear and convincing evidence that Respondent violated Maryland Rules 3.3(a)(1), 3.4(c), 5.5(a) and (b)(1), and 8.4(c) and (d), and D.C. Rules 1.4(a) and (b), 1.6(a)(1), (2), and (3), 5.5(a), and 7.1(a)(1). Based on these findings, the Hearing Committee recommends that Respondent be suspended from the practice of law for a period of six months.

PROCEDURAL HISTORY

On July 22, 2014, Disciplinary Counsel served Respondent with a Specification of Charges (Bar Docket Nos. 2007-D466 and 2011-D047). BX A2; BX A3.[2] On August 19, 2014, Respondent filed her Answer to the Specification of

[2] "BX" Refers to Disciplinary Counsel's exhibits. "Tr." refers to the transcript of the hearing held on June 15-18, 2015. "ODC Br." refers to [Disciplinary] Counsel's Proposed Findings of Fact, Conclusions of Law, and Recommendation as to Sanction. "R. Br." refers to Respondent's Findings of Fact and Conclusions of Law and Recommendation for Appropriate Sanction.

Charges in which she agreed with most of the factual allegations, but denied almost all violations of the Maryland and D.C. Rules. BX A4.

Disciplinary Counsel filed a First Amended Specification of Charges in December 2014, and a Second Amended Specification of Charges in January 2015. *See* BX G1. Respondent did not submit an amended Answer.

On January 27, 2015, Disciplinary Counsel filed another Specification of Charges against Respondent (Bar Docket No. 2014-D405). By Order dated February 10, 2015, all matters against Respondent were consolidated for all purposes.

As reflected in the relevant Specifications of Charges, *see* BX G1 & G2, Disciplinary Counsel charged Respondent with the following Maryland and D.C. Rule violations:

BAR DOCKET NO. 2007-D466 (MARYLAND BANKRUPTCY MATTERS)

- MD Rule 1.15(a), in that Respondent engaged in intentional and/or reckless misappropriation of funds;
- MD Rule 1.15(d), in that Respondent, upon receiving funds or other property in which a third person had an interest, intentionally and/or recklessly failed to promptly notify the third person, and/or failed to promptly deliver to the third person any funds or property that the third person was entitled to receive;
- MD Rule 3.3(a)(1), in that Respondent knowingly made false statements of fact or law to a tribunal;
- MD Rule 3.4(c), in that Respondent knowingly disobeyed an obligation under the rules of a tribunal except for an open refusal based on an assertion that no valid obligation exists;

- MD Rule 4.1(a)(1) and/or (2), in that Respondent knowingly made a false statement of material fact or law to a third person (the creditors, parties-in-interest, and Trustee associated with the Bankruptcy cases) and/or failed to disclose material facts to third parties, when disclosure is necessary to avoid assisting a criminal or fraudulent act by a client;

- MD Rule 5.5(a) and (b)(1), in that Respondent engaged in the practice of law and established an office or other systematic and continuous presence in Maryland for the practice of law in a jurisdiction where doing so violated the regulation of the legal profession in that jurisdiction;

- MD Rule 8.1(a), in that Respondent knowingly made a false statement of fact in connection with a Bar admission application;

- MD Rule 8.4(b), in that Respondent committed perjury in violation of 18 U.S.C. § 1001 (false statements); 18 U.S.C. § 1760 (unsworn declarations under penalty of perjury); and/or 18 U.S.C. 152(3) (false declarations);

- MD Rule 8.4(b), in that Respondent committed the crime of concealment and/or transfer of assets in violation of 18 U.S.C. § 152(1) (concealment of property); (5) (fraudulent receipt of property), and/or (7) (fraudulent transfer or concealment);

- MD Rule 8.4(c), in that Respondent engaged in conduct involving dishonesty.

See BX G1 (Second Am. Specification of Charges) at 9-10.

BAR DOCKET NO. 2011-D047 (THE SIMMONDS MATTER)

- D.C. Rule 1.4(a) and (b), in that Respondent failed to keep her client reasonably informed about the status of the matter and failed to promptly comply with reasonable requests for information and did not explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the prosecution;

- D.C. Rule 1.6(a)(1), (2), and (3), in that Respondent revealed her client's confidences or secrets, used a client confidence or secret to the disadvantage of her client, and/or used a client confidence or secret to the advantage of Respondent;

- D.C. Rule 5.5(a), in that Respondent engaged in the practice of law in a jurisdiction (Maryland) where doing so violated the regulation of the legal profession in that jurisdiction;

- D.C. Rule 7.1(a)(1), in that Respondent made a false and misleading communication by omission about her services; and

- D.C. Rule 8.4(c), in that Respondent engaged in conduct involving dishonesty.

See Id. at 15-16.

BAR DOCKET NO. 2014-D405 (RESPONDENT'S PERSONAL BANKRUPTCY)

- MD Rule 3.3(a)(1), in that Respondent knowingly made false statements of fact or law to a tribunal;

- MD Rule 8.4(b), in that Respondent engaged in criminal conduct that reflects adversely on her honesty, trustworthiness, or fitness as a lawyer in other respects, in violation of 18 U.S.C. § 1001 (making materially false statement); 18 U.S.C. § 1746 (unsworn declarations under penalty of perjury), 18 U.S.C. § 152(1) (concealment of property); 18 U.S.C. § 152(3) (false declarations); and/or 18 U.S.C. § 152(7) (fraudulent transfer or concealment);

- MD Rule 8.4(c), in that Respondent engaged in conduct involving dishonesty, fraud, deceit, and/or misrepresentation; and

- 8.4(d), in that Respondent engaged in conduct that seriously interfered with the administration of justice.

See BX G2 (Specification of Charges) at 6-7.

A hearing was held on June 15-18, 2015, before an Ad Hoc Hearing Committee composed of Caroline E. Reynolds, Esquire, (Chair), Curtis D. Copeland, Jr. (public member), and Joshua D. Rogaczewski, Esquire (attorney member). Tr. 5. Disciplinary Counsel was represented by Becky Neal, Assistant Disciplinary Counsel. Tr. 6. Respondent was represented by John O. Iweanoge, II, Esquire. Tr. 6.

Disciplinary Counsel presented the testimony of David Gold, Esquire (U.S. Department of Justice, Trustee's Office), Lynn English (Lafayette Federal Credit Union), Jeffrey Orenstein, Esquire, (Goren, Wolf & Orenstein), Shari Shanks (GEICO), Kimberly Simmonds-Howell (former client), Susan Bryant, Esquire, and Respondent. Tr. 23, 164, 217, 543, 763, 865, 881, 934. The Committee accepted, without objection from Respondent, Mr. Gold as an expert in consumer bankruptcies and bankruptcy proceedings in Maryland Bankruptcy Court, and Mr. Orenstein as an expert in federal bankruptcy law and bankruptcy proceedings in Maryland Bankruptcy Court. Tr. 27-28; 221.

All of Disciplinary Counsel's filed exhibits (BX A1-A18; BX B1-B9; BX C1-C6; BX D1-D4; BX E1-E25; BX F1-F9; BX G1-G17) were admitted into evidence. Tr. 8-9, 84-85. Prior to the hearing, Respondent filed exhibits RX 1-19, but Respondent's counsel, John O. Iweanoge, II, did not move any exhibits into evidence during the hearing.

At the conclusion of the hearing, the Committee made a preliminary non-binding determination that Disciplinary Counsel had proved at least one Rule

violation as set forth in the Specifications of Charges. Tr. 1015-16. Disciplinary Counsel did not offer any additional evidence in aggravation. Tr. 1016. Respondent testified on her own behalf in mitigation. Tr. 1017-31 (Respondent).

Disciplinary Counsel submitted its Proposed Findings of Fact, Conclusions of Law, and Recommendation as to Sanction on August 7, 2015, and Respondent filed her Proposed Findings of Fact and Conclusions of Law and Recommendation as to Sanction on September 18, 2015. Disciplinary Counsel's filed a Reply on October 16, 2015.

STANDARD OF REVIEW

Disciplinary Counsel bears the burden of establishing by clear and convincing evidence that Respondent violated the Rules of Professional Conduct. *See In re Anderson*, 778 A.2d 330, 335 (D.C. 2001) ("*Anderson I*"); *see also In re Anderson*, 979 A.2d 1206, 1213 (D.C. 2009) (per curiam) (appended Board Report) ("*Anderson II*") (applying clear and convincing evidence standard to charge of misappropriation of funds); Board Rule 11.6. 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) (citations and quotation marks omitted). As the Court has explained, "[t]his more stringent standard expresses a preference for the attorney's interests by allocating more of the risk of error to [Disciplinary] Counsel, who bears the burden of proof." *In re Allen*, 27 A.3d 1178, 1184 (D.C. 2011) (citation and internal quotation marks omitted).

The Ad Hoc Hearing Committee makes the following findings of fact, each of which is supported by clear and convincing evidence.

FINDINGS OF FACT

1. Respondent is a member of the Bar of the District of Columbia Court of Appeals, having been admitted by exam on December 2, 2002, and assigned Bar number 479656. BX A1; BX A15 at 3.

2. Respondent has never been licensed to practice law in the State of Maryland. Tr. 545 (Respondent).

3. At all relevant times, Respondent resided in Maryland at 13902 Waggaman Avenue, Laurel, Maryland 20707. BX A1 at 1; Tr. 546-47 (Respondent).

4. Respondent had an office in the basement of her home, which she used for her businesses at all relevant times. BX E3 at 15; Tr. 547-48, 625 (Respondent).

I. FACTS RELEVANT TO BAR DOCKET NUMBER 2007-D466 (BANKRUPTCY MATTERS)

A. Respondent Operated as a Non-Attorney Bankruptcy Petition Preparer After Being Admitted to Practice.

5. In October 2001, before she was licensed to practice law in any jurisdiction, Respondent established a business called Legal Forms Fitted & Filed, LLC ("Legal Forms"). BX A11 at 1-7; BX C6 at 5; Tr. 92 (Gold); Tr. 624 (Respondent).

6. Respondent operated Legal Forms from her home in Laurel, Maryland, including meeting there with the business's clients. Tr. 547-48, 625-26 (Respondent); BX C6 at 24-25, 41, 54, 67, 79; Tr. 43-44 (Gold).

7. Through Legal Forms, Respondent served clients and filed pleadings as a "non-attorney bankruptcy petition preparer." BX A11 at 2; BX C6 at 5-6, 9-10, 38, 49-50.

8. At a deposition, Respondent testified that her role with respect to clients of Legal Forms was to "come in and give advice" if clients needed it. BX C6 (Respondent's deposition) at 7. Specifically, Respondent testified that when Legal Forms' clients had "questions that [went] beyond . . . just filling out the paperwork," then Respondent would "give them legal advice." *Id*. at 8; *see also, e.g.*, BX C6 at 41.

9. Respondent performed this type of work after she was admitted to practice in the District of Columbia in December, 2002, but continued to represent herself to the Bankruptcy Court as a non-attorney. In 2005, for example, Respondent signed pleadings as a non-attorney bankruptcy petition preparer, which she filed in the United States Bankruptcy Court for the District of Maryland in the following cases:

(a) *In re Wallace*, Case No. 05-10771, filed January 12, 2005 (*see, e.g.*, BX B9 at 14);

(b) *In re Gibson*, Case No. 05-16552, filed March 23, 2005 (*see, e.g.*, BX B1 at 7);

(c) *In re Tyner*, Case No. 05-26211, filed July 19, 2005 (*see, e.g.*, BX B8 at 5);

(d) *In re Ridgley*, Case No. 05-32640, filed September 28, 2005 (*see, e.g.*, BX B5 at 6);

(e) *In re Golden*, Case No. 05-34016, filed October 5, 2005 (*see, e.g.*, BX B2 at 22-23);

(f) *In re Newman*, Case No. 05-34036, filed October 5, 2005 (*see, e.g.*, BX B4 at 6);

(g) *In re Nakina Stewart*, Case No. 05-36397, filed October 11, 2005 (*see, e.g.*, BX B7 at 6);

(h) *In re Leonard Stewart*, Case No. 05-36391, filed October 12, 2005 (*see, e.g.*, BX B6 at 5); and

(i) *In re Ferrell*, Case No. 05-36383, filed October 12, 2005 (*see, e.g.*, BX B3 at 6).

10. Respondent testified in a deposition about the type of work she performed for the clients in the above-listed cases. For example, she advised several of those clients about the differences among the chapters of the Bankruptcy Code, so they could decide which chapter to select for their filings. *See, e.g.*, BX C6 at 51, 78. In some cases, she advised her clients "with respect to exemptions and how to categorize those exemptions." Tr. 46-47; BX C6 at 43-44, 78, 92-93. She also appeared at creditors' meetings with some of those clients. Tr. 47; BX C6 at 45-46, 55-56, 79-80. In at least two cases, she counseled clients on the filing of affirmation agreements. Tr. 47-48; BX C6 at 63-64, 65, 82-83. She advised another client about whether to refinance a home during the pendency of the bankruptcy. BX C6 at 32, 34.

11. Nevertheless, in at least 55 different documents filed with the Bankruptcy Court in the nine cases listed above, Respondent signed her name and

certified[3] that she was acting as a non-attorney bankruptcy petition preparer.[4] BX B1 (*In re Gibson*) at 7, 18, 35-37, 52, 54; BX B2 (*In re Golden*) at 22-23, 42, 53-54, 78; BX B3 (*In re Ferrell*) at 6-7, 18, 31, 34-35, 39, 50, 58; BX B4 (*In re Newman*) at 6, 17-18, 35, 39, 58; BX B5 (*In re Ridgley*) at 6, 17, 35-36, 39; BX B6 (*In re Leonard Stewart*) at 5-6, 17, 34, 38; BX B7 (*In re Nakina Stewart*) at 6, 17-18, 34, 37-38; BX B8 (*In re Tyner*) at 5, 16-18, 36, 41; BX B9 (*In re Wallace*) at 14-15, 31-32, 42.[5] Above each of Respondent's signatures, each form specifically stated that the signature block was for a "non-attorney bankruptcy petition preparer." *Id.*; *see also* Tr. 129-34 (Gold). In multiple instances, Respondent signed beneath a certification that stated, "I certify that I am a bankruptcy petition preparer as defined in 11 U.S.C. § 110 . . . ." *See, e.g.*, BX B1 at 7, 18.

12. Respondent's compensation for her work in the cases listed above exceeded the customary rate for non-attorney bankruptcy petition preparers. During 2005, the reasonable rate for a non-attorney bankruptcy petition preparer to charge for a bankruptcy case (nationally) was $50 to $150. Tr. 38-39; 50-51 (Gold). The

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[3] The certification states, in relevant part, "I certify that I am a bankruptcy petition preparer as defined in 11 U.S.C. § 110 . . . ." *See, e.g.*, BX B1 at 7.

[4] Respondent argues that "Contrary to [Disciplinary] Counsel's assertion, no 'pleading' . . . was filed with the Bankruptcy Court by the Respondent in these nine cases." R. Br. at ¶ 11. The distinction between "pleadings" and other documents filed with the Court is irrelevant to the question at hand: whether Respondent misrepresented herself to the Bankruptcy Court as a non-attorney.

[5] Respondent argues that she signed the petition in *In re Wallace* in January 2005, before she was admitted to practice law in Maryland District Court. R. Br. at ¶ 9. This fact is irrelevant. As of January 2005, Respondent was an attorney licensed to practice in the District of Columbia. *See* ¶1, *supra.* In any case, she undisputedly signed numerous filings as a "non-attorney bankruptcy petition preparer" after being admitted to practice in the Maryland District Court on February 7, 2005. *See* ¶¶ 9, 34, *infra* (and exhibits cited therein).

clients in nearly every one of the above listed cases paid Respondent far more than that customary amount. *See* BX C1 (Trustee Complaint) at ¶ 16 (alleging respondent received $550.00 in Ridgley case), ¶ 28 ($550.00 in Golden case), ¶ 40 ($550.00 in Ferrell case), ¶ 61 ($450.00 in Newman case), ¶ 70 ($450.00 in Leonard Stewart case), ¶ 81 ($450 in Nakina Stewart case), ¶ 93 ($450.00 in Wallace case), ¶ 102 ($450.00 in Tyner case); BX A6 at 4-13 (Respondent's Answer admitting allegations in ¶¶ 16 (in relevant part), 28, 40, 61, 70, 81, 93, and 102 of Trustee Complaint); Tr. 49-51 (Gold).[6]

13. Respondent also failed to file with the Bankruptcy Court any statement of the fees she received for performing services as a non-attorney bankruptcy petition preparer in the cases listed above, even though the Bankruptcy code requires such a statement.[7] BX C1 (Complaint filed by U.S. Trustee in Case No. 05-21233-NVA) at ¶¶ 18 (Ridgley case), 30 (Golden case), 42 (Ferrell case), 52 (Gibson case), 63 (Newman case), 73 (Leonard Stewart case), 83 (Nakina Stewart case), 95 (Wallace case), 105 (Tyner case); BX A6 at 6-13 (Respondent's Answer to

[6] The record does not reflect that Respondent received any payment in connection with the Gibson case. *See* BX C1 (Trustee Complaint) at ¶ 50; BX A6 at 9, ¶ 48 (admitting allegations in ¶ 50 of Trustee Complaint); BX C6 at 59, 61 (Respondent testifying that she handled the case "entirely pro bono" and '"as a favor"').

[7] Bankruptcy petition preparers are required by federal statute to file a declaration regarding fees, in part to protect creditors. *See* 11 U.S.C. § 110(h)(2) ("A declaration under penalty of perjury by the bankruptcy petition preparer shall be filed together with the petition, disclosing any fee received from or on behalf of the debtor within 12 months immediately prior to the filing of the case, and any unpaid fee charged to the debtor."). *See also* Tr. 37, 39-41 (Gold); *cf. also e.g.*, BX D2 at 41.

Complaint in Case No. 05-21233-NVA, admitting allegations in ¶¶ 18, 30, 42, 52, 63, 73, 95, and 105).

B. Respondent Represented Mr. Ezukanma in the *Ezegbunam* Bankruptcy Case Before Being Admitted to Practice Before the Bankruptcy Court.

14. In February 2004, Edith Ezegbunam, through counsel, filed a lawsuit in Prince George's County Circuit Court, Maryland, against Tochukwu Ezukanma and others to resolve a dispute over title to a house owned by Ms. Ezegbunam. *Ezegbunam v. Ezukanma*, Case No. 04-02388 (hereafter, the "State Court Suit"). BX D1. Ms. Ezegbunam alleged in her complaint that Mr. Ezukanma had fraudulently conveyed an interest in Ms. Ezegbunam's house to himself. BX D3 at 54-86; Tr. 281 (Orenstein).

15. In October 2004, Ms. Ezegbunam, through her attorney Leslie H. Quamina, Esquire, filed a Chapter 7 bankruptcy petition in the United States Bankruptcy Court for the District of Maryland, Greenbelt Division, captioned *In re Ezegbunam*, Case No. 04-34161-WIL (hereafter, the "*Ezegbunam* Bankruptcy Case"). BX D2 at 1, 15, 41; BX C4 at 19, 55, 59.

16. Ms. Ezegbunam's house was the primary asset of the bankruptcy estate. Tr. 289-90 (Orenstein). When Ms. Ezegbunam filed for bankruptcy, she had not resolved her title dispute with Mr. Ezukanma. BX D3 at 21-23; Tr. 281 (Orenstein).

17. Michael Wolf, Esquire, was appointed as the Trustee in the *Ezegbunam* Bankruptcy Case, and the first creditors' meeting took place on November 24, 2004.[8] BX D2 at 2, 50; Tr. 276, 281-82 (Orenstein).

18. At the November 2004 creditors' meeting, Trustee Wolf became aware of Ms. Ezegbunam's property dispute with Mr. Ezukanma, and asked the court for permission to hire Jeffrey Orenstein, Esquire, as legal counsel for the Trustee. BX D2 at 1-2, 50; BX C4 at 16-17; Tr. 277, 279-80 (Orenstein).

19. On December 23, 2004, Respondent, on behalf of Mr. Ezukanma, filed a motion in the *Ezegbunam* Bankruptcy Case objecting to the discharge of Ms. Ezegbunam's bankruptcy. BX D2 at 84-86; Tr. 282-83 (Orenstein); Tr. 549-50 (Respondent). As of that date, Respondent had not applied for admission or been admitted to practice law before the Bankruptcy Court. BX A15 at 4, 13; Tr. 71 (Gold), 283-84 (Orenstein); Tr. 550-51 (Respondent).

20. On December 27, 2004, the Bankruptcy Court notified Respondent that the motion she had filed was deficient for two reasons, one of them being that she "must be admitted to practice before this court." BX D2 at 87; Tr. 284-85 (Orenstein).

21. On January 10, 2005, Mr. Ezukanma filed an Adversary Complaint in the Bankruptcy Court. BX D2 at 93-95. The adversary proceeding was captioned

[8] A trustee is an individual approved by the Department of Justice and appointed as a fiduciary of the bankruptcy estate to administer the estate. Tr. 224, 227-28 (Orenstein). A trustee is required to investigate the debtor's financial affairs, identify property of the estate, and where appropriate and reasonable, to liquidate the assets and distribute funds to the creditors of the estate. BX C4 at 18; Tr. 224 (Orenstein).

Ezukanma v. Ezegbunam and assigned Case No. 05-01012 (hereafter, the "*Ezukanma* Adversary Proceeding"). *Id*. The docket sheet reflects that, at the outset, Mr. Ezukanma was proceeding *pro se*. BX D3 at 2.

22. Mr. Ezukanma's Adversary Complaint contained allegations that were substantively identical to the motion Respondent had filed in the *Ezegbunam* Bankruptcy Case in December 2004. *Compare* BX D2 at 84-86 *with* BX D2 at 93-95; *see also* BX D3 at 8-10; BX C4 at 58-59; Tr. 285-86 (Orenstein).[9] In the Adversary Complaint, Mr. Ezukanma claimed that he jointly owned the house with Ms. Ezegbunam, which had become an asset of the Ezegbunam bankruptcy estate, and he sought a court order staying the sale of the house pending resolution of the title dispute. BX D2 at 93-95; BX D3 at 8-10; BX C4 at 58-59.

23. On January 11, 2005, Trustee Wolf removed the State Court Suit to the Bankruptcy Court to be resolved as part of the *Ezegbunam* Bankruptcy Case. BX C4 at 57-58, 64-65, 75; BX D1 at 6; BX D3 at 47-139; BX E12 at 1-2; Tr. 281-82 (Orenstein).

C. Respondent Applied for Admission to Practice Before the United States District Court for the District of Maryland.

24. On January 17, 2005, three weeks after Respondent received the deficiency notice from the Bankruptcy Court (¶20, *supra*), Respondent completed

[9] Disciplinary Counsel does not allege that Respondent in fact drafted the complaint for Mr. Ezukanma, nor is there clear and convincing evidence in the record sufficient to support such a finding. An equally reasonable inference from the available evidence is that Mr. Ezukanma himself adapted the pleading from the motion Respondent had drafted. The Committee, accordingly, does not find that Respondent drafted the *Ezukanma* Adversary Complaint.

and filed an application for admission to the United States District Court for the District of Maryland, which, if granted, would also allow her to practice before the Bankruptcy Court. BX A15 at 2-9; Tr. 71 (Gold); Tr. 593-94, 595-96, 651 (Respondent). Respondent signed the application under penalty of perjury, affirming that all of her answers were "true and correct," before she submitted it to the Court. BX A15 at 4.

25. Question No. 5 under Section A of the application for admission, entitled "Background Questionnaire," asked the following question:

> Excluding traffic violations punishable by fine only, have you ever been convicted of, or entered a plea of no contest to, any crime or are any criminal charges pending against you?

BX A15 at 2.

26. In response to Question No. 5, Respondent answered "No." *Id.*; Tr. 594-95 (Respondent).

27. That answer was false. In fact, Respondent had been convicted of two separate misdemeanor criminal offenses: (a) in October 1999, Respondent was convicted of Driving While Under the Influence, case number 6WL02238, in the Los Angeles, California, municipal court; and (b) in December 1993, Respondent was convicted of Reckless Driving, case number 93L07299, in the Long Beach, California, municipal court. BX A14 at 19, 27-28; BX A16 at 2-4; BX A17 at 4-6; Tr. 606-09 (Respondent).

28. When she previously applied for admission to the District of Columbia bar, Respondent had answered "Yes" to the following question:

> Either as an adult or a juvenile, have you ever been cited, arrested, charged, or convicted for any violation of any law (except minor traffic violations)? Alcohol-or drug-related offenses and moving traffic violations are not considered to be minor.

BX A14 at 19. Respondent attached to her D.C. Bar Application a supplement setting forth an explanation as to the two convictions. *Id.* at 27-28.

29. At the disciplinary hearing, Respondent testified that she did not believe the question on the District of Maryland admission application called for her to disclose her prior convictions. Her first explanation was that the question did not specifically mention alcohol:

> It doesn't ask anything about alcohol or that kind of thing. That's the reason I didn't answer it affirmative. I would have [answered] totally different as to being like a felony. . . . This question does not read the same as the other question [on the D.C. Bar Application for Admission]. I read this to be a criminal answer and that's the reason I marked it no instead of affirmative.

Tr. 654 (Respondent). Then, when the Committee Chair later questioned Respondent about this issue, Respondent testified that the reason she omitted the information from the District of Maryland application and not from the D.C. Bar Application is that she construed the former as excluding *all* traffic offenses:

> The reason I wrote everything down on the D.C. Bar [Application], [was] because they were very specific, auto and asked about drunk driving, reckless driving on and on and on. On the federal – Maryland federal application, the way I read it was if I had committed a felony but not an auto offense – I'm trying to think of the right words.

Tr. 697-98 (Respondent); *see also id.* 698 (Respondent's testimony confirming that she read the District of Maryland application question "to exclude any traffic offense at all.").

30. The Committee does not find Respondent's explanations to be credible. The question on the District of Maryland application, on its face, plainly called for disclosure of all convictions other than "traffic violations punishable by fine only." As Respondent's D.C. Bar Application reflects, she was aware that her sentences for both of her prior two convictions were more severe than a fine: in 1993, she was sentenced to three years of probation and her license was suspended for one year, BX A14 at 28; and in 1999, she received four years of probation and 90 days "restricted driving." *Id*. at 27.

31. The Committee is also unconvinced by Respondent's argument that, because her prior convictions did not preclude her admission to the D.C. Bar, she had no motive to lie when seeking admission to practice before the District Court in Maryland. In fact, Respondent had received a Notice of Deficiency from the Court, which she was attempting to resolve so that she could represent her client in the Bankruptcy Court; thus, a possible motive could be Respondent's desire to avoid any complications or delays in obtaining admission to practice before that Court. While the Committee does not make any finding of fact with respect to what Respondent's motive was, the Committee does not find an absence of motive sufficient to establish that Respondent's misstatement was not knowing.

32. In mitigation, Respondent testified that she suffers from dyslexia, and argued that this disability played some role in her misunderstanding of the question. *See* Tr. 636-37; *see also* Resp. Br. at ¶¶ 1, 7. However, Respondent did not offer any other evidence to corroborate this testimony. Moreover, although she testified that it *takes her longer* to read and understand documents than the average person, Tr. 637, Respondent did not explain or offer evidence as to how her disability could have caused her to *misunderstand* the question. There is no evidence in the record that Respondent was pressed for time when completing the application or that she was otherwise unable to review it carefully to ensure its completeness and accuracy.

33. The Committee thus finds that Respondent knowingly and intentionally omitted her criminal convictions from her application for admission.

34. On February 7, 2005, the U.S. District Court for the District of Maryland admitted Respondent and assigned her Bar Number 16378, which also authorized her to practice law in the Bankruptcy Court. BX A15 at 2, 13; BX E3 at 15; Tr. 154 (Gold); Tr. 610 (Respondent).

D. Respondent Resumed Her Representation of Mr. Ezukanma in the Bankruptcy Court.

35. After she was admitted to practice before the Maryland District Court, Respondent again represented Mr. Ezukanma in connection with the *Ezukanma* Adversary Proceeding (which by that point had been consolidated with the *Ezegbunam* Bankruptcy Case), including by engaging in settlement negotiations with Ms. Ezegbunam's counsel (Ms. Quamina) and Mr. Orenstein. BX A10 at 5;

BX D3 at 1, 4-5, 140-61, 164-71, 176-77; BX G9-G10; BX G13 at 16-18; Tr. 286-89 (Orenstein).

36. The Bankruptcy Court discharged Ms. Ezegbunam's bankruptcy on January 31, 2005, before the parties had settled the title dispute.[10] BX D2 at 6, 97; Tr. 515-16 (Orenstein). However, the discharge did not "close" the *Ezegbunam* Bankruptcy Case or authorize the sale of the house. Trustee Wolf remained responsible for wrapping up the affairs of the bankruptcy estate, including investigating claims and selling the house. Tr. 59 (Gold); Tr. 234-35, 499, 512-13, 539-40 (Orenstein); *see also* BX D2 at 98 (Form entitled "Explanation of Bankruptcy Discharge in a Chapter 7 Case": "[Discharge] is not a dismissal of the case and it does not determine how much money, if any, the trustee will pay to creditors.").

37. The property, therefore, still belonged to the Ezegbunam bankruptcy estate, and could not be transferred or sold without Court approval, which would require the Trustee to file a motion, send notice to creditors, and provide an opportunity for creditors to file objections to the proposed transaction. BX C4 at 25, 36-37; BX D3 at 189, ¶ 8 ("The Parties acknowledge that this Settlement Agreement is subject to Bankruptcy Court approval."); Tr. 298, 300-01, 307-08; 461-62, 517-

[10] For a debtor, the ultimate goal of a bankruptcy petition is to obtain a "discharge" from bankruptcy, which "wipe[s] out" the debts. Tr. 222-23 (Orenstein); *see also id.* at 59 (Gold). As a matter of course, if no party objects, the court grants the debtor a discharge 60 days after the first date that was set for the meeting of creditors. Tr. 498-99 (Orenstein).

19 (Orenstein: "If [you] sell property in the course of the case, those proceeds—it's like the replacement for what was originally the property.").

38. Mr. Ezukanma and Ms. Ezegbunam, accordingly, continued – through counsel – to attempt to settle their ownership dispute in connection with the *Ezukanma* Adversary Proceeding. Respondent continued to represent Mr. Ezukanma in connection with that case throughout the spring and summer of 2006.[11] Tr. 71-72, 86 (Gold), 287-88 (Orenstein); *see also* BX D3 at 164 (pretrial statement filed by Respondent on behalf of Mr. Ezukanma); BX D3 at 176-77 (court record of March 15, 2006 hearing at which Respondent appeared on Mr. Ezukanma's behalf); BX A10 at 6-18 (Respondent's time records); BX E3 at 4-10; Tr. 302 (Orenstein) (after July 2006, "[Respondent] was acting as an attorney in this case and negotiating the settlement with me, absolutely."); Tr. 557-60 (Respondent).

E. Respondent Agreed to a July 2006 Consent Order Barring her From Practicing Before the Bankruptcy Court.

39. At some point in late 2005, one of Respondent's Legal Forms customers, Robin Ridgely, complained about Respondent to the United States Trustee's Office. Tr. 30 (Gold).[12]

[11] For example, on March 6, 2006, Respondent filed a pretrial statement on Mr. Ezukanma's behalf. BX D3 at 5, 164-67. On March 16, 2006, she appeared at a pretrial conference in Bankruptcy Court on Mr. Ezukanma's behalf. BX D3 at 6, 176-77; BX G10 (Transcript); Tr. 287-88, 290-94 (Orenstein).

[12] The Trustee's Office oversees all bankruptcy cases, and serves as the watchdog of bankruptcy courts by reviewing cases for misconduct. Tr. 25-26, 28 (Gold). The Trustee's Office has investigative authority, including the ability to subpoena records and depose witnesses. Tr. 30-31 (Gold).

40. By at least January 2006, the U.S. Trustee, through David Gold, Esquire, began an investigation into Legal Forms. On March 27, 2006, Mr. Gold took Respondent's deposition. BX B5 at 58-60; BX C6 (Deposition Transcript); BX G17 at 1-2; Tr. 30, 41-42, 63, 100-01 (Gold).[13]

41. Mr. Gold subsequently concluded his investigation and drafted a civil Complaint alleging that Respondent had violated several bankruptcy statutes and rules, as well as a number of the Maryland Rules of Professional Conduct (hereafter, the "Legal Forms Proceeding"). BX A12 at 84-106; BX C1 at 4-5, 29; Tr. 65 (Gold).

42. Mr. Gold met with Respondent to discuss the Complaint, and proposed resolving the matter through a stipulation and consent order. BX G17 at 3-5; Tr. 65-66, 68-69, 94 (Gold). Respondent was receptive to this proposal. Tr. 65-66, 69. *See also* R. Br. at ¶ 12.

43. Mr. Gold initially proposed a condition that would enjoin Respondent from appearing in U.S. District Court and the Bankruptcy Court. Tr. 68-71 (Gold). During negotiations with Mr. Gold, Respondent specifically requested that she be allowed to continue to appear in U.S. District Court, although she did not represent any clients in U.S. District Court at the time. Tr. 68-72 (Gold); Tr. 610 (Respondent) BX C3 at 41, lines 12-16.

44. Mr. Gold acceded to Respondent's request, and agreed to a consent order that "permanently enjoined" Respondent from practicing law in the

[13] The transcript from the deposition was admitted as an exhibit at the disciplinary hearing, with no objection from Respondent. *See* BX C6; Tr. 84-85.

Bankruptcy Court, but did not preclude Respondent from practicing in U.S. District Court. Tr. 65-72, 93-95 (Gold); BX G17 at 3-10.

45. Respondent also testified at the disciplinary hearing that she asked Mr. Gold whether she could continue to represent Mr. Ezukanma, Tr. 632,[14] but conceded that the agreement she ultimately signed did not contain any exception permitting her to continue that representation. Tr. 633.

46. On May 30, 2006, in order to obtain the Bankruptcy Court's approval of the settlement with Respondent, Mr. Gold initiated an adversary proceeding by filing a civil complaint, captioned *In re Deni-Antionette Mazingo*, Case No. 05-21244-NVA. Tr. 74-76 (Gold); BX G17 at 6-10.

47. On July 26, 2006, Respondent and Gold stipulated to resolve all matters concerning his Complaint, and Respondent signed an agreement expressing her consent to the following conditions (among others):

(a) Respondent would return $550 to Robin Ridgely;

(b) Respondent and Legal Forms were permanently enjoined from further acting as a bankruptcy petition preparer in Maryland or any other jurisdiction; and

(c) Respondent was "permanently enjoined from practicing law in the United States Bankruptcy Court for the District of Maryland," but she could petition the court for dissolution of the injunction

[14] Mr. Gold testified that Respondent never told him that she was actively representing Mr. Ezukanma in ongoing litigation in Bankruptcy Court, nor did she ask him whether she could continue that representation. Tr. 71-72, 86 (Gold).

> "after no fewer than two (2) years" after the consent order became final.

BX C1 at 3-4, 43-47; BX C3 at 42. The signed consent superseded any prior agreements or understandings, written or oral, between the parties. BX C1 at 45. The agreement did not include any provisions requiring Respondent to admit any particular misconduct. BX C1.

48. The same day, July 26, 2006, the bankruptcy judge approved and entered the consent order. BX C1 at 3-4, 48; BX G17 at 6-10.

49. Respondent knew that the court order to which she had consented had enjoined her from practicing law in Bankruptcy Court. *See, e.g.*, BX G13 at 10, lines 2-4 (Respondent's deposition testimony: "There was a case brought against me and we agreed that I wouldn't practice in the [B]ankruptcy [C]ourt for three years."); BX G17 at 11 (Respondent's letter to Mr. Gold dated August 9, 2006: "I look forward to communicating with you in the future regarding the redemption and admission back into the Bankruptcy Court as we agreed."); Tr. 77-78 (Gold); Tr. 634-35 (Respondent).

F. Respondent Represented Mr. Ezukanma in Settling the Ezukanma Adversary Proceeding.

50. After the Bankruptcy Court entered its July 26, 2006 order enjoining Respondent from practicing law in the Bankruptcy Court, Respondent continued to represent Mr. Ezukanma in connection with efforts to settle the property dispute underlying the ongoing *Ezukanma* Adversary Proceeding. *See, e.g.*, BX A10 at 6-18 (Respondent's time records); BX E3 at 4-10; Tr. 302 (Orenstein) (after July 2006,

"[Respondent] was acting as an attorney in this case and negotiating the settlement with me, absolutely."); Tr. 557-60 (Respondent).[15]

51. Respondent asserts that she "did not appear in Bankruptcy Court or in the [*Ezukanma*] Adversary proceeding after March 16, 2006." R. Br. at ¶ 18 (citing BX D3 at 6). The record reflects that Respondent did not, in fact, file any further pleadings in the *Ezukanma* Adversary Proceeding. *See generally* BX D3. Respondent did not withdraw her appearance, however, and she continued to represent Mr. Ezukanma with respect to the settlement negotiations at least through March 2007. *See* ¶¶ 55-65, *infra*; *see also*, *e.g.*, BX D4 at 15, 21.

G. The Court-Approved Settlement of the Adversary Proceeding.

52. By March 2006, the parties to the Adversary Proceeding, including Mr. Orenstein on behalf of the Trustee, agreed on terms for the settlement of the property dispute. BX D3 at 176-77; BX D4 at 25; Tr. 288-89, 293-94 (Orenstein). The settlement agreement specifically required Bankruptcy Court approval. BX D3 at 189, ¶ 8. Further, the agreement stated that if the parties violated any of the terms of the settlement, the house would be sold and "proceeds distributed first to cover all administrative and unsecured claims of the Bankruptcy Estate and the balance distributed fifty-fifty between [Mr. Ezukanma and Ms. Ezegbunam]." *Id.* at 188, ¶ 6.

[15] At the time, Mr. Orenstein did not know that the court had entered an order that prohibited Respondent from practicing law in Bankruptcy Court. Tr. 340 (Orenstein).

53. The terms of the settlement agreement, if approved by the court, provided that Mr. Ezukanma would receive title to and refinance the house, and from the proceeds of the refinancing, Trustee Wolf would pay the creditors and administrative expenses. BX D3 at 188-89; BX C4 at 29; Tr. 294-95; 298-99 (Orenstein). After the bankruptcy estate's creditors and its administrative expenses had been paid, the parties anticipated a surplus of funds that would be divided equally between Mr. Ezukanma and Ms. Ezegbunam. BX C4 at 29-30, 68-69, 86 ("They [Mr. Ezukanma and Ms. Ezegbunam] agreed to settle their differences and split those surplus proceeds fifty/fifty, yes."); Tr. 294-95 (Orenstein).

54. Performance of the specific terms of the settlement agreement would have allowed Trustee Wolf to pay one hundred percent of the bankruptcy estate's claims, including creditors and administrative costs. BX C4 at 28-34, 40-42, 85-86; BX D3 at 188; BX D2 at 59 ("The Trustee intends to market the property for sale for the benefit of the estate's creditors."); BX C4 at 23 (Trustee Wolf: "[W]e were mindful towards the role of having to make a recovery to pay the creditors of the estate."); Tr. 290, 294-95, 299 (Orenstein); Tr. 685-86 (Respondent). According to Mr. Orenstein, because the equity in the home was known to be sufficient to cover all of the claims, the trustee would never have agreed to settle the property dispute if the settlement did not result in a one hundred percent payment of the creditors' claims and the estate's administrative expenses. Tr. 299 (Orenstein).

55. At the end of August 2006, Mr. Ezukanma was arrested and detained by Immigration and Naturalization Services ("INS"), and he therefore designated

Mark Onwuka, Esquire, as his attorney in fact. BX A10 at 11-16; Tr. 563-66 (Respondent). On September 11, 2006, Respondent and Mr. Onwuka, both acting on behalf of Mr. Ezukanma, agreed with Ms. Quamina (Ms. Ezegbunam's attorney), to sell the house to a third party. BX A10 at 15; Tr. 568-70 (Respondent). Respondent did not, at that time, inform Mr. Orenstein of Mr. Ezukanma's change in circumstances or include Mr. Orenstein in negotiations about the sale of the house. BX E4 at 14; Tr. 566, 568, 571, 575-76 (Respondent).

56. On September 27, 2006, Mr. Orenstein, on behalf of Trustee Wolf, filed a motion seeking court approval of the settlement agreement, and a notice for approval of settlement that he mailed to the interested parties, including creditors of the bankruptcy estate. BX D3 at 181-190, 193-96; BX E3 at 5; Tr. 306-08 (Orenstein). In the motion for approval, Trustee Wolf represented that "[t]he settlement will result in a 100 percent distribution to creditors." BX D3 at 184. The notice of motion advised that interested parties had 20 days to file an objection. BX *Id.* at 194. None of the interested parties objected. BX C4 at 42. Respondent received a copy of the settlement agreement filed with the court. BX G13 at 21-22; Tr. 451-53, 457-59 (Orenstein).

57. On October 23, 2006, the court entered an order approving the settlement. BX D3 at 197-200; BX E3 at 5; Tr. 365 (Orenstein). The order authorized Trustee Wolf to "consummate the settlement under the terms set out in the motion," and to execute documents necessary to carry out the terms of the settlement agreement. BX D3 at 198, 200; BX G13 at 22-23 (Respondent's

deposition testimony acknowledging the accuracy of the agreement). The settlement agreement did not transfer ownership of the property to Mr. Ezukanma or Ms. Ezegbunam. Tr. 518 (Orenstein). In order to transfer title, "[Trustee] Wolf would have been required to sign a deed transferring the estate's interest in the property." Tr. 518-21 (Orenstein).

H. The Sale of the Ezegbunam House.

58. In the meantime, on September 27, 2006 (the same day that Mr. Orenstein filed the settlement agreement with the court), Respondent sent Mr. Orenstein an email informing him that the parties, through counsel, had agreed to sell the property, and to "split the balance ***after paying your fee and catching up the mortgage***." BX E4 at 14 (emphasis added). Respondent further informed Mr. Orenstein that her own "fee of $6,800 would be paid from Tochukwu's portion at settlement." *Id*.

59. Mr. Orenstein responded to Respondent's email, informed her that he had filed the settlement agreement with the court, and stated, "[y]our discussions change what was going to be done, ***but it does not affect the estate*** so I do not think it is a problem." BX E4 at 14 (emphasis added).

60. Respondent wrote back to Mr. Orenstein the same day and, at that point, informed him that Mr. Ezukanma had left the country and had instructed Respondent to sell the property and to recover his share of the proceeds. BX D4 at 23; BX E4 at 13-14; BX C5 at 100; Tr. 307-08 (Orenstein). Respondent assured Mr. Orenstein that she did "not want to do anything without [Mr. Orenstein's] knowledge and ok,"

and asked his advice on how to proceed. BX D4 at 23; BX E4 at 13-14. The record does not reflect any response from Mr. Orenstein. BX E4 at 13.

61. On October 24, 2006, Respondent, by email, asked Mr. Orenstein for permission to place the house on the market and "get a sale before we go to the hearing." Respondent stated, "I have a realtor and a buyer and [Ms. Ezegbunam's counsel] is in agreement." Respondent commented that she "would love to get paid and close out this case." BX E4 at 12-13; Tr. 309-10 (Orenstein). Mr. Orenstein responded, "[t]he Court has approved the settlement, so I do not see any problem." BX E4 at 12.

62. Five months later, on March 26, 2007, Respondent advised Mr. Orenstein that she had a potential buyer for the property, promised to send him a copy of the contract "***as soon as one is signed***," and asked, "[d]o we need to revisit the court with this information?" BX E4 at 12 (emphasis added). *See also* BX C5 at 97-98 (trustee requested copy of contract). In relation to the distribution of the proceeds of the sale, Respondent asked Mr. Orenstein to advise on the amount of his bill, as well as the amount Ms. Ezegbunam would owe to "clear her account with the BK court." BX E4 at 12. She added, "As you probably can tell I have not been involved in a case such as this one." *Id.*

63. The next day, on March 27, 2007, Mr. Orenstein replied in an email: "I do not know if we need to go back to court until I see what the contract is and how the money will be split. Keep me posted." BX E4 at 11; Tr. 310-11, 465, 488-89 (Orenstein).

64. The same day that Respondent received Mr. Orenstein's email, on March 27, 2007, Respondent received, via her fax machine, documents relating to the sale of the house, including a document entitled, "Residential Contract of Sale," signed by the potential buyers. BX D4 at 12, 15-18; Tr. 587-88, 683-85 (Respondent). Respondent did not provide the "Residential Contract of Sale" document to Mr. Orenstein or Trustee Wolf. BX C4 at 44 (Trustee's testimony); BX C5 at 97-98 (Respondent's testimony); BX D4 at 35; BX G13 at 33-34, 47-48, 88-89; Tr. 311-12, 319-20, 463-64, 467, 495-96 (Orenstein); Tr. 589, 690 (Respondent).

65. The record does not contain a fully-executed version of the "Residential Contract of Sale," nor any other fully-executed contract relating to the sale of the property. Nor is there any evidence that Respondent received a fully-executed contract prior to the date of the closing.

66. On April 10, 2007, Respondent sent an email to Mr. Orenstein, stating, "Hi Jeff: I have not heard from you regarding your portion of the bill that needs to be presented at closing and hopefully closing is on the 19th of this month. Can you possibly send me a breakdown of the charges for Edith so that you receive her portion of the proceeds at closing." BX D4 at 21.

67. Later the same day, Respondent emailed the following to Mr. Orenstein:

> Hi Jeffrey:
>
> I need the information ASAP because time is of the essence we hope to close on the 19th of April and the mortgage company is asking for the breakdown ie:

1.Trustee's bill

2. Edith's debt even though we have nothing to do with that part of the case ***I would like to have your bill apart from the other obligations Edith has as we will have a separate cheque drawn for you before division of the funds***. Also the mortgage company needs the pay off however, if you do not have that information I will attempt to retrieve that information through Edith if necessary.

BX E4 at 11 (emphasis added). The closing, however, was apparently delayed.

68. The record does not reflect any response from Mr. Orenstein. Nor does it include any indication that Respondent received any information from Mr. Orenstein on the amount of the bankruptcy trustee's bill or the amount required to pay off the bankruptcy estate's creditors.

69. Respondent did, however, notify the title company, Millenium Title, that the property was part of a bankruptcy estate and provided the company with Mr. Orenstein's contact information. Tr. at 685-86. The title company employee handling the closing on the sale assured Respondent that it had "taken care of what needed to be taken care of with the trustee's office." Tr. at 685 (Respondent); *see also* Tr. at 675 (Respondent). Respondent's understanding was that "the trustee would receive the proceeds of the sale sufficient to cover his fees. . . . [a]nd all of the creditor payments." Tr. at 686 (Respondent). Respondent did not confirm that information with Mr. Orenstein, *id*., who by that point had not replied to several emails from Respondent requesting the same information.

70. On May 16, 2007, Respondent attended the real estate closing at Millenium Title's office. BX C4 at 102, 111; BX C5 at 28-29, 90-91; BX G13 at

46-47; Tr. 660-61 (Respondent). Mr. Onwuka appeared on behalf of Mr. Ezukanma. BX C5 at 91. Ms. Ezegbunam attended with her mother and sister, but without her attorney, Ms. Quamina. BX C5 at 67-68, 71-72, 95; BX G13 at 45-46; Tr. 661 (Respondent).

71. Respondent's sole interest in attending was to collect a check from the proceeds of the sale of the house for attorney's fees she claimed to have earned representing Mr. Ezukanma. BX C1 at 62-63 (Respondent: "We would love to get paid and close out this case"); BX C5 at 91 (Respondent: "I am not a steady working attorney and I needed the money. Since they were going to issue the checks and mail them out, I just went to get my check."); BX E4 at 12-13; BX G13 at 35-36 (Respondent: "I was just trying to help the process along and to get paid. It had been a long time that I hadn't been paid . . ."), 44 (Respondent: "My only concern was being paid at this point."); Tr. 488-89 (Orenstein); Tr. 574, 589-90 (Respondent).

72. At the closing, Millenium, the title company, distributed the proceeds from the sale of the property in multiple checks, and all of the checks were later negotiated:

Mr. Ezukanma	$11,674.12
Respondent	$13,835.00[16]
Debtor (Ms. Ezegbunam)	$21,043.78
Ms. Quamina	$4,465.33

[16] Respondent testified that the amount she received included her fees for additional legal work she had performed for Mr. Ezukanma apart from her work with respect to the Adversary Proceeding. Tr. at 705-07 (Respondent).

BX E9 at 43-44 (HUD-1 Settlement Sheet); BX C4 at 47-48; BX C5 at 16-18, 49-51, 55, 76, 94-95, 99. *See also* BX E3 at 9 (¶ 41), 14 (¶ 68). Neither Trustee Wolf nor the bankruptcy estate received any portion of the proceeds from the sale of the property. Tr. 317 (Orenstein). Respondent, however, believed that the title company had already paid the bankruptcy estate what it was owed. *See* Tr. at 686 (Respondent: "I told them continuously there was a bankruptcy open and to please contact Mr. Orenstein and I gave them his information. They said they would take care of it and finally they said they had taken care of it. Then they told me it was closed. Period."); *see also* Tr. at 707-08 (Respondent testifying that her understanding was that her fees could be paid from Mr. Ezukanma's share of the proceeds from the sale, "[a]fter the trustee is paid, after the creditors are paid," and that she understood that "the trustee and the creditors were to be paid first.").[17]

73. Millenium paid Respondent out of the proceeds from the sale based on her representation that when Mr. Ezukanma learned he would be deported, he agreed to pay Respondent's legal fees from the sale. Respondent sent a copy of that legal bill to Millenium before the closing. BX C5 at 45-46, 49-51, 54-55, 83, 88-89, 99-100; BX G13 at 61. *See also* Tr. 321-22, 324 (Orenstein).

[17] Respondent's uncontroverted testimony at the Disciplinary Hearing was that she did not learn how the proceeds were divided until after the closing. Tr. at 674-75. There is no evidence in the record suggesting that Respondent saw or received a copy of the HUD-1 settlement statement before she accepted her check. The Committee, therefore, does not find that the HUD-1 document placed Respondent on notice that the bankruptcy trustee had not received any portion of the proceeds from the sale.

74. Respondent deposited the funds into her Bank of America account number ending 9517, which was designated a "business economy" checking account. BX G7 at 7-9, 41, 44-45; BX E3 at 14 ¶ 68; BX G13 at 63; Tr. 590-91, 647-48 (Respondent). Respondent had sole signatory authority for the account. BX G7 at 7-9. Within two weeks after Respondent deposited the funds into her account, she spent the proceeds from the sale of the house for her personal benefit, including by making payments to Jewelry TV, QVC, various restaurants, and gas stations. BX G7 at 41-42; BX G13 at 63; Tr. 591-92, 649, 687 (Respondent).

75. Respondent took the $13,835.00, and promptly spent it, even though she understood that the proceeds from the sale of the house were first supposed to be used to pay all of the creditors of the bankruptcy estate and the administrative expenses of the estate. Tr. at 673-74, 685-86, 707-08 (Respondent). The Committee finds that Respondent did so because she believed, albeit erroneously, that the title company had already "taken care of" the necessary payments to the bankruptcy trustee.

I. Mr. Orenstein Discovered the Sale of the House and Filed an Adversary Proceeding Against Respondent and Others.

76. Following the closing, Respondent did not attempt to communicate further with Mr. Orenstein about the sale of the house, including to provide him with a copy of the fully-executed sales contract. Respondent testified that she believed the title company had been in touch with Mr. Orenstein about the closing. Tr. 662-63; 685-86 ("[T]hey said they had taken care of it. Then they told me it was closed. Period.").

77. In July 2007, Mr. Orenstein searched the internet for an update on the status of the property, discovered that it had been sold, and notified Trustee Wolf. BX C4 at 43; BX D4 at 34-35; Tr. 314-15, 462-63 (Orenstein). Both Mr. Orenstein and Trustee Wolf were surprised that the property had been sold without their knowledge. BX C4 at 43; Tr. 319-20. Trustee Wolf directed Mr. Orenstein to "take all steps to recover the estate's funds." BX C4 at 46, 48.

78. In August 2007, Mr. Orenstein sent a letter to Respondent and Ms. Quamina, asking them to return all proceeds that they and their clients received from the sale of the house to the Trustee ($51,018.21). BX C4 at 49; D4 at 36-38; Tr. 470-73 (Orenstein). Respondent did not respond to Mr. Orenstein's August 2007 letter. *See* BX C4 at 49-50.

79. On October 8, 2007, Mr. Orenstein, on behalf of Trustee Wolf, filed a complaint in Bankruptcy Court, captioned, *In re Ezegbunam*, Case No. 07-00773, alleging that Respondent, Mr. Ezukanma, and the other parties involved in the sale violated federal bankruptcy law by selling the property without court approval. BX E2; Tr. 314, 370-71 (Orenstein).

80. Respondent filed response to the Complaint and denied any misconduct. BX E3 (filed Nov. 15, 2007) ("Response to Complaint to Avoid Unauthorized Post-Petition Transfers, for Monetary Damages and Revocation of the Debtor's Discharge") at 1-15; Tr. 315-16 (Orenstein).[18] In her response,

[18] Respondent also represented Mr. Ezukanma in connection with this new adversary proceeding, at least at first. BX E1 at 4; BX E3 at 15 (November 15, 2007 "Response" filed by Respondent as "Attorney for Defendants, Ezukanma and Mazingo"); *Id.* at 22.

Respondent stated that the sale of the property did not violate the settlement agreement; that she acted in good faith; and that because she acted in good faith, the bankruptcy estate could not recover the $13,835 she received from the sale of the property. BX E3 at 10 (¶ A), 11 (¶ A), 12 (¶ 58), 13 (¶¶ 64, 67), 14 (¶ 71). Respondent later filed an "Answer" to the Complaint, in which she continued to deny any wrongdoing. *See* BX E4 (filed Dec. 11, 2007) ("Answer"). Respondent attached her email correspondence with Mr. Orenstein to her December 2007 Answer. *Id*.

81. During discovery, Respondent appeared for her deposition on April 30, 2009, and was represented by Mr. Iweanoge, Esquire. BX G13 (Transcript); Tr. 584 (Respondent).

82. At her April 2009 deposition, Respondent testified that during her negotiations with Mr. Gold, Respondent "told them that I was still working on [Mr. Ezukanma's] case and the trustee had seen me in court. I thought they said that I could complete this case because it was the only one I had and we thought it was at the end at that time." BX G13 at 11, lines 13-18. Similarly, at the disciplinary hearing, Respondent testified that she "told [Mr. Gold] [about Mr. Ezukanma's] case. . . . [Mr. Gold] had been in the courtroom with me when I had that case." Tr. 631-33 (Respondent), *see also* Tr. 701-02 (Respondent). Disciplinary Counsel alleges that these statements were false.

a. Contrary to Respondent's testimony at the deposition and at the hearing, Mr. Gold testified that Respondent did not disclose to him her representation of Mr. Ezukanma. Tr. 71-72, 86 (Gold).

b. There is no evidence in the record before the Committee that Mr. Gold appeared in the *Ezegbunam* Bankruptcy Case or the *Ezukanma* Adversary Proceeding.

c. Mr. Gold also testified that, at the time he negotiated the consent order with Respondent, his goal was to "prohibit and prevent [Respondent] from representing anyone in bankruptcy court," Tr. 72, because he viewed her as a "bad apple in the system" and did not "think that she should be representing people in the system." Tr. 66. Mr. Gold specified that, if the issue had come up, he would not have agreed to permit Respondent to continue to represent anyone in the bankruptcy court. Tr. 72.

d. For these reasons, the Hearing Committee does not find Respondent's testimony credible.

83. Respondent also testified both at her deposition and at the disciplinary hearing that she did not receive a copy of the contract for sale of the house. BX G13 at 50-51 (Respondent: "I didn't have the contract; I was not going to receive the contract."); Tr. 676 (Respondent testifying with reference to a document in her file entitled "sales contract": "That's not the one that was finally sold. That's not the contract that went through."); Tr. 683 (Respondent: "There were three separate

contracts on this property. One fell through from one title company. Then they went to another title company. I'm not sure if that's the one or it's not the one to be honest with you."). Disciplinary Counsel alleges that these statements were also false.

a. Disciplinary Counsel cites the following exchange as proof that Respondent did receive the sales contract: "Q. Would you agree, Ms. Mazingo, that the contract for sale that you received in March 2007 was the one, in fact, that resulted in the sale of the property in May 2007? A. Yes, I do." Tr. 685.

b. Respondent, however, argues that the document she received in March 2007 was not a fully-executed contract, because it was only signed by the buyer of the property. R. Br. at 8 (citing BX D4 at 18).

c. There is, in fact, no evidence in the record indicating that Respondent ever received a fully-executed copy of any "sales contract" relating to the Ezegbunam house.

d. The Committee agrees with Respondent that the March 2007 document, despite its title, is not a binding contract. It is signed by only the buyers, not by the seller. It was, at least, reasonable for Respondent to view that document as an offer and not the contract.

e. The Committee does not view Respondent's testimony at the hearing dispositive as to whether the March 2007 document was

a "contract." The document was the final offer that led to a sale, after other offers fell through. Respondent's testimony is consistent with the fact that the document is entitled "Residential Contract of Sale," notwithstanding the fact that it is not fully executed.

84. On September 15, 2009, the court entered a judgment against Respondent for compensatory damages in the amount of $13,835 plus pre-judgment interest in the amount of $1,569.91, plus post-judgment interest at the applicable federal rate. BX E22 at 2; Tr. 325, 327-28.

85. On September 25, 2009, Respondent appealed the Bankruptcy Court's judgment to the United States District Court for the District of Maryland. BX E23 at 1; Tr. 326-27.

86. On September 3, 2010, the District Court affirmed the Bankruptcy Court order. BX E23 at 34-53; Tr. 327 (Orenstein). The Court found that: (1) the funds Millenium paid to Respondent from the sale of the house belonged to the bankruptcy estate; and (2) the Bankruptcy Court did not authorize the distribution of the proceeds of the sale of the property to Respondent, Mr. Ezukanma, Ms. Ezegbunam, or her attorney. BX E23 at 42-45.

87. As of the date of the disciplinary hearing, Respondent had not acknowledged that the proceeds of the sale belonged to bankruptcy estate. Tr. 327-28 (Orenstein). Respondent also had not paid in full the judgment amount ordered by the Court. Tr. 328 (Orenstein). As a result, neither the creditors nor the expenses

of the bankruptcy estate were fully paid. Tr. 328-29 (Orenstein). Creditors of the bankruptcy estate who would have been paid in full if the original settlement had gone through ultimately received only 25% of their claim amounts. Tr. 523-24 (Orenstein).

J. The Bankruptcy Court Found Respondent Violated the Consent Order by Continuing to Represent Mr. Ezukanma in the Bankruptcy Court.

88. Meanwhile, on September 29, 2008, Trustee Gold filed a show cause motion in the Legal Forms Proceeding, *see* ¶ 41, *supra*, based on Respondent's representation of Mr. Ezukanma in the *Ezukanma* Adversary Proceeding, which violated the July 2006 consent order. BX C1 at 54-60; Tr. 79-80, 136-37 (Gold); BX G17 at 6-10 (July 2006 consent order).

89. Mr. Gold believed that Respondent had engaged in the practice of law based in part on Respondent's email correspondence with Mr. Orenstein, which she had attached to the answer she filed in Case No. 07-00773 (*see* ¶¶ 58-63, 67 79-80, *supra*). BX E4; Tr. 136-37 (Gold). In the show cause motion, Mr. Gold asked the court to (1) reopen the case; (2) issue a show cause order for civil contempt; and (3) sanction Respondent $4,500. BX C1 at 54-60; Tr. 79-80 (Gold).

90. On October 17, 2008, Respondent, through counsel, filed a response in which she denied knowingly violating a court order. BX C1 at 88-91.

91. On November 25, 2008, the court held a show cause hearing and heard testimony from Respondent and from Mr. Orenstein. BX C1 at 2; BX C3 (Transcript of Hearing); Tr. 80, 103-04 (Gold).

92. At the show cause hearing, Respondent testified that the court's August 7, 2006 order was not clear, and that she had a good faith belief that the court order only prohibited her from representing new clients in Bankruptcy Court and permitted her to continue representing existing clients. Tr. 83-84, 139-40 (Gold); BX C3 at 40 (Respondent: "I was not to accept or practice the law, bankruptcy law in the Bankruptcy Court with any new cases that might come to me for the next two years . . . .").

93. At the conclusion of the hearing, the court rejected Respondent's arguments. BX C3 at 63, lines 19-22; *id*. at 66-67 ("I reject that argument. I think the document is clear and unambiguous. It says: '[Respondent] is hereby permanently enjoined from practicing law in the United States Bankruptcy Court for the District of Maryland.'. . . I don't believe that any reasonable, fair reading of the stipulation and consent order could include the notion that it only meant you could not accept any new cases in the next two years.").

94. The Court found that Respondent violated the stipulation and consent order by filing a pleading in the bankruptcy court on behalf of herself and Mr. Ezukanma. BX C3 at 66 ("I do find and conclude that [Respondent] did practice law by filing document 20 in this court. . . ."). The Court, accordingly, fined Respondent $4,500. *Id.* at 67.

95. The Court declined, however, to hold Respondent in civil contempt or to refer her to the discipline committee of the District Court Bar, finding that the fact

that Respondent was also a party to the adversary proceeding in which she improperly represented Mr. Ezukanma was a mitigating circumstance. BX C3 at 68.

96. Respondent duly paid the full amount of the fine imposed by the Court. Tr. 641.

II. FACTS RELEVANT TO BAR DOCKET NUMBER 2014-D405 (PERSONAL BANKRUPTCY)

A. General Policies and Procedures.

97. The bankruptcy laws serve two primary purposes: (1) "to give the honest debtor an opportunity to discharge their debts," and (2) to ensure that creditors have an opportunity to recover some or all of their claims. Tr. 222-23, 425 (Orenstein).

98. Transparency is essential in bankruptcy proceedings, particularly on the part of the debtor. Tr. 37-38 (Gold) ("People in their dealings before the court have to be honest with respect to their roles, and . . . the debtor needs to be honest with respect to their assets and liabilities."); Tr. 245-46 (Orenstein: "Mr. Gold used the word 'transparency,' I would echo that and say it's full disclosure. . . . so that the trustee can evaluat[e] what needs to be done."); Tr. 271-72 (Orenstein: "[D]ebtors have an obligation to accurately and completely disclose their financial information. That is the whole premise of the bankruptcy system."); Tr. 443-44 (Orenstein: "The debtor has to disclose everything."). If a debtor fails to identify a debt, both the creditor and the trustee would be disadvantaged. Tr. 424-25 (Orenstein). If the creditor did not receive notice of the bankruptcy, it could not take timely actions necessary to enforce its rights. Tr. 424, 442, 529-31 (Orenstein). The trustee cannot

readily or easily identify whether there are sufficient assets to pay secured creditors. Tr. 424-25, 441-42 (Orenstein) ("In general, if it's not disclosed, unless you're able to learn through investigation or through somebody telling you, you can't tell what assets are there which is why the schedules have to be accurate."). For the same reasons, the debtor is obligated to file amended pleadings if the debtor discovers the original schedules were inaccurate. Tr. 375-76, 423 (Orenstein).

99. When the debtor files a bankruptcy petition, any property that the debtor has becomes a part of the bankruptcy estate. 11 U.S.C. § 541(a);[19] *see also*, BX C4 at 17-18; BX C4 at 54 (Trustee Wolf: "[W]hen an individual files a bankruptcy, every asset that the debtor has an interest in becomes property of the bankruptcy estate."); Tr. 227-28, 281 (Orenstein).

100. In a bankruptcy, the debtor files schedules that list all of the assets the debtor owns, liabilities the debtor owes, income, expenses, and co-debtors. Tr. 225-26 (Orenstein). The debtor also lists a statement of financial affairs ("SOFA") that reflects details of the debtor's financial affairs in the past several years. Tr. 226-27 (Orenstein).

101. No one may disburse or distribute assets of the bankruptcy estate other than the trustee or the court. Tr. 231-32 (Orenstein).

[19] 11 U.S.C. § 541(a) provides: "The commencement of a case . . . creates an estate. Such estate is comprised of all the following property, wherever located and by whomever held: . . . (2) all interests of the debtor and the debtor's spouse in community property as of the commencement of the case that is – (A) under the sole, equal, or joint management and control of the debtor; or (B) liable for an allowable claim against the debtor . . . ."

B. In May 2005, Respondent Filed for Chapter 7 Bankruptcy.

102. In May 2005, Respondent prepared, signed, and filed her own Chapter 7 Voluntary Petition in the U.S. Bankruptcy Court in Maryland (Greenbelt), Case No. 05-21244. BX A12 at 6-7; Tr. 235, 247-48 (Orenstein); Tr. 612 (Respondent). Respondent completed and filed various forms, including the Petition, SOFA, Summary of Schedules, and Schedules A-J. BX A12 at 6-38; Tr. 235-36 (Orenstein); Tr. 612-13 (Respondent).

103. On May 2, 2005, Respondent, under penalty of perjury, signed and dated the Petition, the Statement of Financial Affairs, and the Schedules, in which she declared that she read the foregoing summary and schedules, and that they were true and correct to the best of her knowledge. BX A12 at 7, 18, and 33; Tr. 235-36 (Orenstein). Ten days later, on May 12, 2005, Respondent filed the documents with the Bankruptcy Court. BX A12 at 1, 6; Tr. 235-36.

C. Respondent Failed to Disclose Financial Information on the SOFA She Filed with Her Bankruptcy Petition.

1. <u>SOFA Question 3a – Payments to Creditors</u>

104. Question No. 3a of the SOFA directed Respondent to "[l]ist all payments on loans . . . and other debts, aggregating more than $600 to any creditor, made within **90 days** immediately preceding the commencement of this case," and the form provided space to list the names and addresses of creditors, dates of payments, amounts paid, and the amounts still owed to the creditor(s). BX A12 at 9 (original emphasis); Tr. 238, 240-41 (Orenstein); Tr. 612-13 (Respondent). The form thus required Respondent to disclose any regular payments to a creditor,

including mortgage payments, loan payments, and monthly utility payments. Tr. 244-46 (Orenstein).

105. The $600 aggregate includes the total amount paid to a creditor during a 90-day period. Tr. 445, 534-35 (Orenstein). If a debtor has paid a creditor more than $600 in the aggregate within 90 days before filing for bankruptcy, the Trustee can sue the creditor to recover the amounts that were paid during that period. Tr. 445-46 (Orenstein).

106. In response to Question No. 3a, Respondent checked the response, "None," thereby representing that she had not paid any creditors more than a total of $600 within the preceding 90 days. BX A12 at 9; Tr. 613-14 (Respondent). Respondent signed the SOFA under penalty of perjury. BX A12 at 18.

107. Contrary to Respondent's answer, within the 90 days before Respondent filed her bankruptcy petition on May 2, 2005, her husband had made at least three monthly mortgage payments in the amount of $1,281.51 each to Bank of America from the Legal Forms business account. BX G6 at 3-5; Tr. 613-14.

108. At the time that Respondent completed and filed the SOFA with the court, which she signed under penalty of perjury (BX A12 at 18), Respondent was well aware of the mortgage payments. Monthly bank statements sent to Respondent's home address included details of the regular mortgage payments, and Respondent and/or Respondent's husband, Mr. Mayronne, regularly deposited funds into the Legal Forms account to ensure that the mortgage payments would clear. BX G6; Tr. 613-614 (Respondent).

109. At the disciplinary hearing, Respondent admitted that she knew that the mortgage payments were being made each month, but that she did not list them on the SOFA form. Tr. 614. The Committee, therefore, finds that Respondent knowingly failed to list the mortgage payments.

110. Respondent was obligated to disclose the financial account information and the mortgage payments regardless of whether she or Mr. Mayronne deposited funds into the account or contributed to the payments. Tr. 265-66 (Orenstein); Tr. 430 (Orenstein) ("[A] joint asset, even though the husband is not in bankruptcy, is considered property of the bankruptcy estate."), Tr. 527-28 (Orenstein: "[I]f the money came from an account that the debtor had an interest in, but [the debtor] was not the person that wrote the check, that still should appear in that 3(a) in the SOFA."); Tr. 532-33 (Orenstein).

2. SOFA Question No. 18a – Businesses Where Respondent Was an Officer, Director, or Partner

111. Question No. 18a of the SOFA directed Respondent to list all businesses in which she was an "officer, director, partner, or managing executive" or where she was "a self-employed professional" within the previous six years, and instructed her to list the "names, addresses, taxpayer identification numbers, nature of the businesses, and beginning and ending dates of all businesses." BX A12 at 14; Tr. 257-58 (Orenstein) (question applies to any business in which debtor had an interest, including an LLC).

112. In response to Question 18a, Respondent checked the response, "None," thereby representing under penalty of perjury (BX A12 at 18) that she was

neither an "officer, director, partner, or managing executive" of any business, nor a self-employed attorney. BX A12 at 14.

113. Contrary to Respondent's answer, as of May 2005 she was conducting the business of Legal Forms by meeting with customers and collecting fees for work as a "non-attorney bankruptcy petition preparer," as well as representing Mr. Ezukanma as his attorney in Bankruptcy Court. BX C6 at 7-12; Tr. 43-44 (Gold); *see also* ¶¶ 5-12, 14-19, 34-38, *supra*. Thus, Respondent was both a "managing executive" of a business and a self-employed attorney at the time she signed the SOFA.

114. For these reasons, the Committee finds that Respondent's answer to Question 18a was false.

115. The Committee also finds that Respondent intentionally responded falsely to Question 18a. She was necessarily aware of both her operation of Legal Forms and her legal practice. Respondent offered no exculpatory explanation for her failure to report those activities in response to Question 18a.

3. Respondent Dishonestly Failed to Disclose Several Financial Accounts on Schedule B (Personal Property)

116. Schedule B ("Personal Property") instructed Respondent, as the debtor, to "list all personal property of the debtor of whatever kind," and listed thirty-three "types" of property. BX A12 at 21-23. For each "type of property," the form asked the debtor to provide a description of the property, the location, whether there is a joint interest, and the amount. *Id.* In a declaration "concerning debtor's schedules," Respondent declared under penalty of perjury that she had read the schedules and

that they were "true and correct to the best of [her] knowledge, information, and belief." *Id.* at 33.

117. On Schedule B, Item No. 2 directed Respondent to identify "[c]hecking, savings or other financial accounts, certificates of deposit, or shares in banks, savings and loan . . . or credit unions," and to state the "current market value of debtor's interest in [the] property, without deducting any secured claim or exemption." BX A12 at 21.

118. In response to Item No. 2 on Schedule B, Respondent wrote: "checking account" and "share account," but did not disclose that both accounts were held at LaFayette Credit Union. BX A12 at 21; Tr. 617 (Respondent).

119. Respondent asserted in briefing that she "disclosed the Bank holding her accounts and the amount she believed was in the account when the document was prepared." R. Br. at 18; *see also id.* ¶ 50. This assertion is not supported by the evidence. Respondent's bankruptcy petition does not identify LaFayette Credit Union as the bank at which Respondent's personal accounts were held; in fact, the petition does not mention LaFayette Credit Union at all. *See* BX A12 at 6-36. Moreover, Respondent did not testify to her purported belief as to how much was in the account, and was not cross-examined on any such belief. In the absence of any evidence in the record in support of Respondent's claim, the Committee is unable to credit this defense.

120. In response to Item No. 2 on Schedule B, Respondent also stated that the total value of her accounts was "$25.00." BX A12 at 21; Tr. 617 (Respondent).

This assertion was false. Contrary to Respondent's statement, as of May 2, 2005 (the date on which Respondent declared under penalty of perjury that her Schedule B was true and correct to the best of her knowledge, BX A12 at 33), Respondent held a total $941.30 between three accounts at LaFayette Credit Union:

(a) $117.09 in her personal account with the number ending 60000 (BX G4 at 63; Tr. 176-77 (English));

(b) $768.82 in the Legal Forms account with the number ending 95000 (BX G6 at 5-6; Tr. 187, 205 (English)); and

(c) $55.39 in the Mazingo Law Offices account with the number ending 35000 (BX G5 at 13; Tr. 183-84 (English)).

121. Item Nos. 12 and 13 on Schedule B directed Respondent to identify account information relating to "[s]tock and interests in incorporated and unincorporated businesses," and "[i]nterests in partnerships or joint ventures" and to state the "current market value of debtor's interest in [the] property, without deducting any secured claim or exemption." BX A12 at 22.

122. Respondent failed to identify any interest relating to her Legal Forms business or her law practice in response to Item Nos. 12 or 13. BX A12 at 22.

123. In May 2005, Respondent maintained, at Lafayette Credit Union, a personal account and two accounts related to her businesses. BX G4; BX G5; BX G6.

a. Respondent maintained an account with an account number ending 6000, which she designated:

Deni-Antionette J. Mazingo [later, D. Antionette Mazingo-Mayronne]
13902 Waggaman Ave.
Laurel MD 20707

BX G4 at 7, 63; 167-69 (English). Respondent opened the 6000 account in 2001, and was the sole signatory on the account. BX G4 at 6; Tr. 167-68 (English).

b. Respondent maintained an account with an account number ending 95000 designated for Legal Forms with the following information:

Legal Forms Fitted & Filed, LLC
D. Antionette Mazingo-Mayronne
Ferguise L. Mayronne
13902 Waggaman Ave
Laurel MD 20707

BX G6; BX C6 at 18-20. Both Respondent and Mr. Mayronne had signatory authority on the account. BX C6 at 18, lines 13-15; Tr. 184-85 (English).

c. Respondent maintained an account with an account number ending 51000 designated for "Mazingo Law Offices":

D. Antionette Mazingo-Mayronne
Mazingo Law Offices
Ferguise Leon Mayronne III
13902 Waggaman Avenue
Laurel MD 20707

BX G5 at 3-7. When Respondent opened the account, she was the sole signatory. BX G5 at 5-6; Tr. 180-81 (English). By at

least January 2005, both Respondent and Mr. Mayronne had signatory authority on the account. Tr. 182-83 (English).

124. LaFayette Credit Union treated both the Legal Forms and the Mazingo Law Offices accounts as "[b]usiness basic accounts." Tr. 203 (English). The accounts belonged to Respondent as the designated business owner. Tr. 204-05 (English).

125. Although Mr. Mayronne may have been authorized to sign on the account, he did not have joint ownership of the accounts. Tr. 204-05, 207-16 (English). Even if the account was a "joint" account, Respondent was obligated to disclose the existence of the account. Tr. 431-33 (Orenstein).

126. Among other things, Respondent used proceeds from the Legal Forms' accounts to pay her mortgage, groceries, and similar personal expenses. *See, e.g.*, Tr. 67-68 (Gold). From January 2005 through August 2005, Respondent regularly withdrew funds from the Legal Forms account, including a monthly, automatic transfer from the account to Bank of America in the amount of $1,281.51 for Respondent's mortgage payment. BX C6 at 22, lines 1-9; BX G6 at 1-9; Tr. 185-88 (English); Tr. 622-24 (Respondent testifying that she used the funds in her law office account and her Legal Forms account for her personal expenses); *see also* Tr. 692 (Respondent: "Any money that was in that account was to pay the mortgage and the house payments – the running of the house.").

127. When a debtor treats business accounts as personal accounts, the debtor may be considered the "alter ego" of the business for purposes of the bankruptcy

laws. Tr. 66-68 (Gold); Tr. 258-260 (Orenstein). For that reason, whenever the debtor has an ownership interest of 5% or greater in a business, the business's accounts must be disclosed – either as personal property listed under Item No. 2 of Schedule B, or as interests in a business account in response to Question 18 of the SOFA or Item 12 or 13 on Schedule B. Tr. 258, 260-61, 431-33, 447 (Orenstein: "[Respondent] had to disclose one or the other. By not disclosing both, she failed miserably in her obligations."). Respondent did not disclose the existence of either her Legal Forms business or her law practice, and she did not disclose the existence of Legal Forms or Law Office financial accounts held at LaFayette Credit Union on the SOFA or the Schedules she filed with the Bankruptcy Court, effectively preventing the trustee from knowing about her active businesses. Tr. 260-62, 447 (Orenstein).

128. On May 12, 2005, Respondent filed her bankruptcy petition, including the SOFA and schedules. BX A12 at 19-36.

129. On August 18, 2005, the court discharged Respondent's bankruptcy, and Respondent received the benefits of a bankruptcy discharge. BX A12 at 71; Tr. 270-71 (Orenstein).

130. Mr. Orenstein testified as an expert that Respondent's failure to accurately and completely disclose information harmed the bankruptcy system:

> [D]ebtors have an obligation to accurately and completely disclose their financial information. That is the whole premise of the bankruptcy system. And it's absolutely clear here that not disclosing the bank accounts, not disclosing the businesses, not disclosing the payments that she made to creditors, not accurately disclosing the value

> of her real property and/or the mortgage – we can't tell which it is, although, given the numbers, I suspect they're both inaccurate – that absolutely is a harm to the system.

Tr. 271-72, *see also* Tr. 273, 424, 442 (Orenstein). However, Mr. Orenstein did not identify any way to quantify such harm. Nor did Bar Counsel offer any other evidence by which the Committee could accurately measure the "harm" to the system stemming from Respondent's conduct.

III. FACTS RELEVANT TO BAR DOCKET NO. 2011-D047 (THE SIMMONDS MATTER)

A. Respondent's Representation of Simmonds in the State of Maryland.

131. In February 2010, Kimberly Simmonds hired Respondent to represent her in establishing a limited liability company in Maryland called New Beginning Investment Group, LLC. BX F5 at 1, 7, 10; Tr. 769-70, 803 (Simmonds). On February 27, 2010, Respondent and Ms. Simmonds executed a written fee agreement on Respondent's letterhead, and Ms. Simmonds paid Respondent the full $2,500 for her legal services. BX F1 at 34; BX F5 at 10, 11-12, 23-24; Tr. 858 (Simmonds).

132. Respondent did not inform Ms. Simmonds that she was not licensed to practice law in Maryland. Tr. 906 (Respondent's testimony: "Q. You did not tell Ms. Simmonds that you were not licensed in Maryland; is that correct? A. No, I did not.").

133. Respondent's letterhead identified her law office as being located in Maryland:

LAW OFFICE OF MAZINGO-MAYRONNE, PA
Attorney and Counselor at Law

13902 Waggaman Ave.
Laurel, MD 20707
(301) 498-1194 Ofc
(301) 498-1443 Fax

BX F5 at 10, 24.[20] Respondent's letterhead did not identify the jurisdictions where she was licensed – or not licensed – to practice law. *Id.*

134. Similarly, the signature line of Respondent's email communications also identified Respondent's office address as 13902 Waggaman Ave., Laurel, MD 20707. BX F1 at 9-12, 16-20, BX F5 at 4, 7, 11, 15-16; BX F6 at 1, 4, 8, 14; Tr. 792-93 (Simmonds).

135. Ms. Simmonds never met Respondent in person, but they communicated by telephone, fax, and email. Tr. 767-68 (Simmonds). Based on Respondent's written correspondence that identified her office address in Maryland, Ms. Simmonds believed that Respondent was licensed to practice law in Maryland. Tr. 768 (Simmonds).[21] Ms. Simmonds testified that she would not have hired Respondent had she known that she was not licensed to practice law in Maryland. Tr. 768-69 (Simmonds).

[20] Throughout the course of her representation of Ms. Simmonds, Respondent used this letterhead in her correspondence with Ms. Simmonds and with Shari Shanks, the assigned claims adjuster at GEICO. BX F5 at 10, 24; BX F6 at 9-10; BX F7 at 36, 38; Tr. 769, 771-72 (Simmonds); Tr. 939-40 (Shanks).

[21] Respondent argues that Ms. Simmonds' testimony "that Respondent did not specifically tell her that she was not licensed to practice in Maryland" implies "that Ms. Simmonds was aware that Respondent was not licensed in Maryland." R. Br at ¶ 55. This argument lacks merit. The fact that Ms. Simmonds discovered later that Respondent was not licensed in Maryland, *see* ¶ 155, *infra*, does not justify Respondent's omission of this material fact at the outset of the representation, nor does it change the fact that Respondent was not authorized to practice law in Maryland at the time she undertook the representation.

136. In May 2010, using the same letterhead, Respondent held herself out to the Maryland Department of Assessments and Taxation as the attorney for New Beginning Investment Group, LLC, by signing the letter as "Counsel for New Beginning Investment Group, LLC." BX F5 at 21; Tr. 885-86 (Respondent).

137. Respondent also used the same letterhead when corresponding with a GEICO representative, Shari Shanks, in connection with Ms. Simmonds' personal injury claim, discussed in detail below. *See* ¶¶ 138-174; *see also* BX F7 at 36, 38; Tr. 939-40, 945-46 (Shanks). Respondent did not inform GEICO that she was not licensed to practice law in Maryland. Tr. 940 (Shanks). Based on the correspondence she received from Respondent, Ms. Shanks believed that Respondent was licensed to practice law in Maryland. Tr. 939-40, 964-65 (Shanks).

B. Respondent Conducts Settlement Negotiations with GEICO

138. On March 30, 2010, Ms. Simmonds was involved in an automobile accident in Montgomery County, Maryland. BX F6 at 2. The next day, Respondent contacted Ms. Simmonds to speak with her about the formation of the limited liability company. Tr. 770-71, 859-60 (Simmonds). During the conversation, Ms. Simmonds told Respondent she had been in a car accident, and that the car accident occurred in Maryland. Tr. 771 (Simmonds). Respondent offered to represent Ms. Simmonds, and agreed to do so for a contingency fee. BX F6 at 4-5, 9; Tr. 771-73 (Simmonds).

139. By letter dated April 1, 2010, Respondent notified GEICO that her office represented Ms. Simmonds. BX F7 at 36; Tr. 939-40, 945-46 (Shanks).[22]

140. On April 6, 2010, Respondent and Ms. Simmonds executed a written fee agreement relating to the personal injury matter. BX F6 at 9. The April 2010 fee agreement provided for payment of a contingency fee of 25% "for negotiations with the insurance companies, the doctors referrals and all communications with adjusters, etc." *Id*.[23]

141. Ms. Simmonds sought medical treatment for injuries related to the accident, including migraine headaches. Tr. 777-78, 786, 819-20 (Simmonds); Tr. 958 (Shanks). From April through November 2010, Ms. Simmonds provided Respondent with her medical records and bills for treatment. BX F1 at 13-17, 21; BX F6 at 13; Tr. 774, 780, 819-20 (Simmonds).

142. On July 27, 2010, Ms. Simmonds notified Respondent that she would be willing to settle the case for an amount between $70,000 and $100,000. BX F6 at 17; Tr. 774-75, 794-95 (Simmonds).

143. Beginning in July 2010, Ms. Simmonds asked Respondent on multiple occasions to tell her the settlement amount that Respondent presented to GEICO, but

[22] Ms. Shanks, the GEICO bodily injury claims adjuster assigned to process Ms. Simmonds's claim, maintained an activity log in the regular course of her business as an adjuster. BX F7 at 8-35; Tr. 935-38, 940 (Shanks). Ms. Shanks also testified about the relevant communications reflected in the log.

[23] The April 2010 fee agreement further provided that if the matter proceeded to litigation "for some unforeseen reason," Respondent's fee would increase from 25% to 30% of the recovery. *Id.* Respondent did not notify Ms. Simmonds that Respondent could not file suit in Maryland because she was not licensed to practice law in Maryland. Tr. 778 (Simmonds).

Respondent refused to give her that information. BX F6 at 14 (Respondent: "I do not tell my clients how much we demand[;] I do confer with you when the opposition respond with their counter offer."); BX F1 at 12 (Respondent: "As I told you before, we would prefer not to provide my clients with the amount of our first demand with respect to the negotiations because the amount is not expected to be awarded as it is only a start to the negotiations and we do not at any time want to give our clients any type of false hope in the enormous amount which is only to start the fight."); *see also* BX F6 at 14-18, 20, 39; Tr. 775-76, 792-94, 797-98, 810 (Simmonds).

144. In a letter dated August 20, 2010, addressed to GEICO, Respondent offered to settle Ms. Simmonds's claim for $84,000, and indicated by a "cc" notation on the letter that she sent Ms. Simmonds a copy of the letter. BX F7 at 38-39; Tr. 950-51 (Shanks). Respondent did not send a copy of the letter to Ms. Simmonds until November 10, 2010. BX F6 at 43-45; Tr. 799-800 (Simmonds).

145. On October 13, 2010, GEICO presented Respondent with a counter-offer to settle the claim for $32,200. BX F7 at 21; Tr. 953-54 (Shanks). Respondent did not communicate this counter-offer to Ms. Simmonds, but instead, immediately, without Ms. Simmonds' knowledge or authority, told the GEICO representative that "she needed at least 50 [thousand]" to settle the claim. Tr. 953-54 (Shanks); BX F7 at 21; Tr. 778-79, 833 (Simmonds).

146. The next day, when asked about the basis for her $50,000 demand, Respondent informed Ms. Shanks that she had intended to demand $60,000 but dropped to $50,000. She further stated that, while there might be "movement" on

Ms. Simmonds' part, she would like to stay as close to $50,000 as possible. BX F7 at 21; Tr. 954-55.

147. On October 22, 2010, Ms. Shanks spoke with Respondent and counter-offered $33,000 to settle Ms. Simmonds's claim; she followed up with a letter extending the same offer. BX F7 at 20, 45; Tr. 938-39, 955-57 (Shanks).

148. On October 26, 2010, Respondent called Ms. Shanks to reject GEICO's $33,000 offer and reiterate her demand of $50,000. Tr. 957; BX F7 at 45.

149. On or about October 29, 2010, Respondent informed Ms. Simmonds in a telephone conversation that GEICO offered $33,000 to settle the claim. Tr. 776-777, 797 (Simmonds); BX F6 at 39 (Oct. 29, 2010 email reflecting phone conversation).

150. In an email dated October 29, 2010, Ms. Simmonds rejected the $33,000 offer, and again asked Respondent what amount she had presented in her initial demand. BX F1 at 15; BX F6 at 39; Tr. 797 (Simmonds).

151. In telephone conversations with Respondent, Ms. Simmonds discussed the possibility of going to trial. Tr. 778 (Simmonds). Respondent encouraged Ms. Simmonds to settle the case, and discouraged her from proceeding to trial, saying that it would take a long time if the matter went to trial. BX F3 at 1 (Respondent: "At the onset of her case I advised her to seek settlement however, if settlement negotiations were not reached then we could discuss her options."); BX F6 at 36; Tr. 778, 798, 833 (Simmonds). Respondent did not inform Ms. Simmonds that Respondent would be unable to take the matter to trial. Tr. 906-07 (Respondent).

152. On November 10, 2010, Respondent provided Ms. Simmonds with a copy of the August 20, 2010 offer letter to GEICO, asking GEICO to settle the claim for $84,000. BX F6 at 43-45.

153. Ms. Simmonds never met Respondent in person, but they communicated by telephone, fax, and email. Tr. 767-68 (Simmonds). During the course of the matter, Ms. Simmonds had a difficult time getting in touch with Respondent. For example, she testified that Respondent did not return her phone calls or emails, that there were times when Respondent's fax machine was not working, and that Respondent claimed that she had not received emails from Ms. Simmonds and records sent by medical providers. Tr. 779-81 (Simmonds). Ms. Shanks similarly testified to her inability to reach Respondent for a period of time. Tr. 958-59 (Shanks). Respondent sometimes provided Ms. Simmonds with conflicting information. Tr. 780 (Simmonds: "There were times when the stories seemed like they would conflict. You know, maybe she would email one thing and when I would talk to her, she would say something different."); Tr. 819 (Simmonds: "[T]here was sometimes conflicting information between what she wrote and what she said.").

154. In a letter dated November 19, 2010, Ms. Shanks presented GEICO's offer of $33,200 to Respondent. BX F7 at 46; Tr. 959-60 (Shanks). Respondent did not communicate this offer to Ms. Simmonds. Tr. 779 (Simmonds).

155. In or around mid-November 2010, Ms. Simmonds discovered that Respondent was not licensed to practice law in Maryland. BX F6 at 68; BX F7 at 59-62; Tr. 788-89 (Simmonds).

156. In a letter dated November 22, 2010, Ms. Simmonds terminated Respondent's representation and instructed her to provide no further legal services on her behalf. BX F6 at 54. Ms. Simmonds attempted to send the letter by fax, but Respondent's fax machine was not working. Thus, on the morning of November 22, 2010, Ms. Simmonds sent Respondent the termination letter by email and regular mail. *Id.* at 54-56; Tr. 780-82 (Simmonds). Respondent confirmed receipt of Ms. Simmonds' termination letter in a response dated November 24, 2010. BX F6 at 67.

157. When Ms. Simmonds terminated the representation, she relied on the terms of the written fee agreement in determining the amount of fees she owed Respondent. BX F6 at 9, 54-55; Tr. 781-82 (Simmonds). The relevant provision of the fee agreement provided:

> You have the right to terminate our services at any time and for any reason. If you do exercise that right, you will remain responsible for any expenses incurred up until the date of termination of our representation. **You will also be responsible to pay us compensation for services rendered on your behalf at a rate of two hundred ($250.00) [sic] per hour, up to a maximum of one (1) total combined (all attorneys) hours**, unless your decision to terminate our services is based on criminal, fraudulent, or unethical behavior on our part.

BX F6 at 9 (emphasis added). Ms. Simmonds presented Respondent with a check for $280, which included $250 for attorney's fees and $30 in costs. *Id.* at 54-55; 781-82, 823 (Simmonds).

158. The Hearing Committee finds that Ms. Simmonds' reliance on her written engagement agreement with Respondent was reasonable. Respondent argues that "it is clear" the engagement agreement contained an error with respect to its reference to a "maximum of one (1) total combined (all attorneys) hours." R. Br. at ¶ 56. The Hearing Committee finds the specific and repeated reference "one (1)" to be clear and unambiguous. Even if the plural use of "hours" injects some ambiguity into the letter, Respondent drafted the letter and any ambiguity must be construed in Ms. Simmonds' favor.[24]

159. Respondent refused to abide by the terms of the fee agreement with Ms. Simmonds. Tr. 824-25 (Simmonds); Tr. 891, 896-97 (Respondent). Respondent testified that she refused to abide by the terms of the fee agreement because she had a "typo" in her fee agreement relating to the maximum number of attorney hours. Tr. 897-900 (Respondent). Respondent testified that by mistake, she left in the phrase "up to a maximum of one (1) total combined (all attorneys) hours" instead of editing the agreement to read "one hundred (100) total combined (all attorneys)

[24] In any event, Ms. Simmonds testified that one of the primary reasons she terminated the representation is because she belatedly learned that Respondent was not licensed to practice law in Maryland, as she had led Ms. Simmonds to believe. ¶¶ 131-37, 155, *supra*. Thus, Ms. Simmonds' decision to terminate Respondent's services was due to behavior on Respondent's part that was – at a minimum – unethical. Under the terms of the engagement agreement, therefore, Ms. Simmonds did not owe Respondent *any* fees.

hours." *Id.* Respondent returned the $280 check to Ms. Simmonds. Tr. 855 (Simmonds); Tr. 891 (Respondent).

160. On November 23, 2010, Respondent called Ms. Shanks and asked whether GEICO could "get any closer" to Respondents' settlement offer of $50,000, stating that she did not want to litigate the case. BX F7 at 17-18. Respondent did so without Ms. Simmonds's knowledge or authority. Tr. 778-79, 833-34 (Simmonds); Tr. 959-61 (Shanks). Ms. Shanks told Respondent that GEICO could offer $33,500. BX F7 at 17-18; Tr. 960 (Shanks).

161. Respondent did not communicate GEICO's offer of $33,500 to Ms. Simmonds. Tr. 779, 784 (Simmonds). Respondent knew that she was obligated to communicate all settlement offers to Ms. Simmonds. BX F6 at 38 (Respondent's October 30, 2010 email: "I do understand and I must as you are aware present all offers to my client. . . . I will keep you apprised of any offers submitted to me.").

162. On November 23 or 24, 2010, Respondent called Ms. Simmonds and left her a telephone message stating that she had received Ms. Simmonds' termination letter. Tr. 782-83 (Simmonds).

163. On the morning of November 24, 2010, Respondent spoke with Ms. Shanks and told her that Ms. Simmonds had terminated Respondent's services. BX F7 at 17. Without Ms. Simmonds' permission, Respondent disclosed to Ms. Shanks that Ms. Simmonds had offered to pay Respondent only $250 for the services she had performed. BX F7 at 17; Tr. 961-62 (Shanks). Respondent instructed Ms.

Shanks that GEICO should not communicate with Ms. Simmonds until Respondent sent a letter stating that she no longer represented Ms. Simmonds. BX F7 at 17.

C. Respondent Reveals Ms. Simmonds' Confidences and Secrets to GEICO.

164. On November 24, 2010 at 12:30 p.m., Respondent sent Ms. Simmonds an email, copied to Ms. Shanks, with the subject line "Simmonds Car Accident – Termination Letter." BX F7 at 47, 57; Tr. 791 (Simmonds), Tr. 886 (Respondent). Respondent intentionally attached to the email a termination letter dated November 24, 2010, addressed to Ms. Simmonds, with a notation that she was sending a copy of the termination letter to "GEICO Claims Sherri Shanks." BX F7 at 47, 57; Tr. 791 (Simmonds), Tr. 886-87 (Respondent); Tr. 966-67 (Shanks).

165. In the attached termination letter, Respondent falsely suggested that more than one attorney had worked on Ms. Simmonds's case. BX F7 at 57 ("Surly [sic] you must realize that after months of working with the doctors' office, your therapist and compiling the information provided to *us* and hours of negotiations with Geico you are not expecting *us* to just forego our fees in the hard work *we* have displayed in this case." (emphasis added)). In fact, no one other than Respondent worked on Ms. Simmonds' case. *But see* Tr. 773 (Simmonds: "[Respondent] was the only person I spoke with."); Tr. 886-87 (Respondent); Tr. 941-42 (Shanks). Respondent wrote that she would be placing a lien on GEICO's last counteroffer in the amount of $8,375, which she calculated as 25% of GEICO's final settlement offer ($33,500). BX F7 at 57; Tr. 784 (Simmonds); Tr. 887 (Respondent).

166. Shanks interpreted Respondent's letter as effectively placing a lien on the settlement proceeds. BX F7 at 57; Tr. 967 (Shanks). Respondent testified at the hearing that she placed a lien on the settlement offer because she had "been told by other attorneys this is what you do when there's a conflict with you and a client and they terminate or you terminate the representation." Tr. 891-92 (Respondent); *see also* BX F3 at 1 (Respondent: "I exercised a reasonable lien against the settlement . . . offer from the insurance company."); BX F6 at 66; Tr. 783-84, 825, 829-31 (Simmonds); Tr. 896 (Respondent).

167. Along with the termination letter, Respondent sent Ms. Shanks a chain of email communications that Respondent had exchanged with Ms. Simmonds during the course of the representation (from September 21, 2010 through November 13, 2010), regarding Ms. Simmonds's injuries, monetary damages, and strategies on how to negotiate her claim with GEICO. BX F7 at 47-56; Tr. 791-92 (Simmonds); Tr. 891, 902-05 (Respondent). Ms. Simmonds did not give Respondent permission to disclose their email communications to GEICO. Tr. 790-92 (Simmonds: "the case had really been compromised and GEICO had information they should [not] have been privileged to and they were really unwilling to negotiate any further."); Tr. 841-42 (Simmonds: "I would say it's kind of like letting your opposing team know what your playbook is."); Tr. 845-46 (Simmonds); Tr. 892-93 (Respondent).

168. Respondent testified at the disciplinary hearing that she sent the emails because she "pushed the wrong button instead of just emailing her, I emailed

everything to Ms. Shanks." Tr. at 893:7-9. Respondent also argued in her brief that forwarding the emails to GEICO was inadvertent. R. Br. at ¶ 57.

169. Contrary to her testimony and argument, Respondent did not accidentally click a button (such as "reply all"); instead she deliberately entered Ms. Shanks's name and email address in the "cc" box of the email and intentionally sent the emails to Ms. Shanks. She also intentionally chose to attach the termination letter, which indicates a "cc" to Ms. Shanks, to the email string, further underscoring that she sent the email quite purposefully. BX F7 at 47 (email sent on November 24, 2010 to both Ms. Simmonds and Ms. Shanks, responding to an email from Ms. Simmonds, on which Ms. Shanks is not included); Tr. 902-04 (Respondent); Tr. 997-98 (Shanks). Accordingly, the Hearing Committee finds that, because Respondent intentionally sent the email string and termination letter to Ms. Shanks, she knowingly revealed the contents of those communications to Ms. Shanks.

170. Respondent's termination letter addressed to Ms. Simmonds, and the email communications between Respondent and Ms. Simmonds became a part of GEICO's case file. BX F7 at 47-57; Tr. 966-67 (Shanks).

171. In a letter dated December 6, 2010, Ms. Simmonds asked Respondent to release the lien she had placed on the GEICO settlement funds. BX F6 at 68; BX F7 at 59-60; Tr. 787-88 (Simmonds). Respondent declined to release the lien at that time. Tr. at 787.

172. In February 2011, Ms. Simmonds hired counsel and paid him $250 to draft and send a demand letter to Respondent seeking a release of Respondent's lien,

which he did on March 3, 2011. BX F6 at 71; *Id.* at 73; Tr. 786-87, 789, 857-58 (Simmonds).

173. On March 17, 2011, Respondent contacted GEICO and released the lien for attorney's fees. BX F7 at 69; Tr. 970 (Shanks).

174. Ms. Simmonds hired a different attorney to represent her in negotiations with GEICO to settle her claim. BX F7 at 67; Tr. 789-90 (Simmonds); Tr. 969-70 (Shanks). Ms. Simmonds, through counsel, settled her claim with GEICO on July 26, 2011, in the amount of $36,400. Tr. 790 (Simmonds); Tr. 974-76, 995-96 (Shanks).

CONCLUSIONS OF LAW

Disciplinary Counsel argues that Respondent violated all of the Rules charged except for Maryland Rules 5.5(a) and (b) – Disciplinary Counsel concedes that it did not prove the latter Rule violations by clear and convincing evidence. ODC Br. at 44 n.10. Disciplinary Counsel recommends a sanction of disbarment.

Respondent concedes that (1) she assisted nine debtors in preparation of their bankruptcy petitions and schedules and that she signed the portion of the petitions that required the affirmation of the preparer, R. Br. at 3; (2) she did not disclose her criminal history in her application to the United States District Court for the District of Maryland, *id*. at 2, 20; and (3) she engaged in the unauthorized practice of law by using a Maryland address on her letterhead without affirmatively stating on her letterhead that she was not licensed to practice law in Maryland, *id*. at 11. Respondent otherwise denies all charged violations of the Maryland and D.C. Rules.

Respondent requests a sanction of a period of suspension no greater than 90 days, with the suspension stayed in favor of a period of supervised probation.

As explained below, the Committee finds that there is clear and convincing evidence that Respondent violated Maryland Rules 3.3(a)(1), 3.4(c), 5.5(a) and (b)(1), and 8.4(c) and (d), and D.C. Rules 1.4(a) and (b), 1.6(a)(1), (2), and (3), 5.5(a), and 7.1(a)(1).

I. BAR DOCKET NO. 2007-D466 (The Ezegbunam Bankruptcy Matter)

A. The Committee Finds No Violation of Maryland Rule 1.15(a).

1. Respondent's Conduct Did Not Violate the Rule

Disciplinary Counsel alleges that Respondent committed intentional misappropriation in violation of MD Rule 1.15(a) when she took $13,835 of the proceeds from the sale of the Ezegbunam house, which belonged to the Ezegbunam bankruptcy estate. ODC Br. at 47.[25] Maryland Rule 1.15(a) provides:

> A lawyer shall hold property of clients or third persons that is in a lawyer's possession in connection with a representation separate from the lawyer's own property. Funds shall be kept in a separate account maintained pursuant to Title 16, Chapter 600 of the Maryland Rules, and records shall be created and maintained in accordance with the Rules in that Chapter. Other property shall be identified specifically as such and appropriately safeguarded, and records of its receipt and distribution shall be created and maintained. Complete records of the account funds and of other property shall be kept by the lawyer and shall be preserved for a period of at least five years after the date the record was created.

[25] Disciplinary Counsel's brief asserts that Respondent took $13,850, but the evidence reflects that the correct amount is $13,835. *See* ¶ 72, *supra*.

In short, when a lawyer is holding funds for a client or third person, the lawyer must maintain those "entrusted funds" separate from the lawyer's own property. *See, e.g.*, *Attorney Grievance Comm'n v. McLaughlin*, 171 A.3d 1205, 1218 (Md. 2017). In Maryland, "'any unauthorized use by an attorney of [. . .] funds entrusted to him [or her],' whether or not temporary or for personal gain or benefit" constitutes misappropriation and violates Rule 1.15. [26] *Attorney Grievance Comm'n v. Glenn*, 671 A.2d 463, 481 (Md. 1996) (quoting *In re Harrison*, 461 A.2d 1034, 1036 (D.C. 1983)); *see also Attorney Grievance Comm'n v. Goodman*, 43 A.3d 988, 996 (Md. 2012).

There is no dispute, and the Committee has found, that Respondent received a check for $13,835, which came from the proceeds from the sale of the Ezegbunam property; that she deposited the check into her bank account; and that she spent the funds for personal purposes. *See* ¶¶ 73-75, *supra*; *see also* ODC Br. at 47. The Committee has also found, however, that at the time Respondent received the check, she did not know that the funds still belonged to the bankruptcy estate, but instead believed that she was entitled to receive the funds as payment of her earned legal fees. *See* ¶¶ 71-73.

Thus, as a *factual* matter, the funds were not "entrusted" to Respondent. Respondent was not "holding" the funds on anyone else's behalf. Instead, at the

[26] Disciplinary Counsel has not cited any cases to support the contention that the funds paid to Respondent at the closing were "entrusted" to her. All of the parties involved in the property sale appear to have been under the mistaken impression that Respondent was entitled to receive the funds as her fee. All were incorrect as a matter of law, however, and the funds remained the property of the bankruptcy estate.

time Respondent received the funds, all of the parties to the real estate transaction reasonably believed the money represented Respondent's earned attorney's fee, and that she was authorized to take the funds. Earned fees are the property of the lawyer. *See McLaughlin*, 171 A.3d at 1218.

We recognize that as a *legal* matter, however, the funds did belong to a third party – the Ezegbunam Bankruptcy estate – and therefore, by operation of law, Respondent was not authorized to take the funds. The house and any proceeds from the sale of house belonged to the bankruptcy estate, and the only person authorized to sell the property, with court approval, was Trustee Wolf. *See* 11 U.S.C. § 541 (a)(1) and (a)(6);[27] BX C4 at 35-36, 45, 88; BX E23 at 42-45 (District Court Order finding funds belonged to bankruptcy estate); Tr. 296-98 (Orenstein: "[A]ny compromise has to be approved by the bankruptcy court with notice to creditors and an opportunity for those creditors to file objections if they believe that the settlement is not fair and reasonable or that they're not being treated properly."); Tr. 351-52 (Orenstein: "settlement agreements have to be approved by the court . . ."); Tr. 464-65 (Orenstein: "I can tell you that the court had not entered an order approving the sale. I had not filed a motion with the court asking for authority to approve the sale.

[27] 11 U.S.C. § 541(a) provides in relevant part: "The commencement of a case . . . creates an estate. Such estate is comprised of all the following property, wherever located and by whomever held: (1) . . . all legal or equitable interests of the debtor in property as of the commencement of the case . . . (6) Proceeds, product, offspring, rents, or profits of or from property of the estate, except such as are earnings from services performed by an individual debtor after the commencement of the case."

I had not told any of the parties they could approve the sale."); Tr. 517-21, 532-33 (Orenstein).

Respondent was not a creditor of the bankruptcy estate, and Trustee Wolf had no responsibility for or interest in the amount of Respondent's attorney's fees, or how Mr. Ezukanma would pay them. BX C4 at 86-87; Tr. 321-22 (Orenstein) ("[Respondent] may have earned the fees, but that didn't give her the right to get paid from that money."); Tr. 331-32 (Orenstein) ("If [Respondent] wanted to get paid from estate assets, then she would have had to have filed a motion with the court for authority to get paid from estate assets."); Tr. 520 (Orenstein explaining that if bankruptcy estate property is sold, but there is a dispute over the distribution of the assets, the proceeds from the sale are typically placed into escrow pending a resolution of the dispute.). Thus, because the property sale was not approved by the Bankruptcy Court, Respondent's receipt and use of the funds was unauthorized. *See* ¶¶ 52-57, 72-75, *supra*; *see also* BX E23 at 45 (District Court Order finding that "the Bankruptcy Court ***did not authorize*** the distribution of the Proceeds of the sale to [Ezegbunam], [Ezukanma], ***and their respective counsel***" (emphasis added)).

Respondent therefore used, without authorization, funds that belonged to a third party by operation of bankruptcy law. But Rule 1.15(a) does not apply to *any* unauthorized use of *any* funds that belong to a third party. It applies only to funds that a lawyer has received for the benefit of someone else. *See* Former Md. R. 16-

603, now Md. R. 19-403[28] (requiring that Maryland lawyers establish trust accounts "for the deposit of funds received from any source *for the intended benefit of clients or third persons*.") (emphasis added); *Attorney Grievance Comm'n v. Smith,* 829 A.2d 567, (Md. 2003) ("'Trust money' means a deposit, payment, or other money that a person entrusts to a lawyer to hold for the benefit of a client or a beneficial owner.") (quoting Md. Code Ann., Bus. Occ. & Prof. § 10-301(d) (2000 Repl. Vol.). Accordingly, the Committee does not find a violation of Rule 1.15(a) because Disciplinary Counsel has not proven that Respondent received funds at the closing for the benefit of a client or third-person.

To assist the Board and the Court in the event of disagreement with the foregoing legal analysis, the Committee finds that, if the funds at issue were considered "entrusted," Respondent's violation of Rule 1.15(a) would have been unknowing, unintentional, non-reckless, and non-negligent, and therefore would not warrant a serious sanction.

2. Respondent Did Not Act Knowingly or with Reckless or Negligent Disregard for the Facts.

The Committee does not find that there is clear and convincing evidence that Respondent intentionally used the bankruptcy estate's funds or consciously disregarded the fact that the funds belonged to the estate. The Committee finds that, at the time of her actions, Respondent sincerely believed that she was entitled to the funds. The evidence in the record reflects that Respondent did represent Mr.

[28] Md. R. 16-603 was recodified as Md. R. 19-403, effective July 1, 2016. *Attorney Grievance Comm'n v. Ndi,* 184 A.3d 25, 46 n.3 (Md. 2018).

Ezukanma in connection with the Adversary Proceeding and other matters, thus earning a fee; that she was instructed by her client to obtain her fee from the proceeds from the sale of the house; that she so informed Mr. Orenstein and Millenium Title; that she further informed Mr. Orenstein that she lacked experience in cases like that one and needed guidance on how to proceed; and that she was assured by Millenium Title that it had taken care of the payments to the bankruptcy trustee. *See, e.g.*, ¶¶ 14-19, 35, 38, 50-52, 60, 62, 69, 72-73, *supra*. There is no evidence in the record that Mr. Orenstein or anyone else ever informed Respondent that *all* proceeds from the sale were required to be remitted to the bankruptcy estate. Quite the contrary, when Respondent proposed to Mr. Orenstein that the parties proposed to sell the property and "split the balance after paying your fee and catching up the mortgage," and that her own fee would be "paid from [Mr. Ezukanma's] portion at settlement," Mr. Orenstein *consented* to that arrangement. *See* ¶¶ 58-59, *supra*.

Disciplinary Counsel alleges that Respondent took the funds intentionally because she knew:

> (1) that the house could not be sold without court approval;
>
> (2) she had no independent or good faith basis to believe that the court had approved the sale of the house or that the trustee had been notified of the sale[;] and
>
> (3) that the sale of the house violated the court-approved settlement agreement.

ODC Br. at 47. The Committee disagrees. Respondent sought Mr. Orenstein's consent before the house was offered for sale, and Mr. Orenstein stated, "[t]he Court

has approved the settlement, so I do not see any problem." *See* ¶ 59, *supr*a. Thus, while the sale of the house in fact violated the settlement agreement, it is clear from the record that Respondent did not actually understand that fact at the time, thus precluding a finding that she acted intentionally or with conscious disregard.

Under Maryland law, the record would not support a finding, by clear and convincing evidence, that Respondent negligently misappropriated the funds. According to the Maryland Court of Appeals,

> Negligence is defined as "the failure of a lawyer to heed a substantial risk that circumstances exist or that a result will follow, which failure is a deviation from the standard of care that a reasonable lawyer would exercise in the situation."

Glenn, 671 A.2d at 485 (quoting ABA Standards for Imposing Lawyer Sanctions (1987) Standard 3.0 cmt., at 287-88). As described above, Respondent sought guidance from an experienced bankruptcy attorney about how to proceed with the sale of the property, and received assurances that the sale of the house, and her receipt of her fee from the proceeds of the sale, were permissible. Moreover, she was expressly informed by the title company handling the property closing that the bankruptcy trustee had been "taken care of." The Committee does not find sufficient evidence to support a conclusion that Respondent acted unreasonably or failed to heed a substantial risk that was known to her at the time.

B. The Committee Finds No Violation of Maryland Rule 1.15(d).

Disciplinary Counsel also argues that Respondent's receipt of the funds at the property closing violated Maryland Rule 1.15(d). The rule provides:

> Upon receiving funds or other property in which a client or third person has an interest, a lawyer shall promptly notify the client or third person. Except as stated in this Rule or otherwise permitted by law or by agreement with the client, a lawyer shall deliver promptly to the client or third person any funds or other property that the client or third person is entitled to receive and, upon request by the client or third person, shall render promptly a full accounting regarding such property.

MD Rule 1.15(d).

As stated above, the Committee finds that the $13,835.00 Respondent received at the property closing belonged, as a matter of law, to the Ezegbunam bankruptcy estate. As such, the bankruptcy estate clearly had an "interest" in the funds. *See, e.g.*, *Attorney Grievance Com'n. v. Levin*, 69 A.3d 451, 468 (Md. 2013) (although "interest" is not defined in the rule, "a legitimate claim of entitlement to that property" generally suffices); *see also id*. ("[e]ntitlement . . . is the dispositive concern.").

However, at the time she received the funds, Respondent was unaware of the bankruptcy estate's interest in the funds. Because Respondent lacked actual knowledge of any obligation to notify a third party of her receipt of the funds, the Committee does not find that there is clear and convincing evidence that Respondent violated MD Rule 1.15(d) when she received the funds at the property closing.

Indeed, Disciplinary Counsel does not even argue that the Rule 1.15(d) violation occurred at that time. Rather, Disciplinary Counsel argues that the violation arose when Respondent *became* aware of the bankruptcy estate's claim to the funds and yet failed promptly to return them. ODC Br. at 47-48. That is, Disciplinary Counsel argues that Rule 1.15(d) was triggered when Respondent was placed on notice of a dispute regarding ownership of the funds – *i.e.*, when Mr. Orenstein, as instructed by Trustee Wolf, demanded in his August 2007 letter that Respondent return the funds. ODC Br. 47; *see also* ¶¶77-78, *supra*.

By August 2007, however, Respondent had already spent the funds in question. ¶¶ 70, 74, *supra*. The Committee has not found any Maryland authority on whether Rule 1.15(d) applies if the attorney only learns of a third party's interest in funds after the attorney, having received the funds in good faith, has already spent the funds. Disciplinary Counsel does not point to any such authority. Portions of Rule 1.15(d) appear inapplicable to this situation – here, it was Wolf who notified Respondent of the bankruptcy estate's interest, not the other way around. Nor is an accounting relevant, since the dispute concerns a sum certain.

Respondent did undertake to repay the funds, although as of the date of the Disciplinary Hearing, Respondent had not yet fully repaid the debt. ¶ 87, *supra*. Disciplinary Counsel appears to be arguing that Respondent's delay in repaying the funds violates MD Rule 1.15(d). But that argument is a poor fit for the plain language of the Rule, and in the absence of legal authority demonstrating that

Respondent's conduct violates the Rule, the Committee does not find that Disciplinary Counsel has proven a violation by clear and convincing evidence.

C. The Committee Finds that Respondent Violated Maryland Rule 3.3(a)(1).

Disciplinary Counsel charges that Respondent violated Maryland Rule 3.3(a)(1) by: (a) lying about her criminal history on her application for admission to the U.S. District Court of Maryland; (b) repeatedly misrepresenting that she was a non-attorney in bankruptcy filings to the Bankruptcy Court; and (c) testifying falsely during the Bankruptcy Court trial that she never received a contract for sale of the house at the center of the Ezegbunum Bankruptcy Case. ODC Br. at 48-49.

Maryland Rule 3.3(a)(1) proscribes knowingly "mak[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 attorney." *See also Attorney Grievance Com'n of Maryland v. Sperling*, 69 A.3d 478, 490 (Md. 2013). "Knowledge" may be inferred from the circumstances "taken as a whole." *See Id.* at 490; Rule 1.0(g).

Comment [1] to Maryland Rule 3.3 explains that the Rule "governs the conduct of an attorney who is representing a client in the proceedings of a tribunal."[29] The Rule "also applies when the attorney is representing a client in an ancillary proceeding conducted pursuant to the tribunal's adjudicative authority, such as a deposition." *Id.*

[29] A "tribunal" is "a court, an arbitrator in a binding arbitration proceeding or a legislative body, administrative agency or other body acting in an adjudicative capacity." Md. Rule 1.0(o).

1. Bar Application

The Committee found that Respondent's application for admission to practice before the United States District Court for the District of Maryland contained a false statement – namely, Respondent answered "No" to Question No. 5, which asked in relevant part whether Respondent had "ever been convicted of . . . any crime." *See* ¶¶ 25-27, *supra*. In fact, Respondent had previously been convicted of two misdemeanor criminal offenses. *See* ¶ 27, *supra*.

Respondent admits that she did not disclose her criminal history on her District of Maryland bar application, but claims the omission was "inadvertent[]." R. Br. at 17. In support, Respondent argues that she did disclose her criminal history on her previous application to the D.C. Bar, and was admitted, thus indicating she had no motive to lie on the District of Maryland application. *Id*. Respondent also claims that her "learning disability also plays a role in her understanding of the question." *Id*.; *see also* ¶ 32, *supra*.

As discussed above, the Hearing Committee did not find Respondent's explanations to be credible. *See* ¶¶ 30-32, *supra*. The Committee finds that Respondent knowingly and intentionally made a false statement on her bar application, in violation of MD Rule 3.3(a)(1).

2. Non-Attorney Bankruptcy Petition Preparer

The relevant federal statute defines a "bankruptcy petition preparer" as "a person, other than an attorney for the debtor or an employee of such attorney under the direct supervision of such attorney, who prepares for compensation a document

for filing." 11 U.S.C. § 110(a)(1); *see also* BX B1 at 18, 35-37, 54; Tr. 32-33, 131 (Gold). The statute requires a bankruptcy petition preparer to provide her clients with a written notice stating "in simple language that a bankruptcy petition preparer is not an attorney and may not practice law or give legal advice." 11 U.S.C. § 110(b)(2)(B)(i). Testifying as an expert on bankruptcy law and procedure, Mr. Gold explained that a bankruptcy petition preparer is strictly limited to performing the clerical task of typing or filling in the documents or pleadings, and may not provide legal advice or even use the word "legal" in their advertisements. Tr. 34 (Gold).

As of the dates she signed the filings in question, Respondent was admitted to practice in the United States District Court for the District of Maryland, which also authorized her to practice before the Bankruptcy Court. *See* ¶¶ 9, 34 *supra*. She was also licensed to practice in the District of Columbia as of December 2, 2002. ¶ 1, 9, *supra*. Respondent also provided legal advice to her clients in connection with their bankruptcy petitions.[30] As such, she was ineligible to sign the filings as a "non-attorney bankruptcy petition preparer."

[30] Respondent contends that there was no evidence or testimony that she provided legal advice to the debtors. R. Br. at ¶ 10. To the contrary, Respondent's own testimony at a deposition establishes that she did provide legal advice. Respondent admitted that she advised her clients on what Bankruptcy Code chapter to file under, what exemptions to claim, and how to categorize assets and liabilities on the bankruptcy schedules, ¶¶ 8, 10, *supra*, all of which constitute legal advice. Respondent also charged fees that far exceed the going rate for non-attorney petition preparers, ¶ 12, *supra*, which further underscores that the services she performed were legal services, not clerical tasks.

Respondent argues that she lacked the requisite knowledge for a violation of Rule 3.3(a). According to Respondent, she was "unaware of the interpretation of the [Bankruptcy] Rules" when she executed petitions as a "non-attorney bankruptcy preparer." R. Br. at 17. Respondent notes that Legal Forms was established several years before she became an attorney, *id*., and points out that when the United States Trustee brought the rule to her attention, she "[i]mmediately" stopped executing petitions as a non-attorney bankruptcy petition preparer and entered into a stipulation that barred her from practicing in the bankruptcy court. *Id*. at 17-18.[31]

The Committee does not find Respondent's arguments persuasive. Respondent knew when she became a licensed attorney. Even if Respondent did not take the time to review the statute before certifying, over and over again, that she was "a bankruptcy petition preparer as defined in 11 U.S.C. § 110 . . .," *see* ¶ 11, *supra*, the signature block she used was entitled, "Certification and Signature of ***Non-Attorney*** Bankruptcy Petition Preparer." *Id*. Respondent does not offer any other "interpretation" of that phrase (or the statute) that would reasonably permit an attorney to sign such a certification. The fact that Respondent stopped signing filings as a bankruptcy petition preparer after the U.S. Trustee drafted a complaint against her does not suggest this was the first time Respondent learned it was inaccurate to call herself a non-attorney; rather, it merely suggests that she stopped engaging in the conduct after she was caught.

[31] There is no evidence that Respondent continued signing filings as a non-attorney bankruptcy petition preparer after she entered into the stipulation with the U.S. Trustee.

Respondent's repeated misrepresentations to the Bankruptcy Court in documents filed on behalf of her Legal Forms clients, therefore, violated MD Rule 3.3(a)(1).

3. Receipt of Contract for Sale of House

Disciplinary Counsel also contends that Respondent testified falsely during the Bankruptcy Court trial when she stated that she never received a contract for the sale of the house at the center of the *Ezegbunam* Bankruptcy Case. ODC Br. 48. Respondent maintains that her testimony was truthful, and that there is "no evidence that the sale contract was provided to Respondent." R. Br. at 18. As the Committee has found, the record does not contain a fully-executed contract of sale, nor is there any evidence that Respondent received a fully-executed contract prior to the date of the closing. *See* ¶¶ 65, 83, *supra*. Thus, the Committee finds that there is not clear and convincing evidence that Respondent testified falsely at the Bankruptcy Trial. This theory, therefore, does not support the Committee's finding that Respondent violated Maryland Rule 3.3(a)(1).

D. The Committee Finds that Respondent Violated Maryland Rule 3.4(c).

Disciplinary Counsel alleges that Respondent violated Rule 3.4(c) by representing Mr. Ezukanma in bankruptcy proceedings in spite of the Bankruptcy Court's July 26, 2006 order barring her from practicing in Bankruptcy Court. ODC Br. at 50-51; *see also* BX G17 at 6-10.[32] Respondent concedes that her conduct

[32] Disciplinary Counsel's brief mistakenly cites the date of the Consent Order as February 2005; in fact, the Order was entered on July 26, 2006. *See* BX G17 at 6-10.

violated Rule 3.4(c), but claims her violation was not "knowing." R. Br. at 20. The Rule provides:

> A lawyer shall not knowingly disobey an obligation of a tribunal except for an open refusal based on an assertion that no valid obligation exists.

MD Rule 3.4(c).

"Knowledge" may be inferred from the circumstances. MD Rule 1.0(g). The Maryland Court of Appeals has held that a knowing and intentional violation of a court order is a violation of Rule 3.4(c). *Attorney Grievance Com'n v. Byrd*, 970 A.2d 870, 881 (Md. 2009) (contravention of bankruptcy court's order after finding of contempt) (citing *Attorney Grievance Com'n v. Mininsohn*, 846 A.2d 353 (Md. 2004)).

Disciplinary Counsel further contends that Respondent's conduct did not constitute an "open refusal based on an assertion that no valid obligation exists," because instead of openly asserting that her representation of Mr. Ezukanma was proper, Respondent "actively concealed" the representation from Mr. Gold. ODC Br. at 50. Disciplinary Counsel also argues that Respondent lied under oath when she testified, during her deposition and at the show cause hearing, that she told Mr. Gold about the Ezukanma representation and thus believed, in good faith, that she could continue representing him. *Id*. at 51.

The Committee agrees that there is no evidence of any "open refusal" to comply with the Court order in this case, and therefore the relevant question is whether respondent knowingly disobeyed the order. The Committee has found that

Respondent knew that the court order to which she consented enjoined her from practicing law in the Bankruptcy Court. *See* ¶ 49, *supra*. The Committee has also found that, after the consent order was entered, Respondent did continue to represent Mr. Ezukanma in an adversary proceeding pending in the Bankruptcy Court. *See* ¶ 50, *supra.*[33] That representation violated the court order and Maryland Rule 3.4(c).

Respondent argues that, after the consent order was entered, she filed only one pleading on Mr. Ezukanma's behalf in the Bankruptcy Court, which was rejected and not docketed. R. Br. at 19. Respondent appears to be arguing that the court's injunction only applied to written filings (and, presumably, in-court appearances), but not to Respondent's other out-of-court activities in connection with the pending action. The Committee does not take such a narrow view of the Court order.[34] Respondent's representation of Mr. Ezukanma with respect to the sale of the property stemmed entirely from the legal dispute then pending before the Bankruptcy Court in the form of an adversary proceeding – in other words, the case

[33] The Committee is not persuaded by Respondent's purported belief that she and Mr. Gold reached a side agreement that permitted her to continue representing Mr. Ezukanma in the Bankruptcy Court. Even assuming, *arguendo*, that Respondent raised the possibility of such an exception when negotiating with Mr. Gold (a fact that is in dispute), no such exception was ultimately embodied in the order entered by the Court – as Respondent conceded at the disciplinary hearing. ¶ 45, *supra*. In any case, if Respondent did raise the possible exception with Mr. Gold, that fact would only underscore her understanding that, absent an exception, her representation of Mr. Ezukanma was otherwise barred by the order.

[34] Respondent also argues that the Bankruptcy Court based its finding that Respondent violated the order solely on the one pleading, not Respondent's other activities with respect to the settlement of the Adversary Proceeding. *See* R. Br. at 19 (citing BX C3 at 66). However, the Bankruptcy Court certainly did not hold that Respondent's representation of Mr. Ezukanma in connection with the settlement and property sale were *not* the practice of law. While the Committee follows the Bankruptcy Court's ruling with respect to the single pleading, that ruling in no way precludes the Committee's finding that Respondent's other conduct also amounted to the practice of law.

was "in" the Bankruptcy Court and subject to that court's jurisdiction. Respondent's activities in negotiating and consummating the settlement of that case constituted the practice of law – as Respondent herself implicitly recognizes when arguing that the $13,835.00 payment she received represented her earned legal fees.

Because Respondent knowingly violated the consent order by continuing to represent Mr. Ezukanma in the adversary proceeding, she violated Maryland Rule 3.4(c).

E. The Committee Finds No Violation of Maryland Rules 4.1(a)(1) and (2).

Disciplinary Counsel charges that Respondent violated Maryland Rules 4.1(a)(1) and (2) "when she deliberately evaded the court process and intentionally withheld information about the sale from Trustee Wolf . . . ." ODC Br. at 47. Respondent contends that there are numerous emails in evidence reflecting Respondent's efforts to communicate with Trustee Wolf, through his attorney, Mr. Orenstein, and that those communications preclude any finding that Respondent intentionally withheld information about the sale. R. Br. at 16.

Maryland Rule 4.1(a) provides that "[i]n the course of representing a client a lawyer shall not knowingly: (1) make a false statement of material fact or law to a third person, or (2) fail to disclose a material fact when disclosure is necessary to avoid assisting a criminal or fraudulent act by a client." Partially true but misleading statements or omissions can be considered "misrepresentations" under Rule 4.1(a). Cmt. [1] Rule 4.1. "Knowledge" may be inferred from the circumstances. Rule 1.0(g).

The Committee finds that Disciplinary Counsel failed to prove a violation of Rules 4.1(a)(1) and (2) by clear and convincing evidence. Disciplinary Counsel does not specify what the omissions are on which it bases its charge. *See* ODC Br. at 47 (arguing generally that Respondent "intentionally withheld information," without citation to any proposed findings of fact). The Committee presumes that Disciplinary Counsel intended to refer to its allegations that "Respondent never provided the contract for sale to Mr. Orenstein or Trustee Wolf, or any information relating to the sale of the property, including the name of the title company, or the date and location of the settlement closing." *See* ODC Br. at 19 (¶ 50).

The Committee assumes, without finding, that the date of the real estate closing and information about how the settlement proceeds were to be distributed were material facts for the bankruptcy trustee.[35] However, Disciplinary Counsel failed to offer clear and convincing evidence that Respondent *knowingly* withheld these facts from the trustee. To the contrary, the Committee found that Respondent made repeated attempts to communicate with the trustee's attorney, Mr. Orenstein, about the sale of the property, including notifying him that a closing date had been scheduled, and that she clearly informed him of her intent to collect a fee from the proceeds. *See* ¶¶ 58-64, 66-67, *supra*. Moreover, the Committee finds credible Respondent's testimony that she believed that either the Debtor or the title company would notify the trustee about the details of the property settlement, especially when

[35] Disciplinary Counsel did not offer any evidence that the name of the title company was, in and of itself, a material fact, and the Committee declines to find that it was.

Mr. Orenstein failed to respond to Respondent's own repeated attempts to reach him and to inquire about the trustee's fees. Even if Respondent, arguably, could have followed up with additional information notwithstanding Mr. Oreinstein's reticence, these facts do not establish, by clear and convincing evidence, that Respondent knowingly failed to disclose any material facts to him.

In addition, Rule 4.1(a)(2) has a further element, of which there is no evidence whatsoever: that disclosure of the supposedly withheld facts was "necessary to avoid assisting a criminal or fraudulent act by a client." Md. Rule 4.1(a)(2). Disciplinary Counsel offered no evidence of *any* action by Respondent's client, let alone a crime or fraud by Mr. Ezukanma; nor did Disciplinary Counsel establish that Respondent's disclosure of the closing date and/or terms of the property sale to Mr. Oreinstein were necessary to avert any crime or fraud by Mr. Ezukanma.

For these reasons, the Committee declines to find that Respondent violated Maryland Rules 4.1(a)(1) and (2).

F. The Committee Finds that Respondent Violated Maryland Rules 5.5(a) and (b)(1).

Disciplinary Counsel charged Respondent with violations of Maryland Rules 5.5(a) and (b)(1), but stated in its post-hearing brief that it "does not believe it produced clear and convincing evidence" of a violation of these rules with respect to the bankruptcy matters. ODC Br. at 44 n.10. However, the Hearing Committee is required to make a recommendation on all charged Rule violations. *See In re Drew*, 693 A.2d 1127, 1132-33 (D.C. 1997) (per curiam) (appended Board Report).

Maryland Rule 5.5(a) and (b)(1) provide:

> A lawyer shall not: (a) practice law in a jurisdiction in violation of the regulation of the legal profession in that jurisdiction, or assist another in doing so.
>
> (b) A lawyer who is not admitted to practice in this jurisdiction shall not:
> (1) except as authorized by these Rules or other law, establish an office or other systematic and continuous presence in this jurisdiction for the practice of law. . .

As explained above, the Committee has found that Respondent violated the court order that precluded her from practicing in the Bankruptcy Court when she represented Mr. Ezukanma in connection with the settlement of the adversary proceeding. *See, e.g.*, ¶¶ 50-51, *supra*. That same conduct establishes that Respondent was practicing law in violation of Maryland Rule 5.5(a). *Cf.*, *e.g.*, *Attorney Grievance Com'n v. Robaton*, 983 A.2d 467, 475 (Md. 2009) (respondent violated Rules 5.5(a) by representing a bankruptcy client at the creditors' meeting and holding himself out to the bankruptcy Trustee as counsel for his client when respondent was no longer certified to practice before the bankruptcy court.).

In addition, the Committee finds that Respondent established an office and a systematic and continuous presence in Maryland for her Legal Forms business. *See, e.g.*, ¶¶ 5-9, *supra*. The Committee further finds that Respondent provided legal advice to her Legal Forms clients, thereby engaging in the practice of law. ¶ 10, *supra*. Because Respondent was not licensed to practice in Maryland, her legal practice in connection with her Legal Forms business violated Maryland Rule 5.5(b)(1).

G. The Committee Finds No Violation of Maryland Rule 8.1(a).

Disciplinary Counsel alleges that Respondent violated Maryland Rule 8.1(a) by falsely asserting on her application for admission to the United States District Court for the District of Maryland that she had never been convicted of a crime, when in fact she had been convicted of Driving Under the Influence and Reckless Driving. ODC Br. at 51. Maryland Rule 8.1(a) provides, in relevant part, that "[a]n applicant for admission or reinstatement to the bar . . . shall not . . . knowingly make a false statement of material fact."

The Committee has already found that Respondent's denial of her criminal history was a false statement. *See* ¶¶ 25-27, *supra*. However, unlike Rule 3.3(a)(1), Rule 8.1(a) contains a materiality requirement. Disciplinary Counsel failed to offer any evidence that Respondent's false statement was *material*. The criminal convictions Respondent failed to disclose were both misdemeanor offenses committed years before the application was submitted (seven years in one instance and 12 years in the other). ¶¶ 24, 27, *supra*. Without minimizing the seriousness of the conduct of which Respondent was convicted – reckless driving and driving under the influence – the Committee finds that there is insufficient evidence that the convictions, had they been disclosed, would have had any impact on whether Respondent was admitted to practice before the District Court. To the contrary, Respondent's prior admission to practice in the District of Columbia, after having disclosed her convictions, suggests that the convictions may not have been material.

Because Disciplinary Counsel failed to establish the materiality of Respondent's false statement, the Committee finds that Disciplinary Counsel has not established a violation of Maryland Rule 8.1(a) by clear and convincing evidence.

H. The Committee Finds No Violation of Maryland Rule 8.4(b).

Under Maryland Rule 8.4(b), "[i]t is professional misconduct for a lawyer to . . . commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects." Disciplinary Counsel charged Respondent with violating Maryland Rule 8.4(b) by committing allegedly criminal acts under 18 U.S.C. § 1001 (false statements); 18 U.S.C. § 1760 (unsworn declarations under penalty of perjury); and/or 18 U.S.C. §§ 152(1), (3), (5), and/or (7).[36] "For purposes of section [8.4](b), an actual conviction is unnecessary to demonstrate that the [respondent] committed misconduct." *Attorney Grievance Com'n v. Levin*, 91 A.3d 1101, 1105 (Md. 2014); *Attorney Grievance Com'n v. Tanko*, 45 A.3d 281, 300 (Md. 2012) ("An actual conviction is not required to establish that an attorney violated [MD] Rule 8.4(b), so long as the underlying conduct that constitutes the crime is proven by clear and convincing evidence."). The Committee considers each of the charged criminal acts in turn, below.[37]

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[36] Disciplinary Counsel also argues in its brief, ODC Br. 50, that Respondent violated 18 U.S.C.§ 152(2), which was not charged in the Second Amended Specification of Charges. We decline to make any findings with respect to criminal statutes not enumerated in the applicable Specification of Charges.

[37] Disciplinary Counsel's brief does not address the charged violations of 18 U.S.C. § 1001, but the Hearing Committee has a duty to evaluate those charges. *Drew*, 693 A.2d 1127. We do not, however, discuss the alleged violation of "18 U.S.C. § 1760." The Hearing Committee is unable to locate any such statute. 28 U.S.C. § 1746 governs unsworn declarations under penalty of

With respect to the alleged violations of Rule 8.4(b), Disciplinary Counsel relies upon the same alleged false statements as it charged with respect to Rule 3.3(a)(1). ODC Br. at 48-49. As explained above, the Committee found that Respondent knowingly made false statements on a bar application and in signing numerous bankruptcy filings as a "bankruptcy petition preparer," but the Committee did not find that Respondent knowingly made false statements with respect to her receipt of a contract for the sale of the Ezegbunam house. *See* ¶¶ 7, 9, 25-33, 65, 83, *supra*. Accordingly, the Committee discusses only the former two bases with respect to the alleged Rule 8.4(b) violations.

As set forth in detail below, the Committee finds that Disciplinary Counsel did not establish the underlying criminal acts by clear and convincing evidence. Accordingly, the Committee finds no violations of Maryland Rule 8.4(b).

1. The Committee Finds No Violation of 18 U.S.C. § 1001

The Second Amended Specification of Charges alleges that Respondent violated 18 U.S.C. § 1001 (false statements). Disciplinary Counsel did not argue in its post-hearing brief that Respondent's conduct violated this statute, but we consider it nonetheless. *See Drew*, 693 A.2d 1127.

In relevant part, § 1001 makes it a crime to "knowingly and willfully," in a matter within the jurisdiction of the United States judicial branch,

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perjury, but that statute is not cited in any Specification of Charges and is not a criminal statute in any event. Disciplinary Counsel's post-hearing briefs do not address either 18 U.S.C. § 1760 or 28 U.S.C. § 1746. Thus, we decline to speculate as to Disciplinary Counsel's theory.

> (1) falsif[y], conceal[], or cover[] up by any trick, scheme, or device a material fact;
>
> (2) make[] any materially false, fictitious, or fraudulent statement or representation; or
>
> (3) make[] or use[] any false writing or document knowing the same to contain any materially false, fictitious, or fraudulent statement or entry.

18 U.S.C. § 1001(a). The statute does not apply to documents submitted to a judge by a party to a judicial proceeding, or that party's counsel. *Id*. § 1001(b). Accordingly, Respondent's misrepresentations on petitions submitted to the Bankruptcy Court are excluded.

Respondent's application for admission to practice before the United States District Court for the District of Maryland qualifies as a "matter within the jurisdiction of the . . . judicial branch of the Government of the United States," and thus her false statement falls within 18 U.S.C. § 1001(a). *Cf.*, *e.g.*, *United States v. Kieffer*, 681 F.3d 1143, 1146 (10th Cir. 2012) (defendant violated 18 U.S.C. § 1001 by fraudulently representing to the court clerk of the United States District Court for the District of Colorado that he was licensed to practice law in the District of Columbia).

However, materiality is an element under each of the subsections of § 1001(a). As explained above, *see* Conclusions of Law, Count I, Section G, *supra*, Disciplinary Counsel failed to establish the materiality of Respondent's false statement by clear and convincing evidence. Accordingly, the Committee declines

to find a violation of Maryland Rule 8.4(b) based upon the alleged violation of 18 U.S.C. § 1001.

2. The Committee Finds No Violation of 18 U.S.C. §§ 152 (1), (3), (5) and/or (7)

18 U.S.C. § 152, in relevant part, makes it a crime to:

> (1) ***knowingly and fraudulently*** conceal[] from a custodian, trustee, marshal, or other officer of the court charged with the control or custody of property, or, in connection with a case under title 11, from creditors or the United States Trustee, any property belonging to the estate of a debtor; . . .
>
> (3) ***knowingly and fraudulently*** make[] a false declaration, certificate, verification, or statement under penalty of perjury as permitted under section 1746 of title 28, in or in relation to any case under title 11; . . .
>
> (5) ***knowingly and fraudulently*** receive[] any material amount of property from a debtor after the filing of a case under title 11, with intent to defeat the provisions of title 11; . . . [or]
>
> (7) in a personal capacity or as an agent or officer of any person or corporation, in contemplation of a case under title 11 by or against the person or any other person or corporation, or with intent to defeat the provisions of title 11, ***knowingly and fraudulently*** transfer[] or conceal[] any of his property or the property of such other person or corporation;

18 U.S.C. § § 152(1), (3), (5), and (7) (emphasis added). Thus, every one of the provisions on which Disciplinary Counsel relies requires that the relevant conduct be done not just knowingly, but also fraudulently. As used in the statute, the term

"fraudulently" includes the intent to deceive. *U.S. v. Gellene*, 182 F.3d 578, 586 (7th Cir. 1999).

Disciplinary Counsel contends that Respondent violated sections (1) and (5) of this statute when she allegedly "knowingly received and then concealed her receipt of $13,8[35] in proceeds from the sale of the house belonging to the [Ezegbunam] bankruptcy estate . . . ." ODC Br. at 50. Although Respondent certainly knowingly received the $13,835 (*see* ¶ 71-75, *supra*), the record does not support a conclusion that Respondent *fraudulently* received the funds, as required for a violation of § 152(5).[38] Nor is there evidence that Respondent *concealed* the funds – knowingly or otherwise – as would be required for a violation of § 152(1). While Respondent did not personally notify Mr. Orenstein after the closing took place, ¶ 76, there is evidence that she told him about the impending sale ahead of time, *see* ¶¶ 58-68, and Respondent offered uncontroverted testimony that she believed the title company would notify the bankruptcy estate of how the sale proceeds were distributed. *See* ¶¶ 69, 72. As discussed above, Respondent was mistaken about whether she had a right to receive the funds. However, there is no

[38] Respondent also contends that the $13,8[35] was not a material amount of property. R. Br. at 18. In the context of § 152, "material" merely refers to "some significant aspect of the bankruptcy case or proceeding." *Gellene*, 182 F.3d at 588. Disciplinary Counsel did not offer evidence specifically relating to materiality, and the Committee makes no findings as to whether this element of the alleged crime was established.

evidence that Respondent possessed the intent to deceive necessary for a violation of §§ 152(1) or (5).[39]

Disciplinary Counsel further argues that Respondent violated § 152(3) "when she identified herself as a non-attorney bankruptcy petition preparer and failed to disclose she was a licensed attorney in over 45 documents she filed in Bankruptcy Court." ODC Br. at 50. There is no dispute that Respondent signed filings as a "non-attorney bankruptcy petition preparer," and, as discussed above, the Committee found that Respondent knew that that she did not qualify as a "non-attorney." *See* ¶ 8-9, 10, 12, *supra*. However, section (3) of the statute prohibits conduct that is not just knowing, but fraudulent – Respondent must have signed as a "non-attorney bankruptcy petition preparer" *with an intent to deceive*. *See Gellene*, 182 F.3d at 586. Disciplinary Counsel offered no evidence of such intent, let alone clear and convincing evidence.

Disciplinary Counsel did not argue that Respondent violated § 152(7), and Respondent did not address that issue in her brief. The Committee does not find clear and convincing evidence that Respondent "knowingly and fraudulently" transferred or concealed any property in violation of the statute.

For the reasons stated above, the Committee finds that Disciplinary Counsel failed to establish, by clear and convincing evidence, that Respondent committed a criminal act in violation of 18 U.S.C. § § 152(1), (3), (5) or (7).

[39] In addition, as Respondent points out, Disciplinary Counsel also failed to establish that either Ms. Ezegbunam or Respondent had any intent to defeat the bankruptcy code, as required under § 152(5).

I. The Committee Finds that Respondent Violated Maryland Rule 8.4(c) (Dishonesty).

Maryland Rule 8.4(c) states that "[i]t is professional misconduct for a lawyer to engage in conduct involving dishonesty, fraud, deceit or misrepresentation." The Court of Appeals of Maryland has noted that "[t]he Rules do not define dishonesty, deceit or misrepresentation[,]" and concluded that "'[t]o determine the ordinary meanings of those words [it is appropriate] to consult their dictionary definitions.'" *Attorney Grievance Com'n v. Dore*, 73 A.3d 161, 168 (Md. 2013) (quoting *Bd. of Educ. v. Marks–Sloan*, 50 A.3d 1137 (Md. 2012)).

> [Webster's] defines "dishonesty" as "being dishonest," which in turn is defined as "lying" and "cheating." [Black's] defines 'dishonesty' as a "disposition to lie, cheat, deceive or defraud . . . ." The conduct described in these definitions involves lying or the intent to commit fraud.

Dore, 73 A.3d at 168 (internal citations omitted). Disciplinary Counsel argues that Respondent engaged in multiple acts of dishonesty in her representation of Mr. Ezukanma:

- Failing to disclose to Mr. Orenstein that her client, Mr. Ezukanma, was "not interested in complying" with the terms of the settlement agreement before Mr. Orenstein filed it with the Court for approval;
- Failure to disclose to Mr. Orenstein that she had "arranged for the sale of the house";
- Failure to provide Mr. Orenstein with the contract for sale; and
- Failure to tell Mr. Orenstein the date of the closing on the property.

See ODC Br. at 46. Disciplinary Counsel also relies upon the same alleged false statements as it charged with respect to Rule 3.3(a)(1). ODC Br. at 48-49.

The Committee does not find that Respondent acted dishonestly with respect to the sale of the Ezegbunam house. Disciplinary Counsel did not establish, by clear and convincing evidence, most of the omissions it alleges. First, contrary to Disciplinary Counsel's assertion, the record reflects that Respondent *did* inform Mr. Orenstein that her client wished to sell the property, rather than take title to it as anticipated by the settlement agreement. ¶¶ 58-63, 66-67, *supra*. The evidence in the record is that Respondent so notified Mr. Orenstein, by email, on the same day that Mr. Orenstein filed the settlement agreement with the Court. ¶ 58, *supra*. There is no evidence in the record clearly establishing which event occurred first.

The Committee also finds that, while the record does not reflect that Respondent, herself, "arranged for the sale of the house," ODC Br. at 46, the record does reflect that Respondent informed Mr. Orenstein that the parties to the adversary proceeding had agreed to sell the property. ¶ 58, *supra*. The Committee has also found that there is not clear and convincing evidence that Respondent ever possessed the final contract for the sale of the house. *See* ¶¶ 65, 83, *supra*.

Finally, while there is no evidence that Respondent informed Mr. Orenstein of the actual closing date on the property (May 16, 2007), she did tell him that the closing was scheduled for April 19, 2007. Mr. Orenstein failed entirely to respond, indicating his lack of interest in the attending the closing. ¶¶ 66-68, 70, *supra*. In these circumstances, the Committee declines to find that Respondent's failure to

continue reaching out to the unresponsive Mr. Orenstein about the closing date was somehow dishonest.

The Committee has found, however, that Respondent knowingly made false statements on her District Court bar application and in signing numerous bankruptcy filings as a "bankruptcy petition preparer." *See* Conclusions of Law, Count 1, Sections C1 and C2, *supra*. In short, Respondent lied. Lying violates Rule 8.4(c). *Dore*, 73 A.3d at 168.

Respondent argues, in effect, that she lacked the requisite intent for a violation because she did not understand that her statements were false. R. Br. at 17. As explained above, however, the Committee did not find Respondent's explanations credible. *See* ¶¶ 30-32, *supra*; *see also* Conclusions of Law, Count 1, Sections C1 and C2, *supra*. The Committee has found that Respondent knew her statements were untrue when she made them. Because Disciplinary Counsel has not alleged fraud or deceit, no further findings as to Respondent's state of mind are necessary. *See,* e.g., *Dore*, 73 A.3d at 174 ("[A]n intent to deceive is only relevant if [Disciplinary] Counsel alleges fraud or deceit.") (citing *Attorney Grievance Com'n v. Reinhardt*, 892 A.2d 533, 540 (Md. 2006)). Absent such an allegation, '"specific intent is not a necessary ingredient of dishonesty or misrepresentation."' *Dore*, 73 A.3d at 174 (citation omitted).

The Committee finds that Respondent violated Rule 8.4(c) by lying on her application for admission to the District Court and on numerous filings with the Bankruptcy Court.

II. BAR DOCKET NO. 2014-D405 (PERSONAL BANKRUPTCY MATTER)

With respect to Respondent's personal bankruptcy petition, Disciplinary Counsel charges that Respondent failed fully to disclose her own financial status, including making false statements of material fact, in violation of Maryland Rules 3.3(a)(1), 8.4(b), 8.4(c), and 8.4(d).

A. The Committee Finds that Respondent Violated Maryland Rule 3.3(a)(1).

As noted above, Maryland Rule 3.3(a)(1) proscribes knowingly "mak[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." *See also Sperling*, 69 A.3d at 490. The Maryland Court of Appeals has held that an attorney's conduct during his personal bankruptcy proceeding may violate this rule. *Attorney Grievance Comm'n v. Zodrow*, 19 A.3d 381 (Md. 2011) (attorney who "knowingly failed to make pertinent disclosures (*i.e.,* his interest in real property and related transactions) and testified falsely (*i.e.,* that his law firm had received only $25,000 since 2005, when in fact it had also received a $99,000 settlement check)," violated Maryland Rules 3.3(a)(1), 3.4(c), and 8.4(c)).

The Committee has found that Respondent knowingly made a false statement on the Statement of Financial Affairs ("SOFA") she filed with her bankruptcy petition, when she failed to disclose three mortgage payments that occurred in the 90 days before she filed the petition. ¶¶ 106-10, *supra*. Respondent also knowingly failed to disclose that she was an "officer, director, partner, or managing executive"

of her Legal Forms business or that she was otherwise "a self-employed professional." ¶¶ 111-15, *supra*. Respondent also failed to disclose on Schedule B the bank at which her checking and share accounts were located, and her financial interests in the Legal Forms business and her law practice. ¶¶ 118, 122, *supra*. Respondent also falsely stated that the total value of her accounts was $25.00, when in fact, the accounts contained more than $940 on the date Respondent signed her petition. ¶ 120, *supra*.

Respondent admits that she failed to disclose the mortgage payments and her interest in Legal Forms, but contends those failures were "inadvertent[]." R. Br. at 10-11.[40] Respondent also appears to argue that she failed to disclose some of her assets because of a belief that the assets would have been exempt under Maryland law. *See* R. Br. at 11 (¶ 51), 18. However, there is no evidence in the record of Respondent's beliefs as to the purported exemption. In any case, even if certain assets were exempt, Respondent would still need to report the assets in order for the exemption to be applied appropriately. The Committee finds Respondent's claim of "inexperience," R. Br. at 18, particularly unpersuasive. Respondent had been preparing bankruptcy petitions for her clients for years, including providing legal advice with respect to the preparation of those forms. She was sufficiently

[40] Respondent also asserts that she did disclose the mortgage payments on her Schedule J. R. Br. at ¶ 48. Respondent's reliance on that schedule is misplaced, however, as it appears to contain a further inaccuracy. BX A12 at 32 (Schedule J, representing that the home mortgage obligation is $800, rather than $1,281.51).

experienced to know that all of her assets, whether owned singly or jointly with her husband, had to be disclosed on her petition.

Respondent also argues, in effect, that her failures to disclose were not material, at least in part because of exemptions available under Maryland state law. *See* R. Br. at 11. However, Rule 3.3(a)(1) does not include a materiality requirement with respect to affirmative false statements like the ones Respondent made here.

Because Respondent knowingly made false statements on her bankruptcy petition, she violated Rule 3.3(a)(1).

B. The Committee Finds No Violation of Maryland Rule 8.4(b).

Under Maryland Rule 8.4(b), "[i]t is professional misconduct for a lawyer to . . . commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects." Disciplinary Counsel charged Respondent with violating Maryland Rule 8.4(b) by committing allegedly criminal acts under 18 U.S.C. § 1001 (false statements); 18 U.S.C. § 1746 (unsworn declarations under penalty of perjury); and/or 18 U.S.C. §§ 152(1), (3), and/or (7).[41]

As noted above, 18 U.S.C. § 1001(b) expressly excludes from the statute's reach any "statements, representations, writings or documents submitted by [a]

[41] Disciplinary Counsel also argues in its brief, ODC Br. 50, that Respondent violated 18 U.S.C. § 152(2), which was not charged in the Specification of Charges. We decline to make any findings with respect to criminal statutes not enumerated in the applicable Specification of Charges.

We also decline to address the citation to "18 U.S.C. § 1746." There is no such criminal statute. 28 U.S.C. § 1746 is entitled, "Unsworn declarations under penalty of perjury," but it is not a criminal statute.

party" in a judicial proceeding. Thus, Respondent's statements in her personal bankruptcy petition are not covered by that statute.

As discussed above, all subsections of 18 U.S.C. § 152 require, as an element of the crime, that the relevant conduct be done not just knowingly, but also fraudulently, with the intent to deceive. *See* 18 U.S.C. § 152(1), (3) & (7); *Gellene*, 182 F.3d at 586; *see also* Conclusions of Law, Count 1, Section H2, *supra*.

With respect to Respondent's personal bankruptcy, Disciplinary Counsel argues that Respondent violated § 152(1) when she filed the petition "without disclosing the existence of several bank accounts, accurate amounts on deposit in her accounts, or her payments to creditors." ODC Br. at 50. Respondent counters that she did disclose her bank account, and that her payment to a second creditor did not conceal property of her estate. R. Br. at 19. Respondent further argues, in effect, that her failure to disclose was not material, insofar as "Debtors in Maryland are allowed state exemptions in bankruptcy of about $11,500.00 and all jointly held property and/or tenant by the entirety are exempt." R. Br. at 11 ¶ 51. Disciplinary Counsel offered no evidence of any fraudulent intent. For that reason, the Committee finds that, while Respondent's failure to make accurate disclosures on her personal bankruptcy petition were knowing, there is not clear and convincing evidence that those omissions were fraudulent.

Accordingly, the Committee finds that Disciplinary Counsel failed to establish any violation of 18 U.S.C. § 152.

Because Disciplinary Counsel has failed to establish that Respondent committed any criminal act, the Committee finds that there is not clear and convincing evidence of any violation of Rule 8.4(b).

C. The Committee Finds that Respondent Violated Maryland Rule 8.4(c).

As explained above, intentional false statements – *i.e.*, lies – violate Rule 8.4(c). *See* Conclusions of Law, Count I, Section I, *supra*. Because the Committee has found that Respondent lied on her bankruptcy petition, the Committee also finds that Respondent violated Rule 8.4(c).

D. The Committee Finds that Respondent Violated Maryland Rule 8.4(d).

Maryland Rule 8.4(d) provides that it is "professional misconduct for an attorney to . . . engage in conduct that is prejudicial to the administration of justice." According to Maryland law, conduct prejudicial to the administration of justice is the type of "'conduct that impacts on the image or the perception of the courts or the legal profession . . . and that engenders disrespect for the courts and for the legal profession.'" *Attorney Grievance Comm'n v. Marcalus*, 996 A.2d 350, 362 (Md. 2010). The Maryland Court of Appeals has "found a broad range of conduct to be prejudicial to the administration of justice." *Attorney Grievance Comm'n v. Rand*, 981 A.2d 1234, 1242-43 (Md. 2009) (citing cases, *inter alia*, in which filing false documents with Federal immigration authorities, filing misleading petition for expungement, and failure to provide truthful information to Bar Counsel were found prejudicial to the administration of justice).

In one case, the Maryland Court of Appeals found that an attorney violated Rule 8.4(d), among others, by filing "false business reports" in a bankruptcy court, thereby making "false statements to the bankruptcy courts and the Trustee." *Byrd*, 970 A.2d at 889.[42] The *Byrd* case, along with the authorities cited in *Rand*, support a finding that Respondent violated Maryland Rule 8.4(d) by filing with the Bankruptcy Court a bankruptcy petition that contained false and misleading statements.[43]

III. BAR DOCKET NO. 2011-D047 (SIMMONDS MATTER)

A. The Committee Finds that Respondent Violated D.C. Rules 1.4(a) and (b).[44]

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

[42] Disciplinary Counsel's brief discusses only D.C. law. ODC Br. at 51-52. However, because Respondent's misconduct occurred before the U.S. Bankruptcy Court in Maryland, the Maryland Rules of Professional Conduct apply (*see* D.C. Rule 8.5(b)(1)). Moreover, Disciplinary Counsel charged Respondent with violations of the *Maryland* Rules of Professional Conduct, not the D.C. Rules. Accordingly, the Committee finds case law discussing the Maryland rule to be most applicable.

[43] Disciplinary Counsel seeks to broaden the reach of this charge to encompass the bankruptcy matters charged in Docket No. 2007-D466, but only the Specification of Charges for Docket No. 2014-D405 charges a Rule 8.4(d) violation. The Committee, therefore, does not consider whether Respondent's conduct with respect to the *Ezegbunam* Bankruptcy violated Rule 8.4(d).

[44] Unlike Respondent's conduct in U.S. Bankruptcy Court in Maryland where the Maryland Rules of Professional Conduct apply (*see* D.C. Rule 8.5(b)(1)), Respondent's representation of Ms. Simmonds did not involve a matter pending before a tribunal, and therefore the D.C. Rules of Professional Conduct apply. D.C. Rule 8.5(b)(2)(i) provides that "[i]f the lawyer is licensed to practice only in this jurisdiction, the rules to be applied shall be the rules of this jurisdiction."

Bernstein, 707 A.2d 371, 376 (D.C. 1998). The purpose of this Rule is to enable clients to "participate intelligently in decisions concerning the objectives of the representation and the means by which they are to be pursued." Rule 1.4, Cmt. [1]. "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) (alteration in original) (citation and quotation marks omitted) (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, and the Board agreed, that the respondent's level of communication was not unreasonable, given the nature of the case and the client's behavior).

Similarly, Rule 1.4(b) states than an attorney "shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation." This Rule provides that the attorney "must be particularly careful to ensure that decisions of the client are made only after the client has been informed of all relevant considerations." Rule 1.4, Cmt. [2]. The Rule requires 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 Hearing Committee finds that Respondent failed in her duty to communicate with Ms. Simmonds about her personal injury case. First, Respondent withheld from Ms. Simmonds the material fact that Respondent was not licensed to

practice law in Maryland and that, for this reason, she could not take the personal injury case to trial if it did not settle. ¶¶ 131-35, 138-40, 151, *supra*. Respondent's omission deprived Ms. Simmonds of the opportunity to make an informed decision regarding the pros and cons of being represented in settlement negotiations by an attorney unlicensed in the jurisdiction where the case would be filed if those negotiations failed.

Ms. Simmonds also testified that she frequently had a difficult time contacting Respondent. ¶ 153, *supra*; *see also* ¶ 156, *supra*,. Respondent outright refused to reveal to Ms. Simmons the amount of the settlement demand Respondent intended to make on Ms. Simmonds' behalf, even when directly and repeatedly asked. ¶¶ 143-45, 150, *supra*. Indeed, Respondent did not disclose the amount of the demand until months after the settlement negotiations began. ¶¶ 144, 152 *supra*. Nor did Respondent timely convey to Ms. Simmonds the various settlement offers she received from GEICO. ¶ 145, 147-49, 154, *supra*.

Respondent argues that "[t]he trail of emails and telephone conversation[s] [in]consistent with Ms. Simmonds testimony negates this violation." R. Br. at 21 (citing Tr. 775-78, 797-800, 818-23). The Hearing Committee disagrees. The evidence of Respondent's communications with Ms. Simmons reflects a client seeking to be reasonably informed about the status of her matters and an attorney deliberately refusing to provide that information, even information the client needs to make informed decisions about settlement. The Committee, accordingly, finds that Respondent violated Rules 1.4(a) and (b).

B. The Committee Finds that Respondent Violated D.C. Rules 1.6(a)(1), (2), and (3).

Disciplinary Counsel charges violations of D.C. Rules 1.6(a)(1), (2), and (3), which state that a lawyer shall not knowingly: (1) reveal a confidence or secret of the lawyer's client; (2) use a confidence or secret of the lawyer's client to the disadvantage of the client; (3) use a confidence or secret of the lawyer's client for the advantage of the lawyer or of a third person. "'Confidence' refers to information protected by the attorney-client privilege under applicable law, and 'secret' refers to other information gained in the professional relationship that the client has requested be held inviolate, or the disclosure of which would be embarrassing, or would be likely to be detrimental, to the client." Rule 1.6(b). "Knowledge" may be inferred from the circumstances. Rule 1.0(f).

Respondent undisputedly forwarded to a GEICO examiner, Ms. Shanks, an email string and attachment that included communications between Respondent and her client, Ms. Simmonds. *See* ¶¶ 164-67, *supra*; *see also* ODC Br. at 54-55; R. Br. at ¶ 57. The communications Respondent disclosed included information about Ms. Simmonds' injuries, monetary damages, strategy on how to negotiate a settlement of her claim, and a fee dispute between Ms. Simmonds and Respondent. ¶ 167, *supra*. The information Respondent disclosed thus included client confidences and secrets within the meaning of the rule.

Moreover, the Hearing Committee found, based on all of the circumstances, that there was clear and convincing evidence that Respondent knowingly forwarded the email and the information within it. *See* ¶ 169, *supra.* Because Respondent

knowingly revealed her client's confidences and secrets, Respondent violated D.C. Rule 1.6(a)(1).

The Hearing Committee also found that Respondent used the information in the forwarded email string to support the lien she had placed on any settlement between Ms. Simmonds and GEICO. ¶¶ 165-67, *supra*. Because Respondent thereby used Ms. Simmonds' confidences and secrets to Ms. Simmonds' detriment and to Respondent's own advantage, Respondent also violated D.C. Rule 1.6(a)(2) and (a)(3).

Respondent argues that Ms. Shanks testified that the correspondence that she received from Respondent did not have any effect on the value of the claim or the ultimate settlement amount, which was fair and reasonable. R. Br. at ¶ 57 (citing Tr. 1002). The Hearing Committee did not make any findings with respect to the reasonableness of the ultimate settlement amount or whether Respondent's improper disclosures of her client's information impacted the settlement amount. Those facts are not dispositive of whether Respondent used Ms. Simmonds' confidences and secrets in violation of the Rule. It is undisputed that Respondent placed a lien on Ms. Simmonds' settlement and refused to remove it for months, and the Hearing Committee found that Respondent used Ms. Simmonds' confidences and secrets in an effort to supply a basis for her lien. That use of Ms. Simmonds' information violated Rule 1.6.

C. The Committee Finds that Respondent Violated D.C. Rule 5.5(a).

D.C. Rule 5.5(a) prohibits a lawyer from practicing law "in a jurisdiction where doing so violates the regulation of the legal profession in that jurisdiction." Thus, D.C. Rule 5.5(a) effectively incorporates the rules of the foreign jurisdiction (here, the Maryland Rules of Professional Conduct) regarding the unauthorized practice of law. Maryland Rule 5.5(b) provides in relevant part:

> (b) A lawyer who is not admitted to practice in this jurisdiction shall not:
>
> > (1) [e]stablish an office or other systematic and continuous presence in this jurisdiction for the practice of law; or
> >
> > (2) hold out to the public or otherwise represent that the lawyer is admitted to practice law in this jurisdiction.

See also Md. Code Ann., Bus. Occ. & Prof. § 10-206 ("[B]efore an individual may practice law in the State, the individual shall . . . be admitted to the Bar . . . ."). Under Maryland law, the practice of law expressly includes "giving legal advice," "representing another person before a unit of the State government or of a political subdivision," and "giving advice about a case that is or may be filed in a court." *See* Md. Code, Business Occupations and Professions, §§ 10-101(h)(1) & (2).

The Committee has found that Respondent established an office in her Laurel, Maryland home, which she used at all relevant times for her law practice, including her representation of Ms. Simmonds. ¶¶ 3, 133-34, *supra*. Respondent provided legal advice to Ms. Simmonds; represented Ms. Simmonds before the Maryland

Department of Assessments and Taxation;[45] and advised Ms. Simmonds about her personal injury matter, including whether to file a lawsuit; and negotiated with GEICO about a settlement of the personal injury matter. ¶¶ *See, e.g.*, 131, 135-154., *supra*. As such, Respondent clearly "practiced law" in Maryland even though she was not licensed to do so. *See Attorney Grievance Com'n v. Johnson*, 770 A.2d 130 (Md. 2001) (lawyer engaged in the unauthorized practice of law when he maintained a home office in Maryland, met clients, signed retainer agreements, called clients from his home office, and routinely sent correspondence from Maryland office); *Attorney Grievance Com'n v. Harris-Smith*, 737 A.2d 567 (Md. 1999) (attorney maintained a home office in Maryland for three years and failed to disclose to clients that she was not barred in Maryland); *Attorney Grievance Com'n v. Hallmon*, 681 A.2d 510 (Md. 1996) (preparing legal documents, interpreting them, giving legal advice, and applying legal principles to problems of any complexity constitute the practice of law).

Respondent also held herself out as a lawyer admitted to practice law in Maryland. Respondent's letterhead, identifying Respondent's law practice as "Law Office of Mazingo-Mayronne, PA," reflected the address of her Maryland office, and did not clarify that Respondent was not licensed to practice law in Maryland. ¶ 133, *supra*. Respondent used this letterhead for her engagement agreement with

[45] Respondent argues, without support, that registering a limited liability company does not constitute the practice of law. R. Br. at ¶53. Respondent is incorrect. *See* Md. Code, Business Occupations and Professions, §§ 10-101(h)(1) ("practice law" means, among other things, "representing another person before a unit of the State government").

Ms. Simmonds, and for communications on Ms. Simmonds' behalf, thus misrepresenting that Respondent was licensed to practice in Maryland. ¶¶ 131, 133, 136-37, *supra*. Respondent's email signature, likewise, included the Maryland address of her law office; Respondent sent emails to Ms. Simmonds and on Ms. Simmonds' behalf, again holding herself out as an attorney licensed in Maryland. ¶¶ 131, 134, 136-37, 144, *supra*. Respondent concedes that this conduct violated Maryland Rule 5.5(b)(2). R. Br. at 11.

The Committee, therefore, finds that Respondent violated D.C. Rule 5.5(a).

D. The Committee Finds that Respondent Violated D.C. Rule 7.1(a)(1).

D.C. Rule 7.1(a) provides:

> A lawyer shall not make a false or misleading communication about the lawyer or the lawyer's services. A communication is false or misleading if it: (1) Contains a material misrepresentation of fact or law, or omits a fact necessary to make the statement considered as a whole not materially misleading; or (2) Contains an assertion about the lawyer or the lawyer's services that cannot be substantiated.

For example, in *In re Winstead*, 69 A.3d 390, 398 (D.C. 2013), the Court found that an attorney violated Rule 7.1(a) when that attorney used letterhead and other business communications reflecting that she was an attorney with a law office in Maryland without indicating that she was not licensed to practice law in Maryland.

Disciplinary Counsel alleges that Respondent's failure to disclose to Ms. Simmonds that she was not admitted to the Maryland Bar violated D.C. Rule 7.1(a). ODC Br. at 56-57. According to Disciplinary Counsel, throughout her

representation of Ms. Simmonds, and in Respondent's communication with Ms. Shanks from GEICO, Respondent used letterhead and email signature lines that suggested she was licensed to practice law in Maryland, and that she was obligated to affirmatively indicate the limits on her license in her correspondence, but she failed to do so. *Id.* at 57. The Committee agrees, *see, e.g.*, ¶¶ 131-37, 139, 144, *supra*, and finds that clear and convincing evidence establishes that Respondent violated Rule 7.1(a).

E. The Committee Finds No Violation of D.C. Rule 8.4(c).

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

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

In re Shorter, 570 A.2d 760, 767-68 (D.C. 1990) (per curiam) (internal quotation marks and citation omitted); *see also In re Scanio*, 919 A.2d 1137, 1142-43 (D.C. 2007). Dishonesty in violation of Rule 8.4(c) does not require proof of deceptive or fraudulent intent. *In re Romansky*, 825 A.2d 311, 315 (D.C. 2003). Thus, when the dishonest conduct is "obviously wrongful and intentionally done, the performing of the act itself is sufficient to show the requisite intent for a violation." *Id.* Conversely, "when the act itself is not of a kind that is clearly wrongful, or not intentional, [Disciplinary] Counsel has the additional burden of showing the requisite dishonest

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

Disciplinary Counsel argues that Respondent "dishonestly ignored the clear language of her fee agreement" with Ms. Simmonds in an attempt to collect a greater fee. ODC Br. at 57. Respondent drafted a fee agreement that provided that if Ms. Simmonds terminated the representation, she was obligated to pay attorney's fees of "(250.00) per hour, up to a maximum of one (1) total combined (all attorneys) hours." ¶ 157, *supra.* Accordingly, when Ms. Simmonds terminated the representation, she sent Respondent a check for $280, representing $250 for attorney's fees plus $30 for costs. ¶ *Id.*, *supra.* Knowing that the payment was fully compliant with the written terms of her fee agreement, Respondent nevertheless rejected Ms. Simmonds's payment and improperly placed a lien in the amount of $8,375.00 on the most recent settlement offer from GEICO. ¶¶ 159, 165-66, *supra.*

Respondent argues that when read in context, it is clear that the language in the retainer agreement that Ms. Simmonds would only be responsible for one hour of service upon termination was an innocent error. R. Br. at ¶ 56. Disciplinary Counsel counters that the careless drafting of the fee agreement did not obviate Respondent's obligation to abide by the terms of the fee agreement. ODC Br. at 58.

There is no question that Respondent's failure to honor her fee agreement was improper and that her sharp practices in placing a lien on Ms. Simmonds' settlement

and forcing Ms. Simmonds to retain counsel to remove the lien were unwarranted. They were not, however, dishonest. Respondent openly refused to honor the fee agreement and belatedly sought to re-negotiate it, then placed her improper lien in an attempt to force payment. But she did not lie. The Committee finds quite credible Respondent's assertion that her letter's reference to "one (1) hour" was a mistake – Respondent was not lying about that. She was certainly not entitled to escape the consequences of her own sloppy drafting, but while Respondent's conduct may violate other rules, Disciplinary Counsel chose not to charge those violations. The evidence before the Committee does not support a finding that this conduct violated Rule 8.4(c).

RECOMMENDATION AS TO SANCTION

The Committee has found that Respondent violated the following rules:

- With respect to Bar Docket No. 2007-D466 (the *Ezegbunam* Bankruptcy Matter): Maryland Rules 3.3(a)(1), 3.4(c), 5.5(a) and (b)(1), and 8.4(c).
- With respect to Bar Docket No. 2014-D405 (Personal Bankruptcy Matter): Maryland Rules 3.3(a)(1), 8.4(c), and 8.4(d).
- With respect to Bar Docket No. 2011-D047 (Simmonds Matter): D.C. Rules 1.4(a) and (b), 1.6(a)(1), (2), and (3), 5.5(a), and 7.1(a)(1).

In this case, Disciplinary Counsel has asked the Hearing Committee to recommend the sanction of disbarment. Respondent has requested that the Hearing Committee recommend the sanction of a period of suspension no greater than 90 days, and that the suspension be stayed for a period of supervised probation. For the

reasons described below, we recommend that Respondent be suspended from the practice of law for six months.

I. STANDARD OF REVIEW

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

The sanction also must not "foster a tendency toward inconsistent dispositions for comparable conduct or . . . otherwise be unwarranted." D.C. Bar R. XI, § 9(h)(1); *see, e.g.*, *Hutchinson*, 534 A.2d at 923-24; *Martin*, 67 A.3d at 1053 (citing *In re Elgin*, 918 A.2d 362, 376 (D.C. 2007)); *In re Berryman*, 764 A.2d 760, 766 (D.C. 2000). In determining the appropriate sanction, the Court of Appeals considers a number of factors, including: (1) the seriousness of the conduct at issue; (2) the prejudice, if any, to the client which resulted from the conduct; (3) whether the conduct involved dishonesty; (4) the presence or absence of violations of other provisions of the disciplinary rules; (5) whether the attorney has a previous disciplinary history; (6) whether the attorney has acknowledged his wrongful

conduct; and (7) circumstances in mitigation or aggravation. *See, e.g.*, *Martin*, 67 A.3d at 1053 (citing *Elgin*, 918 A.2d at 376); *Hutchinson*, 534 A.2d at 924. The Court also considers "'the moral fitness of the attorney' and 'the need to protect the public, the courts, and the legal profession . . . .'" *In re Rodriguez-Quesada*, 122 A.3d 913, 921 (D.C. 2015) (per curiam) (quoting *In re Howes*, 52 A.3d 1, 15 (D.C. 2012)).

II. APPLICATION OF THE SANCTION FACTORS

In short, the Committee found that Respondent violated one or more Rules by the following conduct:

- Misrepresenting herself as a "Non-Attorney Bankruptcy Petition Preparer" in bankruptcy court filings (Docket No. 2007-D466, Violations of Maryland Rules 3.3(a)(1) and 8.4(c));
- Failing to disclose her criminal history on her application to practice before the District Court in Maryland (Docket No. 2007-D466, Violations of Maryland Rules 3.3(a)(1) and 8.4(c));
- Violating the Consent Order by continuing to represent Mr. Ezukanma in the adversary proceeding pending in the Bankruptcy Court (Docket No. 2007-D466, Maryland Rule 3.4(c));
- Misstating and omitting information on her personal bankruptcy petition, filed with the Bankruptcy Court (Docket No. 2014-D405, Violations of Maryland Rules 3.3(a)(1), 8.4(c), and 8.4(d));
- Failing to keep her client, Ms. Simmonds, informed of the status of her matter (Docket No. 2011-D047, Violation of D.C. Rules 1.4(a) and (b));
- Disclosing and using her client's confidences and secrets (Docket No. 2011-D047, Violation of D.C. Rules 1.6(a)(1), (2) and (3)); and
- Engaging in the unauthorized practice of law (Docket No. 2007-D466, Violations of Maryland Rules 5.5(a) & (b)(1); Docket No. 2011-D047, Violations of D.C. Rules 5.5(a) & 7.1(a)(1)).

1. The seriousness of the conduct at issue

While Respondent's various misrepresentations in court filings and on her application to practice before the District Court are somewhat serious by their very nature, in this case they were inconsequential. Disciplinary Counsel did not even argue that Respondent's claim to be a "Non-Attorney Bankruptcy Petition Preparer" influenced any decision by the Bankruptcy Court in any way, nor was there any evidence that any client was harmed by the misrepresentation. Apart from the naked fact that the representation was untrue, the record is devoid of any evidence that the misstatements had any impact at all. Likewise, there was no evidence that Respondent's application to practice would have been denied if she had been truthful about her criminal history; to the contrary, the evidence suggested that the true facts would not have precluded Respondent's admission. And while Respondent did fail to disclose certain assets on her bankruptcy petition, there is no evidence that properly disclosing those amounts would have changed the outcome of her case in any way. Because each of these instances involved dishonesty, the Committee finds that there is a degree of seriousness to the violations. Dishonesty, however, is accounted for under a separate factor, and in light of the lack of evidence that this misconduct actually harmed anyone or had any consequences at all, the Committee does not find that the seriousness of these violations weighs strongly in favor of a severe sanction.

The Committee finds that Respondent's ongoing representation of Mr. Ezukanma, notwithstanding the Consent Order barring Respondent from doing just

that, is a more serious violation. As an officer of the Court, Respondent should have scrupulously obeyed the Order and withdrawn from any matters pending before the Court. That Respondent was engaged in activities that did not involve filing pleadings or appearing in Court was not important; the matter was an adversary proceeding pending in Bankruptcy Court, and was therefore covered by the Order.

The most serious violations the Committee has found result from Respondent's conduct with respect to the Simmonds matter. There, Respondent intentionally kept from her client relevant information relating to the settlement negotiations, which Ms. Simmonds needed to know in order to make informed decisions about settlement. Respondent also deliberately disclosed her client's confidences and secrets in an effort to benefit herself and support her lien on the client's settlement. The evidence, moreover, shows that Respondent's misconduct impeded the settlement of Ms. Simmonds' case – both because Respondent, without Ms. Simmonds' approval, made settlement demands in amounts lower than Ms. Simmonds hoped to obtain in settlement, *see* ¶¶ 142-150, 160, *supra*, and because Respondent disclosed to GEICO Ms. Simmonds' confidential financial information and legal strategies. *See*, *e.g.*, ¶ 167, *supra* (citing Ms. Simmonds' testimony that, by the time she obtained new counsel, "the case had really been compromised and GEICO had information they should [not] have been privileged to and they were really unwilling to negotiate any further."). Respondent's betrayal of her client's trust was thus serious misconduct.

In sum, this factor weighs in favor of a more severe sanction than would otherwise be warranted.

2. The prejudice, if any, to the client which resulted from the conduct

There is no evidence that Respondent's conduct in any of the matters prejudiced any of Respondents' clients. This factor weighs in favor of a less severe sanction.

3. Whether the conduct involved dishonesty.

Some of Respondent's conduct involved dishonesty. Members of the Bar have a "duty . . . to be scrupulously honest at all times." *In re Cleaver-Bascombe*, 986 A.2d 1191, 1200 (D.C. 2010) (per curiam) (emphasis omitted) (citations omitted); *see also In re Mason*, 736 A.2d 1019, 1024 (D.C. 1999) ("[H]onesty is 'basic' to the practice of law." (citation omitted)). Yet, as explained above, the Committee has found that Respondent made knowing misrepresentations in multiple bankruptcy filings on behalf of clients; in her own personal bankruptcy petition; and in her application to practice before the District Court in Maryland. These knowing acts of dishonesty weigh in favor of a more severe sanction.

4. The presence or absence of violations of other provisions of the disciplinary rules.

Here, the Committee has found violations of a total of 16 disciplinary rules resulting from multiple disparate courses of conduct. This factor weighs in favor of a more severe sanction.

5. Whether the attorney has a previous disciplinary history

There is no evidence in the record suggesting that Respondent has a previous disciplinary history. This factor, therefore, weighs in favor of a less severe sanction.

6. Whether the attorney has acknowledged his wrongful conduct.

This factor is mixed; the Committee finds that Respondent acknowledged that her conduct was wrongful in a few respects, but in most instances failed to acknowledge the wrongfulness of her conduct. *See generally* R. Br. at 11-21. The Committee finds, therefore, that this factor weighs slightly in favor of a more severe sanction.

7. Circumstances in mitigation or aggravation

There are no additional circumstances in mitigation or aggravation.

Discussion

Weighing the factors above, the Committee concludes that the appropriate sanction for Respondent's misconduct is suspension from the practice of law for six months.

In the Committee's view, none of Respondent's violations, whether standing alone or in combination, would warrant disbarment. However, some of Respondent's conduct is serious and warrants a substantial sanction.

For example, Respondent's dishonesty and interference with the administration of justice "warrant imposition of a more severe sanction." *Martin*, 67 A.3d at 1053. The Court of Appeals has "generally imposed relatively short periods of suspension for isolated instances of dishonesty," but "relatively longer

suspensions where dishonesty is accompanied by other serious violations or is protracted." *Id*. at 1053-54 (citing cases). *Compare In re Hawn*, 917 A.2d 693, 693 (D.C. 2007) (per curiam) (thirty-day suspension for falsifying transcript); *In re Owens*, 806 A.2d 1230, 1231 (D.C. 2002) (per curiam) (thirty-day suspension for making false statements to administrative law judge); *In re Schneider*, 553 A.2d 206, 212 (D.C. 1989) (thirty-day suspension for falsifying receipts), *with In re Wright*, 885 A.2d 315, 316-17 (D.C. 2005) (per curiam) (one-year suspension for pattern of dishonesty in several matters); *In re Ukwu*, 926 A.2d 1106, 1120 (D.C. 2007) (two-year suspension for neglecting client's matters, dishonesty to client, and false statements to Bar Counsel). Here, Respondent's false statements were isolated from each other, made in separate matters and without any evidence of an overall plan or pattern of deceit. On the other hand, one misstatement – Respondent's misrepresentation of herself as a non-attorney – was repeated in multiple cases over a period of time. The Committee thus finds that the dishonesty violations, if they were standing alone, would warrant a suspension of more than thirty days, but not more than one year.

Respondent's misconduct in the Simmonds matter – failing to keep her client reasonably informed about the status of her case; disclosing client confidences and secrets; and engaging in unauthorized practice of law – would also warrant a suspension, even standing alone. In cases involving roughly similar violations, the Court has imposed sanctions ranging from public censure to suspension of as much as six months (in cases involving multiple violations). *See, e.g.*, *In re Ponds*, 876

A.2d 636, 636 (D.C. 2005) (per curiam) (public censure where attorney violated Maryland Rule 1.6 by "improperly disclosing confidential information in a motion to withdraw as defense counsel for a client"); *In re Koeck*, 178 A.3d 463 (D.C. 2018) (per curiam) (sixty-day suspension, with fitness requirement, where attorney improperly disclosed former employer's confidences and secrets to a newspaper reporter and disclosed separate confidences to various governmental agencies); *In re Wright*, 702 A.2d 1251 (D.C. 1997) (per curiam) (appended Board Report) (thirty-day suspension with fitness requirement for failure to communicate with client, conduct which seriously interferes with justice, and several other violations, and where the respondent failed to appear for his hearing and did not present any argument before the Court); *In re Bernstein*, 707 A.2d at 372 (thirty-day suspension for failure to keep client reasonably informed, failure to represent client zealously, and failure to act with reasonable promptness in representing client); *In re Soininen*, 853 A.2d 712, 722, 725, 732 n.28 (D.C. 2004) (six-month suspension for serious violations including, *inter alia*, violation of Rule 5.5, with prior disciplinary history in aggravation); *In re Adams*, 191 A.3d 1114, 1117-20, 1122-24 (D.C. 2018) (per curiam) (six-month suspension with all but ninety days stayed in favor of probation for multiple violations, including Rule 5.5 violation, with practice monitor in lieu of fitness requirement); *In re Gonzalez-Perez,* 917 A.2d 689, 691 (D.C. 2007) (ninety-day suspension for making false statements to a tribunal, unauthorized practice of law, dishonesty and serious interference with the administration of justice).

Because this case involves multiple violations, it is appropriate for the sanction to be more severe than it would be for any single violation standing alone. Accordingly, weighing all of the factors above, the Committee recommends that Respondent be suspended from the practice of law for six months.

III. FITNESS REQUIREMENT

Because the Committee has recommended suspension, we analyze whether Respondent should be required to prove fitness prior to her reinstatement.

The Court established the standard for the imposition of a fitness requirement in *Cater*, 887 A.2d 1. The Court held that "to justify requiring a suspended attorney to prove fitness as a condition of reinstatement, the record in the disciplinary proceeding must contain clear and convincing evidence that casts a serious doubt upon the attorney's continuing fitness to practice law." *Id.* at 6. Proof of a "serious doubt" under *Cater* "must involve 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) (alteration in original) (citation and quotation marks omitted). 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, while the fixed period of suspension is intended to serve as the commensurate response to the attorney's past ethical misconduct,

> [i]n 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; *see also Guberman*, 978 A.2d at 211 (explaining that the Court historically has imposed a fitness requirement when an attorney shows a lack of remorse; failed to cooperate or engaged in questionable conduct during the disciplinary process; engaged in repeated neglect of client matters; engaged in repeated misconduct of the type for which the attorney was previously disciplined; or failed to resolve misconduct attributed to her personal problems and pressures.).

The record before the Committee does not establish that a fitness requirement would be appropriate. While the nature and circumstances of the misconduct are somewhat serious, the Committee finds that Respondent's violations resulted more from carelessness and inexperience than from immutable defects in her character. Because there is not sufficient evidence in the record "to give reason to think that [the] misconduct will be repeated," *In re Adams*, 191 A.3d at 1120, the Committee does not recommend a fitness requirement be imposed.

CONCLUSION

For the foregoing reasons, the Committee finds that Respondent violated Maryland Rules 3.3(a)(1), 3.4(c), 5.5(a), 5.5(b)(1), 8.4(c), and 8.4(d), and D.C. Rules 1.4(a), 1.4(b), 1.6(a)(1), 1.6(a)(2), and 1.6(a)(3), 5.5(a), and 7.1(a)(1), and should be suspended from the practice of law for a period of six months. We further recommend that Respondent's attention be directed to the requirements of D.C. Bar

R. XI, § 14, and their effect on eligibility for reinstatement. *See* D.C. Bar R. XI, § 16(c).

AD HOC HEARING COMMITTEE

Caroline E. Reynolds, Esquire, Chair

Curtis D. Copeland Jr, Public Member

Joshua D. Rogaczewski, Esquire, Attorney Member