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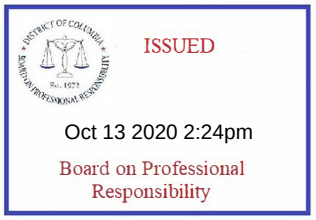

DISTRICT OF COLUMBIA COURT OF APPEALS
BOARD ON PROFESSIONAL RESPONSIBILITY

In the Matter of:	:	
	:	
ANITHA W. JOHNSON,	:	Board Docket No. 18-BD-058
	:	Disc. Docket Nos. 2010-D511,
Respondent.	:	2011-D455, 2012-D091,
	:	2013-D305, & 2016-D382
A Member of the Bar of the	:	
District of Columbia Court of Appeals	:	
(Bar Registration No. 495672)	:	

REPORT AND RECOMMENDATION OF THE
BOARD ON PROFESSIONAL RESPONSIBILITY

Respondent Anitha W. Johnson is charged in a five-count Specification of Charges with violating District of Columbia Rules of Professional Conduct ("Rules") 1.1(a) and (b) (Competence, Skill, and Care), 1.2(a) (Abiding by Client Wishes), 1.3(a) (Diligence and Zeal), 1.3(b)(1)-(2) (Intentional Failure to Seek Client Objectives and Intentional Prejudice); 1.3(c) (Reasonable Promptness), 1.4(a) and (b) (Failure to Inform and Explain), 1.4(c) (Failure to Communicate Settlement Offer), 1.5(a)-(c) (Fees), 1.6(a)(1) (Confidentiality of Information), 1.15(a) (Reckless or Intentional Misappropriation, Record-keeping, Commingling), 1.15(c) (Failing to Promptly Notify, Deliver, or Account for Funds), 1.15(e) (Safekeeping Unearned Fees); 1.16(d) (Terminating Representation), 3.4(c) (Knowing Disobedience of Tribunal Rule or Obligation), 8.4(b) (Criminal Act), 8.4(c) (Dishonesty), and 8.4(d) (Serious Interference with the Administration of Justice). The alleged misconduct occurred in connection with her representation of separate

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

clients in five separate matters (Counts 1 through 4[1]), over the course of seven years, and in connection with Disciplinary Counsel's investigation of a non-client matter (Count 5).[2]

The Ad Hoc Hearing Committee found clear and convincing evidence that Respondent committed violations of Rules 1.1(a) and (b), 1.2(a), 1.3(a), 1.3(b)(1) and (2), 1.3(c), 1.4(a) and (b), 1.4(c), 1.5(a)-(c), 1.6(a)(1), 1.15(a) (negligent misappropriation, record-keeping, and commingling), 1.15(c), 1.16(d), 3.4(c), 8.4(c), and 8.4(d). The Hearing Committee found that several of the specific Rule violations occurred more than once, as they were repeated among multiple counts.[3] The Committee additionally found that Respondent intentionally testified falsely

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[1] Count 4 (Katina Wilson) involved the representation of a single client in two matters, a custody case and a personal injury matter.

[2] When the disciplinary investigation began, the disciplinary authority was titled "Office of Bar Counsel." On December 19, 2015, the title of that office changed to the "Office of Disciplinary Counsel," and, for consistency in this Report, we use the current term even though the earlier pleadings and filings may have referred to "Bar Counsel."

[3] In Count 1 (Roger D. Rudder, Jr., Rosena Rudder, Noverlene Giselle Goss, and their daughters), the Committee found violations of Rules 1.1(a) and (b), 1.3(a), 1.3(b)(1) and (2), 1.3(c), 1.4(a) and (b), and 8.4(c).

In Count 2 (Donnell Lewis), the Committee found violations of Rules 1.1(a) and (b), 1.6(a)(1), 3.4(c), and 8.4(d).

In Count 3 (Glenn Strawder), the Committee found violations of Rules 1.1(a) and (b), 1.3(a), 1.3(b)(1) and (2), 1.3(c), 1.4(a) and (b), 1.15(a) (record-keeping), and 8.4(c).

In Count 4 (Katina Wilson), the Committee found violations of Rules 1.2(a), 1.3(b)(1) and (2), 1.3(c), 1.4(a) and (b), 1.4(c), 1.5(a)-(c), 1.15(a) (negligent misappropriation, commingling, and record-keeping); 1.15(c), 1.16(d), 8.4(c), and 8.4(d).

In Count 5 (Jean Harris), the Committee found a violation of Rule 8.4(d).

during the hearing. The Committee recommended the sanction of disbarment for Respondent's flagrant dishonesty.

Disciplinary Counsel takes no exception to the Hearing Committee's Report and Recommendation. Respondent takes exception to the denial of her motion to exclude expert testimony, most of the Committee's factual findings, and most of the Committee's legal conclusions. Only as to Count 4, Respondent concedes a violation of Rule 1.5(c) for not putting a contingency fee agreement in writing, a violation of Rule 1.15(a) for the commingling of personal and client funds, and a violation of Rule 1.15(c) for not making prompt payment to a medical provider.[4] Respondent denies all the other violations found by the Committee, and denies that she testified falsely. Respondent recommends a sanction no greater than a six-month suspension for the conceded violations.

Having considered the record, the parties' briefs, and the oral argument before the Board, we determine that the Hearing Committee's factual findings are supported by substantial evidence in the record, and we therefore concur with those factual findings. We find that the Hearing Committee did not abuse its discretion in admitting the testimony of three experts who testified in their respective areas of expertise concerning the standard of care (respectively, police misconduct cases, personal injury law, and domestic relations cases). We also agree that Disciplinary

[4] In admitting the Rule 1.15(c) violation in Count 4, Respondent concedes any possible notice issues related to the Specification of Charges not referencing the lack of prompt payment to the medical provider. *See* Specification, ¶ 118(K) (Rule 1.15(c) charge identifying a failure to promptly notify or deliver settlement funds to her client).

Counsel met its burden of proving that Respondent negligently (but not recklessly or intentionally) misappropriated entrusted funds in Count 4 and committed the other Rule violations found by the Committee, with the exception of the Rule 3.4(c) and 8.4(d) charges in Count 2, the Rule 1.5(b) charge in Count 4, and the Rule 8.4(d) charge in Count 5, which were not proven by clear and convincing evidence.

As described below, we have determined also that the evidence is clear and convincing that Respondent testified falsely in several respects during the 2019 hearing. In addition, Respondent's flagrant dishonesty and indifference toward her clients covered an extensive seven-year period from 2007 to 2014. As stated by the unanimous Hearing Committee, Respondent "always defaulted to the dishonest course of action," and the repeated misconduct shows that she "lacks the fundamental character necessary to practice law in compliance with the Rules." Hearing Committee Report and Recommendation ("HCR") at 137-38; *see also* HCR at 140-41. We add that Respondent's misconduct – for one example, her abandonment of client Katina Wilson just days before a custody trial so she could pursue an overseas teaching opportunity – often demonstrated an incomprehensible indifference to the needs of her clients and to her obligations as their attorney. In connection with her representation of the Rudder and Goss families (charged in Count 1 of the Specification of Charges), the Hearing Committee characterized Respondent's conduct as a "breathtaking indifference to her clients' interests" (HCR at 95); this phrase aptly describes Respondent's conduct throughout the

representations giving rise to this disciplinary matter. For all these reasons, we are compelled to agree that the sanction in this case should be disbarment.

I. Respondent's Arguments Regarding Expert Testimony, Factual Findings, and Credibility Findings

A. Expert Testimony

In her briefing to the Board, Respondent argues through counsel that the Committee improperly admitted the testimony of Disciplinary Counsel's three expert witnesses. Prior to the contested hearing, Disciplinary Counsel timely identified three witnesses as experts: Mr. Claiborne (police misconduct cases), Mr. Grenier (personal injury law), and Ms. Ravdin (domestic relations cases). Respondent filed objections to all three expert witnesses on the basis that Disciplinary Counsel's Witness List did not provide information on the witnesses' area of expertise, the subject matter of the expert testimony, or the substance of the experts' opinions. Under the Board Rules, however, pre-hearing discovery of expert reports or expert opinion testimony is not required.

Here, the transcript of the proceedings shows that Respondent was permitted to cross-examine each proposed expert concerning his or her qualifications and expertise. We do not find any error, either in the Committee's decision to qualify Disciplinary Counsel's witnesses as experts or in its consideration of the expert testimony on the standard of care according to the experts' areas of expertise. *See, e.g.*, *In re Outlaw*, 917 A.2d 684, 686 (D.C. 2007) (per curiam) (expert testimony admitted in the field of personal injury practice); *In re Fair*, 780 A.2d 1106, 1111-12 (D.C. 2001) (expert testimony concerning probate law properly admitted).

B. Factual Findings and Credibility Findings

We next address Respondent's claim before the Board that the Committee's factual findings are not supported by substantial evidence.

"In disciplinary cases, the Board must accept the Hearing Committee's evidentiary findings, including credibility findings, if they are supported by substantial evidence in the record." *In re Ukwu*, 926 A.2d 1106, 1115 (D.C. 2007) (quoting *In re Cleaver-Bascombe*, 892 A.2d 396, 401 (D.C. 2006)). The Board is to "accord considerable deference to credibility findings by a trier of fact who has had the opportunity to observe the witnesses and assess their demeanor" unless unsupported by substantial evidence. *In re Bradley*, 70 A.3d 1189, 1193-94 (D.C. 2013) (per curiam).

Substantial evidence is "'more than a mere scintilla. It means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion."' *Giles v. D.C. Dep't of Employment Servs*., 758 A.2d 522, 524 (D.C. 2000) (citation omitted); *In re Evans*, 578 A.2d 1141, 1149 (D.C. 1990) (per curiam) (appended Board Report). In contrast to clear and convincing evidence, substantial evidence may be equivocal. *See, e.g.*, *In re Godette*, 919 A.2d 1157, 1163-64 (D.C. 2007); *In re Cater*, 887 A.2d 1, 24 (D.C. 2005).

Here, the Hearing Committee repeatedly found Respondent's former clients' testimony to be credible. *See, e.g*., FF[5] 34-36 (clients' testimony "found to be credible"), 103 (client "more credible"), 127 (based on observations during the

[5] The Hearing Committee's 171 Findings of Fact are referenced individually as "FF __."

hearing, finding client "to be an incredibly articulate, organized and capable person"). The Committee similarly found the expert witnesses' testimony to be credible on the issue of the standard of care. On the other hand, the Committee did not find Respondent's testimony and explanations to be credible and, at times, found her testimony to be knowingly false. *See* FF 36, 69, 83, 162; *see also* HCR at 133. Upon our review, we conclude that the Committee's credibility findings are amply supported by the record and the Committee's own personal observations. *See, e.g.*, FF 36 (noting that Respondent's testimony conflicted with documents in the record, while her client's testimony was consistent with the email records), FF 67 (observations of former client Mr. Lewis' demeanor during his testimony).

The Board also concludes that substantial evidence supports the Committee's factual findings. Almost all of Respondent's objections to the factual findings result from Respondent's disagreement with the Committee's crediting her clients' or Disciplinary Counsel's experts' testimony, at times over that of Respondent. *See* Resp. Br. at 3-47 (objecting to FF 3, 4, 6, 9-11, 14-15, 17-19, 22, 28-29, 31-32, 36-37, 45, 52-53, 70, 76, 80, 83, 94-98, 103, 105, 111, 113-115, 119, 124, 140-141, 143-147, and 162).[6] Based on our independent review of the record evidence and the transcript testimony, we conclude that the factual findings are supported by

[6] We note that Respondent's objections to FF 5, 12, 20, 25-27, 34-35, 40-41, 44, 49, 51, 56-57, 60, 62-64, 67-69, 91-92, 107, 120-121, 123, 133, 136, 139, and 154-160, are an invitation for the Board to reweigh the evidence, which is not permitted. The weight to be accorded any piece of evidence is "within the ambit of the Hearing Committee's discretion." *In re Speights*, 173 A.3d 96, 102 (D.C. 2017) (per curiam). The existence of possible contrary evidence in the record, in other words, does not mean that the Committee's factual findings are unsupported by substantial evidence. *See Godette*, 919 A.2d at 1163-64.

substantial evidence; therefore, we have no basis to disturb them. *Ukwu*, 926 A.2d at 1115.

II. Factual Summary and Overview of the Rule Violations

As noted above, the Board accepts the Hearing Committee's findings of fact in this matter and incorporates and refers to the Committee's Report for a complete presentation of those facts and findings. With the four exceptions noted, the Board also concurs with the Committee's determinations with respect to Rule violations and finds that those determinations are supported by clear and convincing evidence. In this Report, the Board summarizes key findings with respect to each Count and also summarizes the proven Rule violations.

A. Count 1: Police Misconduct Case Filed on Behalf of the Rudders, Ms. Goss, and Their Children

In late October 2008, Respondent agreed to represent three adults (Roger and Rosena Rudder ("the Rudders"), and Noverlene Goss) and two minor children (the Rudders' five-year-old daughter and Ms. Goss's 15-year-old daughter) in a civil rights action alleging excessive use of force by police, including the "striking and mishandling" of the two children. FF 3, 5. The two families had been celebrating the culture of Trinidad at a public parade when the adults and Ms. Goss's 15-year-old daughter were arrested for assaulting a police officer. FF 3. The Rudders and Ms. Goss retained Respondent to represent them, relying on Respondent's false statement that she had prior experience handling police brutality cases. FF 5, 6.

Even though her clients provided early information about potential videotapes, photos, and witnesses to support the claims of excessive use of force, Respondent did not follow up on this information or conduct any investigation until it was too late. FF 14-20. Disciplinary Counsel's expert witness on police brutality cases testified that the lack of initial investigation and discovery was a "fatal, fatal mistake" in the case. FF 22.

Before filing the Complaint alleging constitutional and common law claims for her clients, Respondent failed to consider the statute of limitations for the common law claims (one year for assault and battery for adult victims). As a result, she filed the Complaint too late for the adults' common law claims. When the Defendants (police officers and the District of Columbia) filed a motion to dismiss, Respondent erroneously assumed that the same statute of limitations applied to the two daughters and then improperly conceded that the common law claims should be dismissed as to *all* the Plaintiffs. FF 25-29. In doing so, Respondent failed to act upon the repeated acknowledgement by the Defendants – both in their Motion to Dismiss and in their subsequent Reply to Respondent's Response to the Motion to Dismiss – that the statute of limitations had not expired as to the common law claims of the juvenile Plaintiffs. FF 27-29. The Defendants had also moved to dismiss the Section 1983 and constitutional claims against the individual officers because the Complaint was conclusory and did not allege sufficient facts to establish a violation of the Plaintiffs' constitutional rights. FF 27. Respondent failed to oppose this assertion. FF 28.

The U.S. District Court subsequently dismissed the entire Complaint, including the constitutional law claims and the minors' common law claims. FF 30. Respondent deliberately delayed informing her clients of the court's order dismissing the Complaint. FF 31, 34; *see also* HCR at 99. Respondent filed a Motion to Reconsider, Request to Reopen Case, and Request to File an Amended Complaint, which was opposed by the Defendants. Respondent did not discuss the Motion to Reconsider or its opposition with her clients. FF 32. After the Motion to Reconsider was denied, Respondent filed an appeal. FF 33.

The mediation of the appeal was unsuccessful, with Respondent urging her clients to accept a $10,000 offer of settlement, which they rejected. FF 44. On November 17, 2010, Mr. Rudder sent a letter to Respondent to terminate the relationship and requested a copy of their file. FF 38. On February 28, 2011, Mr. Rudder again instructed Respondent that he was terminating the attorney-client relationship. FF 46. Respondent did not file her motion to withdraw until March 10, 2011. *Id*. Substitute counsel entered an appearance for the Rudders and Ms. Goss on April 13, 2011. *Id*. Substitute counsel obtained a settlement larger than $10,000 that was kept confidential. FF 48; *see also* Tr. 258.

The Hearing Committee found that Respondent: failed to inform her clients of the District of Columbia's original Motion to Dismiss; failed to consult with her clients before she conceded dismissal of the common law counts against all Plaintiffs, including the minor children, and dismissal of the Fifth and Fourteenth Amendment claims; failed to inform her clients, at the time it happened, of the

Court's original Order dismissing the Complaint; failed to inform her clients that she was filing the Motions to Reconsider, Request to Reopen Case, and Request to File the Amended Complaint with the Court, or the substance of such motions; and only informed her clients of the Court's rejection of Respondent's Motion to Reconsider when Respondent determined (again, without consulting her clients) to notice an appeal of the Court's decision. FF 36. The Committee concluded that Respondent's clients only learned about the court's dismissal of the Complaint through their own research. FF 34, 36. Additionally, the Committee determined "Respondent affirmatively misled her clients as to the seriousness of the impact of the dismissal of their claims" and falsely assured her clients that the dismissal was not Respondent's fault. FF 37, 40. Further, in addition to its findings as to Respondent providing false information to her clients on these issues, the Hearing Committee found that Respondent provided false information in her correspondence with Disciplinary Counsel on these issues and testified falsely on these issues at the hearing. FF 35-36.

The Hearing Committee also found that in discussions with the Rudders and Ms. Goss at the onset of the engagement, Respondent knowingly and intentionally misrepresented her experience in police misconduct matters: Respondent led the clients to believe she had previous, successful experience as an attorney in such matters; in fact, the matter for the Rudders and Ms. Goss was her first such case as

an attorney. The Committee also found that Respondent similarly misrepresented her experience in this area of law in her correspondence with Disciplinary Counsel. FF 5-6.

Respondent failed to acknowledge, let alone show remorse for, her misconduct in connection with her representation of the Rudder and Goss families. For example, as found by the Hearing Committee in her answers to the complaint filed by Mr. Rudder with Disciplinary Counsel, Respondent "repeatedly brushed aside Mr. Rudder's claims by stating, 'Mr. Rudder is not an attorney and does not realize . . .' or 'does not understand.' Respondent also argues that Mr. Rudder filed his grievance against her 'because he could not understand the legal issues in the case.'" FF 51 (internal citations omitted).

For a number of reasons, including the conduct summarized above, the Committee found, and the Board concurs, that Respondent's conduct fell below the standard of care for attorneys handling police misconduct cases. *See* FF 53.

With respect to Count 1 of the Specification of Charges, the Board concurs with the Hearing Committee in finding the following violations by Respondent were proven: Rule 1.1(a) and (b) (competence and skill); Rule 1.3(a) and (c) (lack of diligence, promptness); Rule 1.3(b)(1) and (2) (intentionally failing to seek objectives, intentional prejudice); Rule 1.4(a) and (b) (failing to inform and explain); and Rule 8.4(c) (dishonesty).[7]

[7] Rule 1.1(a) requires a lawyer to "provide competent representation to a client." The Court has determined that competent representation requires the "legal knowledge, skill, thoroughness, and preparation reasonably necessary for the representation." *See In re Drew*, 693 A.2d 1127,

1130, 1132 (D.C. 1997) (per curiam) (appended Board Report) (lawyer who has requisite skill and knowledge, but who does not apply it for particular client, violates obligations under Rule 1.1(a)).

Rule 1.1(b) mandates that "a lawyer shall serve a client with skill and care commensurate with that generally afforded to clients by other lawyers in similar matters." Rule 1.1(b) is "better tailored [than Rule 1.1(a)] to address the situation in which a lawyer capable to handle a representation walks away from it for reasons unrelated to his competence in that area of practice." *In re Lewis*, 689 A.2d 561, 564 (D.C. 1997) (per curiam) (appended Board Report).

Rule 1.3(a) states that an attorney "shall represent a client zealously and diligently within the bounds of the law." Rule 1.3(a) "does not require proof of intent, but only that the attorney has not taken action necessary to further the client's interests, whether or not legal prejudice arises from such inaction." *In re Bradley*, Board Docket No. 10-BD-073, at 17 (BPR July 31, 2012), *recommendation adopted*, 70 A.3d 1189, 1191 (D.C. 2013) (per curiam); *see also Lewis*, 689 A.2d at 564 (Rule 1.3(a) violated even where "[t]he failure to take action for a significant time to further a client's cause . . . [does] not [result in] prejudice to the client").

Rule 1.3(c) provides that an attorney "shall act with reasonable promptness in representing a client." The Court has held that failure to take action for a significant time to further a client's cause, whether or not prejudice to the client results, violates Rule 1.3(c). *See, e.g.*, *Speights*, 173 A.3d at 99-101.

Rule 1.3(b) provides that "[a] lawyer shall not intentionally: (1) [f]ail to seek the lawful objectives of a client through reasonably available means permitted by law and the disciplinary rules; or (2) [p]rejudice or damage a client during the course of the professional relationship." A negligent failure to pursue a client's interest becomes intentional when "the neglect is so pervasive that the lawyer must be aware of it" or "when a lawyer's inaction coexists with an awareness of his obligations to his client." *Ukwu*, 926 A.2d at 1116, 1135 (quotations and citations omitted). "Proof of actual intent to harm . . . is not necessary to establish a violation of Rule 1.3(b)(2); but [Disciplinary] Counsel must establish that the attorney 'knowingly created a grave risk' that the client would be financially harmed and understood that financial damage was 'substantially certain to follow from his conduct.'" *In re Wright*, Bar Docket Nos. 377-99 *et al.*, at 24-25 (BPR Apr. 14, 2004) (citation omitted), *recommendation adopted*, 885 A.2d 315 (D.C. 2005) (per curiam).

Rule 1.4(a) provides that "[a] lawyer shall keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information." Under Rule 1.4(a), an attorney must not only respond to client inquiries, but must also initiate contact to provide information when needed. *See, e.g.*, *In re Robbins*, 192 A.3d 558, 564-65 (D.C. 2018) (per curiam); *In re Bernstein*, 707 A.2d 371, 376 (D.C. 1998).

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." The Rule places the burden on the attorney to "initiate and maintain the consultative and decision-making process if the client does not do so and [to] ensure that the ongoing process is thorough and complete." Rule 1.4, cmt. [2].

B. Count 2: Divorce Case; Representation of Mr. Lewis

In July 2007, Respondent was retained by Donnell Lewis to represent him in a divorce proceeding. FF 54. After a scheduled status hearing was vacated, the court scheduled another status hearing for January 10, 2008, without regard for Respondent's availability. FF 56. After speaking to a court clerk, Respondent filed a Praecipe informing the court that she could not attend on that date, noting that it had been scheduled for January 10, 2008 even though she had informed the court clerk that she was unavailable on that date. FF 56; *see also* RX 14. The Praecipe requested that the court clerk contact her office to reschedule the status hearing date. RX 14. Although the court did not change the hearing date, Respondent neither filed a motion to continue the hearing nor arranged for another attorney to appear on her behalf. FF 56 (Respondent testifying that normally she would arrange for another attorney to appear on her behalf but "at that time I didn't have those resources"). On January 10, 2008, when the court clerk in the Lewis matter was unable to reach Respondent by telephone (because Respondent was in another courtroom), Mr. Lewis appeared at the status conference without counsel. The court asked Mr. Lewis to explain his counsel's non-appearance. Mr. Lewis, without having the benefit of counsel to consult with, responded by disclosing to the court – with his wife and her counsel present – the confidential information that he was

Rule 8.4(c) provides that "[i]t 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." *In re Shorter*, 570 A.2d 760, 767-68 (D.C. 1990) (per curiam) (internal quotation marks and citation omitted) (second alteration in original).

having difficulty paying Respondent's bills and retainer. FF 57; *see also* FF 59. On February 4, 2008, Respondent filed a motion to withdraw which provided confidential information about Respondent's financial situation in greater detail. DX 2F at 19-26.[8] Respondent did not file the motion to withdraw *in camera* or *ex parte* because she was not aware that she could do so. Mr. Lewis never gave permission to Respondent to disclose the basis of the motion to withdraw. FF 62-63, 65. The court granted the motion to withdraw on March 5, 2008, the date of the evidentiary hearing. FF 61.

The Hearing Committee found Respondent was dishonest in that Respondent defended her disclosure of confidential information regarding her client by claiming to Disciplinary Counsel and to the Committee that Mr. Lewis had already disclosed his financial condition to the court, when in fact Respondent disclosed such confidential client information in more extensive detail. FF 69. Moreover, Mr. Lewis's disclosure of information was made only when – in court on his own, without Respondent to counsel him – the court pressed Mr. Lewis on the status of his case and he attempted to explain. The lack of remorse and shifting of blame evident in this claim by Respondent is further established by her response when asked at the hearing if it was now her view that the disclosures in her Motion to Withdraw were improper: "I don't know. I guess that's for the [Hearing] Committee to decide, but I don't believe it was prejudicial and I believe it was

[8] The Hearing Committee Report has an error in identifying the date of filing of the motion to withdraw. *See* FF 60, 67. The pleading has a filed date stamp of February 4, 2008. DX 2F at 19.

agreed by the client, that he understood and that he had already disclosed it." FF 65; Tr. 1228-29.

For several reasons – including the conduct summarized herein – the Committee found that Respondent's representation of Mr. Lewis fell below the standard of care for attorneys handling family law matters. *See* FF 70.

With respect to Count 2 of the Specification of Charges, the Board concurs with the Hearing Committee in finding the following violations by Respondent were proven: Rule 1.1(a) and (b) (competence and skill) and Rule 1.6(a)(1) (knowingly revealing confidence/secret).[9] However, as to Rule 3.4(c) (knowingly disobeying rule of tribunal) and Rule 8.4(d) (serious interference with administration of justice), we do not find that Disciplinary Counsel has sustained its burden of proving those additional charges.

On the evidence presented, we cannot conclude that the evidence is clear and convincing that Respondent "knowingly" violated the rule of a tribunal by failing to appear at the status hearing given that she had filed the Praecipe notifying the court of her unavailability. *See* Rule 3.4(c) (a lawyer shall not "[k]nowingly disobey an

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[9] *See supra* n.7 (explanation of Rules 1.1(a) and (b)). Rule 1.6(a)(1) prohibits a lawyer from "knowingly[] reveal[ing] a confidence or secret of the lawyer's client." Rule 1.6(b) defines a "confidence" as "information protected by the attorney-client privilege under applicable law" and a "secret" as "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." In finding a Rule 1.6(a)(1) violation, the Court has stated that "there can be no doubt that the information about [the attorney's client] disclosed by [the attorney] was so 'gained.' If there had been no professional relationship, then the alleged facts of which [the attorney] complained – [the client's] non-payment of her fees, her lack of cooperation, and her misrepresentations – would not have existed, and [the attorney] would [not] have known them. . . ." *In re Gonzalez*, 773 A.2d 1026, 1030 (D.C. 2001).

obligation under the rules of a tribunal except for an open refusal based on an assertion that no valid obligation exists").

Respondent correctly argues that Respondent's failure to appear at the single status hearing had a *de minimis* effect on the judicial process and that Disciplinary Counsel had not established a violation of Rule 8.4(d). *See* Resp. Br. at 77-78.[10] While Disciplinary Counsel references an obstruction of the disciplinary investigation to justify the 8.4(d) violation in its brief to the Board, *see* ODC Br. at 54, the Hearing Committee made no factual finding of a failure to cooperate during the disciplinary investigation for the Lewis matter. *See* FF 54-70 (Findings of Fact related to Lewis representation). Further, in its briefing to the Hearing Committee, Disciplinary Counsel did not propose any factual finding or submit any argument that Respondent had interfered with the disciplinary investigation. *See* Disciplinary Counsel's Proposed Findings of Fact, Conclusions of Law, and Recommended Sanction, PFF 33-43 (Lewis matter). In fact, during the disciplinary investigation, Respondent conceded that her disclosures in the motion to withdraw were improper, *see* DX 2D. The recanting of that position while testifying during the hearing, *see*

[10] Rule 8.4(d) provides that it is professional misconduct for a lawyer to "[e]ngage in conduct that seriously interferes with the administration of justice." To establish a violation of Rule 8.4(d), Disciplinary Counsel must demonstrate by clear and convincing evidence that: (i) Respondent's conduct was improper, *i.e.*, that Respondent either acted or failed to act when he should have; (ii) Respondent's conduct bore directly upon the judicial process with respect to an identifiable case or tribunal; and (iii) Respondent's conduct tainted the judicial process in more than a *de minimis* way, *i.e.*, it must have potentially had an impact upon the process to a serious and adverse degree. *In re Hopkins*, 677 A.2d 55, 60-61 (D.C. 1996). Rule 8.4(d) is violated if the attorney's conduct causes the unnecessary expenditure of time and resources in a judicial proceeding. *See In re Cole*, 967 A.2d 1264, 1266 (D.C. 2009).

Tr. 1222-23, is more appropriately addressed as dishonesty before the Hearing Committee, an aggravating factor in determining sanction. *See infra* at p. 36.[11]

Accordingly, the Rule 3.4(c) and 8.4(d) charges in Count 2 have not been proven by clear and convincing evidence.

C. Count 3: Medical Malpractice Case on Behalf of Mr. Strawder

Glenn Strawder suffered a retinal tear in his left eye in 2004. FF 71. After being seen and treated by several medical personnel, including Dr. Desai, at the Washington Hospital Center's emergency room, he was discharged the same day even though at least one doctor considered him at high risk for retinal detachment. FF 77. Mr. Strawder ultimately lost all vision in his left eye. FF 77.

Sometime in April 2007, Respondent agreed to represent Mr. Strawder even though she had never handled a medical malpractice action. FF 73. Respondent testified that she intended to file the lawsuit to preserve the action before the statute of limitations period expired and then find new experienced counsel. FF 73. However, records in her case file did not show any evidence of any communications with potential co-counsel. FF 74. Modeling a "form complaint" she had obtained in a seminar, Respondent filed a medical malpractice action on behalf of Mr. Strawder on August 23, 2007. In the complaint, Respondent used an incorrect name for a corporate defendant, but opposing counsel agreed to accept service despite the

[11] It appears that the Hearing Committee found that Respondent was dishonest in the Lewis matter, *see* FF 69, but the Specification of Charges did not include an allegation of dishonesty in Count 2. Dishonesty or false testimony during a hearing, however, may be considered when recommending a sanction.

error. FF 75-76. In a Notice of Intention to Assert Claim, Respondent misdated the alleged treatment event as occurring in 2007 instead of 2004. FF 76.

Respondent missed several discovery deadlines. FF 80. Respondent filed her expert's designation out of time. FF 79. Even though the Defendants jointly offered three experts, including an economics expert, Respondent did not try to find an economics expert. FF 81.[12] On November 20, 2008, the parties participated in a mediation which was unsuccessful. FF 82. That same day, Respondent and counsel for Dr. Desai filed a Praecipe dismissing Dr. Desai from the case with prejudice, but without any settlement offer or benefit to Mr. Strawder. FF 82. According to Disciplinary Counsel's expert witness, it was a serious mistake to dismiss Dr. Desai. FF 83.

The Hearing Committee determined, and the Board concurs, that Respondent provided intentionally false testimony at the hearing when she stated that she left the decision to dismiss Dr. Desai from the malpractice case up to her client. As the Committee found: "Mr. Strawder blamed Dr. Desai for his injury and he would not have dismissed him from the case without encouragement from Respondent." FF 83. This false testimony evidences Respondent's lack of remorse regarding her conduct and her shifting of blame to her client for the consequences of her conduct.

Respondent filed a motion to withdraw on December 8, 2008; ultimately, the Court granted this motion on February 6, 2009. FF 84, 87. Successor counsel's

[12] Before his injury, Mr. Strawder had worked as a CAT scan technologist for nearly twenty years and had also worked as an inventor with sixteen patents under his name. FF 72.

requests to reopen discovery, to add additional experts, and to continue the trial were all denied. FF 89. Mr. Strawder then accepted what he considered to be a nuisance settlement for dismissal of the entire case with prejudice. FF 89.

The Committee determined, and we concur, that Respondent was dishonest when she arranged for Mr. Strawder to borrow funds from a litigation financing company called Peachtree Funding. FF 91, 98. Respondent facilitated the processing of two non-recourse loans totaling more than $17,000 (including total principal, fees, and interest). FF 91, 94. Respondent's law office valued Mr. Strawder's case at five million dollars in the loan agreement even though Respondent testified that she had "no idea" why that amount was put down on the application. FF 91. Respondent claimed someone else in the office wrote down the "five million"; however, she conceded that she or another lawyer in her office reviewed the loan application prior to its submission. FF 91. She never sought to correct the potential recovery number provided to Peachtree Funding (FF 91), testifying at the hearing that "I didn't believe it was my obligation." Tr. 1286.

Respondent encouraged Mr. Strawder to incur increasing amounts of debt, even though, as she admitted at the hearing, she "didn't know whether his case had value." FF 92 (citing Tr. 1278). Respondent claimed to Peachtree Funding that her client had been informed of, and understood, the terms of the loan, when in fact Mr. Strawder had no understanding of, and Respondent failed to explain, the high interest he would be charged for the two loans. FF 93, 98. Respondent did not provide him with an accounting of the loan funds she received directly from Peachtree Funding.

FF 94. In addition, Respondent did not retain records showing how she spent the more than $17,000 in funds that she had received from Peachtree Funding to litigate Mr. Strawder's case. FF 94.

For several reasons, including the conduct summarized herein, the Committee determined that Respondent's conduct fell below the standard of care for attorneys handling medical malpractice cases. *See* FF 97.

With respect to Count 3 of the Specification of Charges, the Board concurs with the Hearing Committee in finding the following violations by Respondent were proven: Rule 1.1(a) and (b) (competence and skill); Rule 1.3(a) and (c) (lack of diligence, promptness); Rule 1.3(b)(1) and (2) (intentionally failing to seek objectives, intentional prejudice); Rule 1.4(a) and (b) (failing to inform and explain); Rule 1.15(a) (record-keeping); Rule 8.4(c) (dishonesty).[13] With respect to Respondent's intentional prejudice to Mr. Strawder, we note more specifically that we concur with the Hearing Committee's findings and conclusions, at page 96 of the report, that:

> Respondent's actions in the dismissal of Dr. Desai were intentional within the meaning of Rule 1.3(b). *See* [*In re*] *Ekekwe-Kauffman*, 210 A.3d [775,] 788-89 [(D.C. 2019) (per curiam)]. She knew this would defeat one of Mr. Strawder's primary objectives and she should have

[13] *See supra* n.7. As to Rule 1.15(a) (record-keeping), the rule requires lawyers to keep "[c]omplete records of . . . account funds and other property" and preserve them "for a period of five years after termination of the representation." *See In re Edwards*, 990 A.2d 501, 522 (D.C. 2010) (appended Board Report). The purpose of the requirement of "complete records is so that 'the documentary record itself tells the full story of how the attorney handled client or third-party funds' and whether, for example, the attorney misappropriated or commingled a client's funds." *Id.* (citation omitted).

known that, without any settlement offer in sight, it would make the case harder to settle, not easier. FF 83, 97.

D. Count 4: Custody Case and Personal Injury Case on Behalf of Ms. Wilson

1. Custody Case

On July 23, 2012, Katina Wilson retained Respondent to represent her in a custody matter and paid her a $1,000 retainer, which was deposited into Respondent's IOLTA account ending in -9009. In signing the retainer agreement, Ms. Wilson agreed to pay Respondent an hourly rate. FF 100. Although Ms. Wilson requested regular invoices to reflect what had been paid and outstanding balances, Respondent provided invoices only during the first few months of the representation. FF 103. Respondent falsely claimed during the course of this disciplinary matter (*see* Respondent's Proposed Findings of Fact at 19, ¶ 79) that Ms. Wilson did not request regular invoices. FF 103.

Ms. Wilson's former husband had a history of domestic abuse, including a criminal assault conviction, and she sought sole custody of their daughter. FF 100. Respondent failed to propound discovery to Ms. Wilson's former husband even though he had been convicted of domestic abuse, failed to interview an identified witness to his abuse, failed to advise Ms. Wilson as to whether an expert in domestic violence should be retained, and failed to prepare any of the other fact witnesses that had been identified. FF 111.

The trial was scheduled to begin on July 18, 2013, a date that had been set four months earlier. FF 106, 112. Around July 10, Respondent informed Ms. Wilson

that she had "an opportunity" to teach a course overseas that conflicted with the trial dates. FF 112. Respondent informed opposing counsel that this opportunity was a "great career opportunity for me." FF 112. But Respondent failed to disclose fully to Ms. Wilson the potential consequences of proceeding with substitute counsel. FF 113. On July 13, Respondent left the country without having filed a motion to withdraw and without having ensured that successor counsel proposed by Respondent had entered an appearance. (As explained below, proposed successor counsel did not enter an appearance.) Respondent did not turn over the case file to Ms. Wilson or consult with her on how to proceed at trial. FF 119.[14]

During Ms. Wilson's telephone call with Respondent's proposed successor counsel, Ms. Wilson learned that she would have to pay a retainer of several thousand dollars (in addition to the over $16,000 in fees already paid to Respondent) and that trial fees could run close to an additional $20,000. Though the proposed successor counsel later offered to spread out the payments with an initial retainer of $3,000 and then $1,000 to $1,500 per month to pay off the balance, Ms. Wilson could not afford these additional costs given her annual income of $75,000. FF 114. On July 13, Ms. Wilson notified all parties and their counsel that she would be proceeding *pro se*. FF 116.

Distraught about having to proceed to trial without counsel, Ms. Wilson attempted to settle her case with her former husband. She participated without

[14] Respondent caused her motion to withdraw to be filed after the court had closed on July 16, 2013 (three days after she had left the country). FF 121.

counsel in mediation with her former husband, his attorney, and her daughter's guardian *ad litem*. Ms. Wilson ultimately chose not to settle the case on the terms offered; she was insistent that her former husband not be permitted unsupervised or overnight visits with their daughter. FF 117.

On July 18, Ms. Wilson appeared for trial without counsel. The court granted Respondent's motion to withdraw, received only the day prior, and proceeded to address pending discovery motions – the implications of which Ms. Wilson had no knowledge. FF 122. Although Ms. Wilson ultimately succeeded in retaining full custody of her daughter, as the Committee noted her success was not due to any of Respondent's efforts. *See* FF 127. Respondent never discussed with Ms. Wilson the unresolved discovery disputes and attendant sanction motions, and Respondent failed to inform her client that these issues were to be addressed at trial or to instruct her about how to address them. FF 115. As a result of Respondent's failure to respond to opposing counsel's motion to compel and for sanctions, Ms. Wilson had to pay $1,089.65 of her ex-husband's attorney's fees and costs, an amount which was credited against her ex-husband's outstanding child support to her. FF 130, 131.

Respondent did not refund to Ms. Wilson any of the more than $16,000 in attorney's fees paid to her by Ms. Wilson, notwithstanding the circumstance that Respondent's abandonment of her client just before trial meant that much of the time she had spent on the case was wasted and of no value to her client. FF 133. Further, although Respondent had promised to do so, she never provided an itemized bill to Ms. Wilson. Respondent failed to maintain complete records in this matter. FF 103.

The Hearing Committee did find that, with respect to this one matter for this one client, Respondent acknowledged before the Committee that "she had erred in dealing with the Wilson [custody] case." FF 132. But even if she may have acknowledged some error in this matter, in doing so Respondent appeared to shift to her client ultimate responsibility for the predicament into which Respondent placed that client. For example, in her testimony before the Hearing Committee, Respondent appeared to suggest that her obligations to Ms. Wilson would have been appropriately discharged if only Ms. Wilson – by that time immersed in preparing to represent herself at trial – had responded to last minute texts and calls Respondent claimed to have placed:

> And so I -- once she made up her mind, I then tried to ask her -- in which I sent her a text. I was calling her, and she wouldn't pick up. And I sent her in text. I said, well, at least let me give you some tips. Let me just tell you some basic stuff because I knew that even though [her ex-husband's counsel] may treat her badly as she's stated -- that it's pretty undisputed that she was the primary caregiver; that he doesn't have a relationship; and that there's certain tips in certain things that she can say to express to the court, and a judge, what she wanted and still succeed. I also, from the conversations, wanted to tell her how she could talk to the [guardian ad litem], but she wouldn't take my calls.

Tr. at 1148-49.

Further, as just discussed, Respondent's acknowledgement of error did not motivate her to refund any of the fees she charged Ms. Wilson in this matter. Moreover, any acknowledgement of error by Respondent in this matter is vitiated by the fact that, as found by the Hearing Committee, Respondent sought "to relieve herself of any blame" for the sanctions imposed by the court on Ms. Wilson by

claiming, "without basis," that "she 'would not have known that sanction[s] would be imposed on Ms. Wilson.'" FF 130 (citing Respondent's Proposed Findings at 22). By way of confirming her shifting of blame to her client in this matter, "Respondent did not reimburse [the sanction] amount to Ms. Wilson although she [Respondent] was responsible for its assessment." FF 131.

For numerous reasons, including the conduct described above, the Committee determined that Respondent's conduct fell below the standard of care for attorneys handling domestic relations cases. *See* FF 136.

2. Personal Injury Case

Before she left Ms. Wilson to fend for herself in the custody matter, Respondent had agreed to represent Ms. Wilson in a personal injury matter which arose when Ms. Wilson was struck by a taxicab. FF 137-38. Respondent conceded that she did not provide Ms. Wilson with a retainer agreement or any other writing setting forth her fee rate or basis in this additional matter. FF 138.

Respondent's office had advised Ms. Wilson to get treatment from the Maryland Injury Center for her injuries. FF 139. To negotiate a lower medical cost, Respondent's office told the Maryland Injury Center that she would reduce her original contingency fee of 33% by 5%. This representation to the medical provider that Respondent was taking a 5% reduction in her fee was false. Respondent took her full 33%. *See* FF 145.

For several reasons, including the conduct described above and specifically listed in the Hearing Committee Report, *see* FF 147, the Committee determined that

Respondent's conduct fell below the standard of care for attorneys handling personal injury cases. *See* FF 147.

3. Investigation of Respondent's IOLTA Accounts

Disciplinary Counsel subpoenaed Respondent's records of her entrusted funds related to Ms. Wilson's personal injury settlement and all clients with entrusted funds in the relevant IOLTA account ending in -9009, which listed over 90 clients. FF 148, 152. Disciplinary Counsel's forensic investigator, Charles Anderson, requested client files for approximately 20 of the clients listed. FF 152. At the hearing, Mr. Anderson testified that it was impossible for him to match up the transactions that appeared in Respondent's bank records with the transactions as they appeared in the client ledgers produced by Respondent. FF 153 (citing Tr. 977).

It is undisputed that Respondent produced two different versions of the ledger for the IOLTA account ending in -9009, a May 2016 version and a November 2017 version. *See* FF 155. Mr. Anderson described the second version as having '"additional transactions. It appears to have been cleaned up. It looks more professional."' FF 155 (quoting Tr. 978). Respondent also provided to Disciplinary Counsel two different versions of invoice #577, dated August 1, 2013, in the Wilson custody case (the Hearing Committee concluded, however, that there was not clear and convincing evidence to support the conclusion that the second version of this invoice was intentionally false). FF 148, 149.

The Committee concluded, and we concur, that Disciplinary Counsel did not meet its burden of proving misappropriation of Ms. Wilson's settlement funds (or

theft as alleged in the Rule 8.4(b) charge) by clear and convincing evidence. *See* HCR at 114-15. Because of Respondent's poor and incomplete record-keeping, the Committee also decided that the evidence was not clear and convincing that the -9009 account held insufficient funds for the ten clients named in the Specification of Charges. *See* Specification, ¶ 117; FF 156, 158.

However, the Committee found that Disciplinary Counsel had sustained its burden of proof in establishing a shortage of funds held for Respondent's client Dionne Hart. FF 158. Respondent deposited Hart-related checks totaling $4,905 on February 26, 2013, paid Ms. Hart $2,172.50 on March 7, 2013, and transferred her $1,500 legal fee from her trust account to her operating account on March 28, 2013, leaving a balance of $1,232.50. *See* FF 157. By June 30, 2013, the IOLTA -9009 account balance was only $445.64 when it should have held $1,232.50 of Ms. Hart's entrusted funds. FF 157. During the hearing, Respondent did not dispute that the $1,500 transfer of funds on March 28, 2013, represented her fees in the Hart matter. *See* HCR at 118 (citing Tr. 1028-29, 1110-11).

Although Ms. Hart was not identified by name in the factual allegations (Specification, ¶¶ 117, 118 (J)), the Hearing Committee noted that Respondent did not object during the hearing or in post-hearing briefing about the questioning and examination of her handling of Ms. Hart's funds, and, in any event, the Specification of Charges gave Respondent adequate notice and she had a meaningful opportunity to defend. *See* HCR at 117 n.14.

The Committee did not find that the misappropriation was reckless or intentional, as argued by Disciplinary Counsel, because the evidence fell short of clear and convincing. The Committee found, however, that negligent misappropriation was proven by clear and convincing evidence. *See* FF 158-59.

The Committee additionally found that Respondent commingled client funds with personal funds with respect to client Hart and clients Faud and Marenikeji Agrebe. HCR 110-11. Unlike with respect to the misappropriation charge, the Specification of Charges did not allege commingling of "multiple clients' entrusted funds" but only commingling of Ms. Wilson's funds. However, the Hearing Committee found that it was appropriate to find commingling of other client funds (*i.e.*, other than Ms. Wilson's) because (1) Respondent herself raised the defense of commingling in connection with the charges related to her handling of entrusted funds and (2) Respondent "did not claim surprise when testifying or in briefing about her failure to keep separate her entrusted funds from her earned fees . . . ." HCR at 110-11 (citing *In re Slattery*, 767 A.2d 203, 212 (D.C. 2001) (where respondent is on notice of the nature of the rule violation, no Fifth Amendment due process rights violated) and *In re Salgado*, Board Docket No. 16-BD-041, at 4 (BPR Oct. 23, 2018) (finding uncharged Rule 1.15(a) commingling violation based on the respondent's admissions)).

With respect to Count 4 of the Specification of Charges – which concerns Respondent's conduct in connection with her representations of Katina Wilson in the child custody case and in the personal injury case, and also concerns

Respondent's conduct in connection with her IOLTA accounts – the Board concurs with the Hearing Committee in finding the following violations by Respondent were proven: Rule 1.2(a) (settling without client's knowledge or consent); Rule 1.3(b)(1) and (2) (intentionally failing to seek objectives, intentional prejudice); Rule 1.3(c) (reasonable promptness); Rule 1.4(a) and (b) (failing to inform and explain); Rule 1.4(c) (failing to communicate offer of settlement); Rule 1.5(a) (unreasonable fee); Rule 1.5(c) (contingency fee not in writing); Rule 1.15(c) (failing to promptly notify, deliver, or render accounting of entrusted funds); Rule 1.16(d) (failing to protect client's interests upon termination); Rule 8.4(c) (dishonesty); and Rule 8.4(d) (serious interference with the administration of justice).[15]

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[15] *See supra* n.7, 10. Rule 1.2(a) obligates a lawyer to "abide by a client's decisions concerning the objectives of the representation . . . and [to] consult with the client as to the means by which they are to be pursued." It specifically requires that '"[a] lawyer shall abide by a client's decision whether to accept an offer of settlement of a matter."' *See In re Hager*, Bar Docket No. 031-98, at 21 (BPR July 31, 2001) (quoting Rule 1.2(a)), *recommendation adopted in relevant part*, 812 A.2d 904 (D.C. 2002) (per curiam). "Rule 1.2(a) . . . is designed to preserve the client's right to accept or reject a settlement offer, and it requires that a client be able to exercise his or her judgment at the time a settlement offer is communicated." D.C. Bar Ethics Op. 289 (1999); *see In re Elgin*, 918 A.2d 362, 375 (D.C. 2007) (attorney settled client's action on terms which he negotiated and did not disclose to his client); *Wright*, 885 A.2d 315 (attorney settled clients' personal injury cases without their knowledge or consent); *Hager*, 812 A.2d at 917-19 (attorney withheld material terms of a settlement offer from his clients).

Similarly, Rule 1.4(c) provides that "[a] lawyer who receives an offer of settlement in a civil case . . . shall inform the client promptly of the substance of the communication." A communication triggers obligations under Rule 1.4(c) if it is "an offer to negotiate and arrive at terms upon which a matter in dispute may be resolved, rather than continuing the dispute." *In re Thyden*, Bar Docket No. 257-92, at 16 (BPR Feb. 7, 2002), *recommendation adopted*, 877 A.2d 129 (D.C. 2005).

Rule 1.5(a) provides that "[a] lawyer's fee shall be reasonable." "The prototypical circumstance of charging an unreasonable fee is undoubtedly one in which an attorney did the work that he or she claimed to have done, but charged the client too much for doing it." *In re*

With respect to Rule 1.15(a) (negligent misappropriation, commingling, record-keeping), we concur with the Hearing Committee's conclusion, and its reasoning in support thereof, that, as to Count 4: record-keeping failures were proven; a negligent misappropriation of funds of client Dianne Hart was proven; and commingling was proven with respect to client Hart and clients Faud and Marenikeji

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Cleaver-Bascombe, 892 A.2d 396, 403 (D.C. 2006). However, "[i]t cannot be reasonable to demand payment for work that an attorney has not in fact done." *Id.*

Rule 1.5(c) "requires that the contingent fee arrangement be in writing. This writing must explain the method by which the fee is to be computed, as well as the client's responsibility for expenses. The lawyer must also provide the client with a written statement at the conclusion of a contingent fee matter, stating the outcome of the matter and explaining the computation of any remittance made to the client." Rule 1.5, cmt. [8]. *See In re Bettis*, 855 A.2d 282 (D.C. 2004) (all contingent fee agreements must be recorded in writing).

Rule 1.15(c) requires a lawyer to "promptly notify the client" "[u]pon receiving funds . . . in which a client . . . has an interest" and to "promptly deliver to the client . . . any funds or other property that the client or third person is entitled to receive." *See, e.g.*, *Edwards*, 990 A.2d at 520-21 (after foreclosure of client's condominium, respondent was required to return money held in trust to be used to prevent foreclosure because the purpose of holding the funds had been rendered moot).

Rule 1.16(d) provides:

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

Furthermore, "'a client should not have to ask twice' for [her] file." *In re Thai*, 987 A.2d 428, 430 (D.C. 2009) (per curiam) (quoting *In re Landesberg*, 518 A.2d 96, 102 (D.C. 1986)). Failure to refund any unearned portion of a fee violates Rule 1.16(d). *See, e.g.*, *In re Samad*, 51 A.3d 486, 497 (D.C. 2012) (per curiam) (finding a violation where the respondent claimed that he did some work on the case, but did not "suggest that he earned the entire flat fee or that he returned any portion of the fee").

Agrebe.[16] The Board agrees with the Hearing Committee that, under the specific facts and circumstances presented in this matter as discussed above, due process concerns are not implicated by finding these Rule 1.15(a) violations with respect to clients who were not specifically identified in, or comprehended by, the Specification of Charges. The Board does take the opportunity here, however, to urge Disciplinary Counsel to avoid even the potential for due process concerns in future matters, *first*, by being more rigorous in its understanding and expectation of the evidence it will be able to adduce at a hearing on a matter so that, *second*, it may be as precise as feasible in drafting the Specification of Charges in that matter.

The Board finds that a violation of Rule 1.5(b) (failure to have a written fee agreement) was not proven in this matter. Rule 1.5(b) provides:

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

The Court has not previously addressed the issue of how many instances of representation constitutes a "regular representation" of a client that obviates the need for putting the basis or rate of the fee in writing, and the Board declines to opine on this issue on the facts of this case (in which the record shows one representation by Respondent of Ms. Wilson in a custody matter, during the course of which

[16] We do not summarize the case law related to Rule 1.15(a) commingling or Rule 1.15(a) misappropriation given that the Hearing Committee has already done so in its Report. *See* HCR at 109-11 (commingling), 112-14, 122 (misappropriation). *See supra* n.13 (Rule 1.15(a) record-keeping case law).

Respondent picked up the personal injury case involving the same client). Further, we believe the relevant misconduct in this Count is more aptly captured by the proven violation of Rule 1.5(c), which imposes a mandatory writing for contingency fee agreements that does not include an exception when the attorney has regularly represented the client. In violation of this requirement, there was no written contingency agreement in connection with Respondent's representation of Ms. Wilson in her personal injury case.

E. Count 5: Incorrect Response to Disciplinary Counsel, Subsequently Corrected

On September 26, 2016, Jean Harris was involved in an automobile accident and, soon after, a man arrived at her residence who stated that he was from a law firm and he could represent her in connection with the accident. FF 164-65. Ms. Harris did not keep his business card, could not recall the lawyer's name, but remembered that he said he was from Respondent's law firm. FF 165. After not getting a response from the lawyer despite making phone calls to the firm, Ms. Harris wrote Respondent on November 1, 2016, stating that she no longer wanted the man she met to represent her. FF 167. On November 4, 2016, Respondent sent Ms. Harris a letter, in which she acknowledged that a request had been made that the firm no longer represent her. FF 169. On December 6, 2016, Disciplinary Counsel asked Respondent to respond to Ms. Harris's complaint concerning the lack of communication. FF 170. Respondent informed Disciplinary Counsel that she had no information regarding Ms. Harris. FF 170. When Ms. Harris learned about

Respondent's claim, she provided Disciplinary Counsel with the November 4, 2016 letter. FF 170.

The Hearing Committee stated that it "cannot determine if [Respondent's] misstatement to Disciplinary Counsel was intentional or not. Nonetheless, it was a violation of Rule 8.4(d) to misinform Disciplinary Counsel in their investigatory role." FF 171. In declining to find a violation of Rule 8.4(c), however, the Committee offered a somewhat different perspective on its evaluation of Respondent's misstatement: "we are not convinced that Respondent was not merely mistaken, as opposed to intentionally or recklessly dishonest, when she made her statement to Disciplinary Counsel." HCR at 132-33.

The Board does not find a violation of Rule 8.4(d) with respect to this Count. The Board declines to conclude that *any* misrepresentation to Disciplinary Counsel – even an honestly mistaken one – would violate Rule 8.4(d) and would constitute "serious interference with the administration of justice," regardless of a respondent's state of mind. The Board is not aware of any precedent to support this reading of the rule.

In reaching and stating this conclusion, the Board should not be seen as condoning or encouraging careless responses to requests from Disciplinary Counsel. It is essential that any such request by Disciplinary Counsel be taken seriously and responded to diligently by the recipient. The Board's conclusion here is based on the facts found in this specific case, wherein the evidence simply did not establish

the state of mind of the Respondent in responding to Disciplinary Counsel's inquiry regarding Ms. Harris.

III. Disbarment for Flagrant Dishonesty

The Court and the Board have described "flagrant dishonesty" as a dishonesty "reflect[ing] a continuing and pervasive indifference to the obligations of honesty in the judicial system," including dishonesty that is "aggravated or prolonged." *In re Bynum*, 197 A.3d 1072, 1074 (D.C. 2018) (per curiam) (citation and quotations omitted); *see also In re Bynum*, Board Docket No. 16-BD-029 (BPR April 4, 2018) (Board finding "flagrant dishonesty" warranting a sanction of disbarment, instead of the Committee's sanction recommendation of a three-year suspension with a fitness requirement). In *Bynum*, the dishonest conduct spanned a five-year period, from the start of his representation of clients in two matters and through false statements during the disciplinary hearing. The Court noted that Bynum's dishonesty was "exacerbated by his lack of remorse and effort to shift the blame to others, which the Board deem[ed] additional hallmarks of flagrant dishonesty." *Bynum*, 197 A.3d at 1074. We concur with the Hearing Committee's conclusion that Respondent's repeated, persistent, and pervasive dishonesty constituted flagrant dishonesty such that, as recommended below, Respondent should be barred from the continued practice of law.

As found and reported by the Hearing Committee, and as summarized above, in connection with her representation of the Rudder and Goss families: Respondent lied at the outset about her experience in police misconduct cases and similarly

misrepresented her experience in this area of law in her correspondence with Disciplinary Counsel; Respondent affirmatively misled her clients as to the seriousness of the impact of the dismissal of their claims, falsely assured her clients that the dismissal was not Respondent's fault, provided false information in her correspondence with Disciplinary Counsel on these issues, and testified falsely on these issues at the hearing. *See* HCR at 3, 134, 144 (false testimony); *see also* FF 36, 69, 83, 162.

In connection with her representation of Donnell Lewis, Respondent was dishonest in that she defended her disclosure of confidential information regarding her client by claiming to the Committee during the hearing that Mr. Lewis had already disclosed his financial condition to the court, when in fact Respondent disclosed such confidential client information in more extensive detail and had admitted as much when represented by counsel during the disciplinary investigation.

In connection with her representation of Glenn Strawder: Respondent provided intentionally false testimony at the hearing when she stated that she left the decision to dismiss Dr. Desai from the malpractice case up to her client; Respondent was also dishonest in arranging for Mr. Strawder to borrow funds from the litigation financing company in that she valued Mr. Strawder's case at five million dollars in the loan agreement even though, as she testified at the hearing, she had "no idea" why that amount was put down on the application; and Respondent was dishonest when she claimed to the litigation financing company that her client had been informed of, and understood, the terms of the loan, when in fact Mr. Strawder had

no understanding of, and Respondent failed to explain, the high interest he would be charged for the two loans. *See* HCR at 130-31.

In connection with her representation of Katina Wilson, Respondent: falsely represented to a medical provider that she was taking a 5% reduction in her typical contingency fee; falsely claimed during the course of this disciplinary matter that Ms. Wilson did not request regular invoices; falsely promised to provide Ms. Wilson a final statement of her account; provided to Disciplinary Counsel two conflicting versions of an itemized statement of Ms. Wilson's account, both of which Respondent claimed were a complete listing of the time spent on Ms. Wilson's behalf; failed to provide truthful and complete records of her accounts to Disciplinary Counsel, and, in fact, provided two different versions of her client accounts in account -9009. *See* HCR at 131-32.

Respondent's pattern of pervasive dishonest conduct spanned from 2007-2014 (a longer period than in *Bynum*) and, through her misleading and dishonest conduct with Disciplinary Counsel and then her repeated false testimony at the hearing, continued into 2018 and 2019. Further, Respondent's lack of remorse for her misconduct, and shifting of blame to her clients for the consequences of that misconduct – exacerbating factors and "additional hallmarks of flagrant dishonesty" here, as they were in *Bynum* – are detailed above and in the Hearing Committee's Report.

As the Board was considering this matter and determining to recommend disbarment of Respondent Anitha Johnson, it was also considering the matter of

Respondent Deni-Antionette Mazingo-Mayronne and recommending disbarment because of her flagrant dishonesty. *See In re Mazingo-Mayronne*, Board Docket Nos. 14-BD-060 & 15-BD-014 (BPR Oct. 13, 2020). As the Board notes in its Report in *Mazingo-Mayronne*:

> The Court has endorsed a 'fact-specific approach [that] requir[es] [consideration of a] [r]espondent's particular misconduct, and not simply the rules that he [or she] violated' to determine what constitutes flagrant dishonesty. *In re Guberman*, 978 A.2d 200, 206 n.5 (D.C. 2009) (quoting Board Report). There is no bright-line test for determining flagrant dishonesty.

Id. at 22. Although the specific facts of Respondent Johnson's and Respondent Mazingo-Mayronne's proven misconduct clearly differ, the misconduct of each is also clearly characterized by prolonged, repeated, and flagrant dishonesty, which "'reflect[s] a continuing and pervasive indifference to the obligations of honesty in the judicial system.'" *In re Pennington*, 921 A.2d 135, 141 (D.C. 2007) (quoting *In re Corizzi*, 803 A.2d 438, 443 (D.C. 2002)); *In re Pelkey*, 962 A.2d 268, 281 (D.C. 2008) (disbarment for "persistent, protracted, and extremely serious and flagrant acts of dishonesty"). Disbarment is the only appropriate sanction for such flagrant dishonesty.

CONCLUSION

For the reasons set forth *supra* and in the Ad Hoc Hearing Committee's Report and Recommendation, we recommend that Respondent be disbarred for her flagrant dishonesty and indifference to her clients. We further recommend that the period of

disbarment run for purposes of reinstatement from the filing of the affidavit required by D.C. Bar R. XI, § 14(g). *See In re Slosberg*, 650 A.2d 1329, 1331-33 (D.C. 1994).

BOARD ON PROFESSIONAL RESPONSIBILITY

By: 

Robert L. Walker

All members of the Board concur in this Report and Recommendation except Ms. Pittman, who is recused, and Ms. Larkin, who did not participate.