DISTRICT OF COLUMBIA COURT OF APPEALS
BOARD ON PROFESSIONAL RESPONSIBILITY

In the Matter of:	:	
	:	
ANTHONY M. RACHAL, III,	:	
	:	Board Docket No. 14-BD-062
Respondent.	:	Bar Docket No. 2012-D180
	:	
A Member of the Bar of the	:	
District of Columbia Court of Appeals	:	
(Bar Membership No. 229047)	:	

REPORT AND RECOMMENDATION OF THE
BOARD ON PROFESSIONAL RESPONSIBILITY

Before the Board is the Report and Recommendation of an Ad Hoc Hearing Committee, which concluded that Respondent violated certain of the District of Columbia Rules of Professional Conduct ("Rules") as charged by Disciplinary Counsel,[1] but that Disciplinary Counsel failed to prove other charges against Respondent. Specifically, the Hearing Committee found that Respondent violated the following:

- Rule 1.3(b)(2) (intentionally prejudicing or damaging a client during the course of a professional relationship);
- Rule 1.7(b)(1) (representing a client on a position adverse to another client in the same matter);

[1] From the inception of this matter until December 19, 2015, Disciplinary Counsel was referred to as "Bar Counsel." Effective December 19, 2015, the D.C. Court of Appeals amended Rule XI of the District of Columbia Rules Governing the Bar by changing the title of Bar Counsel to "Disciplinary Counsel." We use the current title in this Report and Recommendation.

- Rule 1.7(b)(2) (representing a client with respect to a matter even though such representation will be or is likely to be adversely affected by representation of another client); and

- Rule 1.7(b)(3) (representing a client with respect to a matter even though representation of another client will be or is likely to be adversely affected by such representation).

The Hearing Committee concluded that Disciplinary Counsel failed to prove that Respondent violated Rule 1.3(b)(1) (intentionally failing to seek the lawful objectives of a client) and Rule 8.4(d) (engaging in conduct that seriously interfered with the administration of justice).

The Hearing Committee recommends that Respondent be suspended for three months each for the Rule 1.3(b)(2) violation and the Rule 1.7 violations, with the sanctions to run concurrently, and that reinstatement be conditioned on his successful completion of six hours of ethics-related Continuing Legal Education ("CLE") courses approved by Disciplinary Counsel, to include a course on the representation of multiple clients in civil cases.

Disciplinary Counsel and Respondent have filed exceptions to the Hearing Committee's Report and Recommendation. Disciplinary Counsel argues that Respondent also violated Rule 8.4(d) and urges that Respondent be suspended for one year and required to demonstrate fitness before reinstatement. Respondent argues that no violations should be found.

The Hearing Committee's findings of fact are supported by substantial evidence in the record. The Board concurs with the findings of fact, conclusions of

law, and ultimate recommended sanction set forth in the Hearing Committee's Report and Recommendation, which we adopt and incorporate by reference.

The Board also denies Respondent's motion to dismiss, as discussed below.

I. FINDINGS OF FACT

The Board adopts the Hearing Committee's factual findings, which are briefly summarized below.

Respondent was retained to represent two beneficiaries of the Virginia P. Ridley Trust (the "VPR Trust"), Patrick Ridley and his mother, Madlyn Ridley-Fisher, as well as Harold Fisher, who was both a creditor of that trust and the spouse of Ms. Ridley-Fisher. In early 2009, all three clients hired Respondent to have Brenda L. Hopkins, Esq., removed as trustee of the VPR Trust, to have a new trustee appointed, to collect debts owed to the trust, and to pay Mr. Fisher, as trust creditor. Respondent did not advise or warn his three clients of possible conflicts of interest among them or of the consequences of such conflicts, and he did not seek a waiver of conflicts. The retainer agreement did not address the source of funds for payment of Respondent's hourly fees.

After asking Ms. Hopkins to resign, Respondent filed a complaint in D.C. Superior Court in April 2009 on behalf of the three clients seeking, among other things, Ms. Hopkins' removal as trustee of the VPR Trust, the appointment of Brian Hopson as successor trustee, and payment to Mr. Fisher for goods and services provided for the benefit of the trust. In July 2009, Ms. Hopkins filed an answer and counterclaim for trustee fees, among other things. In November 2010, the Superior

Court issued a consent order directing that Ms. Hopkins resign as trustee, that Mr. Hopson be her successor, and that Mr. Hopson not distribute assets or pay the plaintiffs' claims without court approval or until after Ms. Hopkins' counterclaim was resolved.

In February 2011, Respondent expressed concern that he was not being paid. As a result, Patrick Ridley urged Mr. Hopson to cease communicating with Mr. Fisher, a creditor of the trust.

The case went to trial in August 2011. In October 2011, the court ruled in favor of Ms. Hopkins and directed her lawyer to submit a proposed order for the payment to Ms. Hopkins of trustee's fees, payable from the VPR Trust. Immediately after the ruling, Respondent advised his clients that they could spend the money in the VPR Trust provided that they maintained sufficient funds to pay Ms. Hopkins the money owed to her. Accordingly, Mr. Fisher, on behalf of Ms. Ridley-Fisher, sent an email to Mr. Hopson requesting that he, as trustee, make a payment to Mr. Fisher in satisfaction of the VPR Trust's remaining debt. After Mr. Hopson made that payment, Patrick Ridley voiced an objection. At Respondent's urging, Mr. Hopson demanded the return of the money to the VPR Trust. In a letter to Ms. Ridley-Fisher and Mr. Fisher, Respondent reiterated the demand and threatened to file a "praecipe" to inform the court that they (his clients) acted contrary to the court's direction and without the knowledge of the majority heir, Patrick Ridley (his other client). Mr. Fisher and Ms. Ridley-Fisher objected to the filing of the "praecipe," but Mr. Fisher refused to return the money to the VPR Trust.

On October 28, 2011, Respondent filed a "praecipe" on behalf of Patrick Ridley and Mr. Hopson, alleging misrepresentations by Ms. Ridley-Fisher and Mr. Fisher to Mr. Hopson and requesting that the court order the return of the funds that had been paid to Mr. Fisher. Respondent did not move to withdraw from representation of Ms. Ridley-Fisher or Mr. Fisher.[2] After Ms. Ridley-Fisher and Mr. Fisher filed a *pro se* opposition, the court issued an order denying the "praecipe," and stating that (1) a "praecipe" was not the appropriate means for seeking the relief requested, (2) Respondent appeared to be asking the court to take action against his own clients, and (3) Respondent did not represent the true "movant," Mr. Hopson.

On September 30, 2014, the court resolved the suit to remove Ms. Hopkins, awarding her $51,936.49 on her counterclaim, over and above the $34,100 that she had already been paid been as trustee. The court also dismissed Mr. Fisher as plaintiff in the trustee-removal action, as he was solely a creditor and not a beneficiary of the VPR Trust. Mr. Hopson, as trustee, never filed an action for the return of the money from Mr. Fisher.

[2] At the conclusion of his oral argument before the Board, Respondent stated that he had been fired by Ms. Ridley-Fisher and Mr. Fisher before he filed the "praecipe." This was not in the record before the Hearing Committee, and thus is not considered by the Board. *See* Board Rule 13.7 ("Review by the Board shall be limited to the evidence presented to the Hearing Committee, except in extraordinary circumstances determined by the Board.").

II. MOTION TO DISMISS

Before turning to the merits of the instant matter, the Board must address Respondent's Motion to Dismiss and Vacate Report and Recommendation of the Ad Hoc Hearing Committee, filed with the Board on December 7, 2015, and again on February 1, 2016, in the form of a "Renewed [] Motion." The basis for both motions is that the Hearing Committee did not file its report within 120 days of the conclusion of the hearing, as prescribed by D.C. Bar Rule XI, § 9(a), and Board Rule 12.2. The disciplinary hearing concluded on January 14, 2015, and the Hearing Committee's report was filed on November 25, 2015. In his motion, Respondent argues that due process was violated and that he is prejudiced by Disciplinary Counsel's delay in bringing charges, and he claims that the delay by the Hearing Committee indicates that Disciplinary Counsel's charges were not clearly and convincingly proved. Respondent argues that this prejudices him because witnesses might be unavailable or subject to memory lapses on any potential remand. He also notes that he is a sole practitioner who "does not possess the unlimited resources and staff available to Bar Counsel and Hearing Committee. . . ." Respondent's Renewed Motion (Feb. 1, 2016) at 7. He also argues that he was not permitted sufficient time to allow witnesses to travel to the hearing from out of town, an argument that the Board rejects. Indeed, the Hearing Committee was very careful in giving Respondent the opportunity to call further witnesses, but he declined to do so. Tr. 532-35, 589-593.

Delay by a hearing committee in issuing a report and recommendation is not grounds for dismissal of charges. *See, e.g.*, *In re Barber*, 128 A.3d 637, 642 (D.C.

2015) (per curiam). "The 120-day rule is 'directory, rather than mandatory'. . . ." *Id.* (quoting *In re Morrell*, 684 A.2d 361, 370 (D.C. 1996)). As the Court in *Morrell* stated: "It would hardly serve the integrity of the bar, moreover, to allow [a respondent] to avoid the imposition of discipline for his serious ethical violations merely because the Hearing Committee took a long time carefully evaluating the substantial, complex evidence in his case." *Morrell*, 684 A.2d at 370. Notwithstanding Respondent's argument that the delays in *Barber* and *Morrell* were not as great as in his case, the principle of those cases still applies and their holdings stand. Respondent's motion to dismiss is denied.

III. ANALYSIS

The Board agrees with the Hearing Committee that Disciplinary Counsel established that Respondent violated Rules 1.3(b)(2) and 1.7(b)(1), (2), and (3), and that Disciplinary Counsel did not prove that he violated Rules 1.3(b)(1) and 8.4(d).

A. Rules 1.3(b)(1) and (2)

The Hearing Committee found that Disciplinary Counsel proved a violation of Rule 1.3(b)(2), but not Rule 1.3(b)(1). The basis of these allegations is that Respondent failed to pursue recovery of Mr. Fisher's debt from the VPR Trust, that he asked the court to order Mr. Fisher to return the money paid to him by the trust, and that he damaged Ms. Ridley-Fisher's and Mr. Fisher's interests by filing a "praecipe" that claimed that they had defrauded the trust. We agree with the Hearing Committee.

Rule 1.3(b)(1) states: "A lawyer shall not intentionally . . . [f]ail to seek the lawful objectives of a client through reasonably available means permitted by law and the disciplinary rules[.]" By bringing an action in Superior Court, Respondent sought recovery of a debt owed to his client, Mr. Fisher, an original plaintiff in that action. Although the court dismissed Mr. Fisher as plaintiff, Respondent did attempt to seek that client's lawful objectives through reasonably available means, even if he later determined that payment was not appropriate at the time that it was made. Accordingly, we agree that Disciplinary Counsel has failed to prove a violation of Rule 1.3(b)(1). Notably, Disciplinary Counsel no longer argues otherwise.

Rule 1.3(b)(2) states: "A lawyer shall not intentionally . . . prejudice or damage a client during the course of the professional relationship." To establish a violation, Disciplinary Counsel must demonstrate "actual prejudice or damage to the client." *In re Cohen*, 847 A.2d 1162, 1165, n.1 (D.C. 2004); *see also In re Robertson*, 612 A.2d 1236, 1250-51 (D.C. 1992) (appended Board Report) (analyzing former rule, DR 7-101(A)(3)). Respondent filed a "praecipe" contrary to the wishes and interest of two of his clients, and he advised the successor trustee, Mr. Hopson, to demand the return of money paid to Respondent's client—a payment for he had previously advocated. Although Mr. Fisher did not ultimately repay the trust, he and Ms. Ridley-Fisher did defend against Respondent's actions. Moreover, the "praecipe," which alleged misrepresentation on the part of those clients, was filed in the court's public record. This constitutes actual damage to Respondent's clients.

Respondent argues that his duty to the court and his other obligations required him to prevent his clients from taking action that would place them in contempt of court (Respondent's Brief ("Br.") to the Board at 13-14), and that he has an affirmative duty to protect third-parties' interests and property (Respondent's Br. at 18-19, citing Rule 1.15). He further argues that a single filing cannot support a determination of a Rule 1.3 violation. Disciplinary Counsel correctly argues that Respondent misapprehends Rule 1.15, as he was not obligated to protect third-party property that he did not possess. Moreover, Respondent's single filing went beyond protecting his clients and third parties. It actively advocated action against his own clients, going so far as to allege in the public record that those clients made misrepresentations, and it caused Ms. Ridley-Fisher and Mr. Fisher to oppose their own lawyer's filing. Accordingly, the Board agrees with the Hearing Committee's finding that Respondent intentionally prejudiced or damaged two of his clients during the course of their professional relationship. Disciplinary Counsel proved a violation of Rule 1.3(b)(2).

B. Rules 1.7(b)(1), (2), and (3)

The Hearing Committee found that Disciplinary Counsel proved a violation of Rules 1.7(b)(1), (2), and (3), by Respondent representing multiple clients with actual and potential (or likely) adverse interests.[3] We agree with the Hearing Committee.

[3] We note that the Hearing Committee appears to have referred to "potential" and "likely" conflicts interchangeably. A "likely" conflict is covered by Rule 1.7; a "potential" conflict is not. *See* D.C. Bar Legal Ethics Op. 301 (2000) (a conflict requiring informed consent "must be likely, not merely

Rule 1.7(b) states:

> Except as permitted by paragraph (c) below, a lawyer shall not represent a client with respect to a matter if:
>
> (1) the matter involves a specific party or parties, and a position to be taken by that client in that matter is adverse to a position taken or to be taken by another client in the same matter, even though that client is unrepresented or represented by a different lawyer;
>
> (2) such representation will be or is likely to be adversely affected by representation of another client; [or]
>
> (3) representation of another client will be or is likely to be adversely affected by such representation. . . .

Rule 1.7(c) permits a lawyer to represent a client in a matter covered by Rule 1.7(b) if "each potentially affected client provides informed consent to such representation after full disclosure of the existence and nature of the possible conflict and the possible adverse consequences of such representation" and "the lawyer reasonably believes that the lawyer will be able to provide competent and diligent representation to each affected client." "Informed consent" is defined as "the agreement by a person to a proposed course of conduct after the lawyer has communicated adequate information and explanation about the material risks of and reasonably available alternatives to the proposed course of conduct." D.C. R. Prof'l Conduct 1.0(e).

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hypothetical. . . . In other words, '[t]he mere possibility that a result in one representation will affect the outcome of another is not enough to trigger a conflict as to which waiver must be sought.'" (quoting D.C. Bar Legal Ethics Op. 265 (1996))). As discussed above, we find that Respondent violated Rule 1.7 because he engaged in representations that were "likely" to adversely affect the representation of another client or "likely" to be adversely affected by the representation of another client.

In *In re Szymkowicz*, Bar Docket Nos. 2005-D179 *et al.* at 4-13 (BPR May 19, 2017), *review pending*, D.C. App. No. 14-BG-884, the Board recommended that the Court hold that a respondent, who challenges a *prima facie* showing of a Rule 1.7(b) violation by asserting that he received informed consent, bears the burden of producing evidence to support that assertion. If the respondent produces such evidence, Disciplinary Counsel bears the ultimate burden of proving by clear and convincing evidence that the respondent did not obtain informed consent. We apply the *Szymkowicz* analysis here.

1. Rule 1.7(b)(1) (adverse positions between clients)

Here, Respondent communicated with Mr. Hopson, as trustee, and represented Mr. Ridley in the filing of a "praecipe," both of which were designed to secure the repayment of money by another of Respondent's clients, Mr. Fisher, to the VPR Trust. Respondent's actions were adverse to Mr. Fisher, with whom Respondent never discussed the implications of the conflict or sought informed consent. Thus, Respondent's representation of all three clients violated Rule 1.7(b)(1), unless the exception in Rule 1.7(c) applies.[4]

[4] The Hearing Committee also found a Rule 1.7(b)(1) violation because Respondent sought the return of funds through the trustee, a position adverse to that of Mr. Fisher. However, as neither the VPR Trust nor the trustee was Respondent's client, the Board is not convinced that Rule 1.7(b) is pertinent to this conduct.

2. Rule 1.7(b)(2) and 1.7(b)(3) (representation of one client likely to adversely affect or be adversely affected by the representation of another client)

From the start of Respondent's representation of his three clients, it was likely that they would have adverse interests. Two of them were beneficiaries of the VPR Trust, entitled to different amounts of that trust; and the third was a creditor of that trust. They each sought a slice of the same pie—each a portion of the same finite pool of assets. Even though they joined together as plaintiffs with the same goal at the outset of the underlying matter (removing the trustee), they plainly had likely conflicts, and they ultimately did conflict. Respondent failed to disclose the likely conflicts—disagreement over rights to trust funds—to his clients. Thus, Respondent's representation of all three clients violated Rules 1.7(b)(2) and 1.7(b)(3), unless the exception in Rule 1.7(c) applies. Disciplinary Counsel has demonstrated a *prima facie* case.

3. Respondent did not offer evidence that he obtained informed consent from any of his clients.

Respondent argues that his clients gave "expressed waivers," relying on the language of the retainer agreement and the Verified Complaint. However, neither of those documents reflects that the clients were informed of the material risks and reasonably available alternatives to joint representation, and thus neither reflects informed consent. Indeed, although the retainer letter devotes a paragraph to the "Attorney's Right to Withdraw," it does not mention the fact that a conflict of interest may require Respondent to withdraw from the representation.

Respondent also argues that the clients were sophisticated and gave implied consent to the joint representation. He argues that they decided that it was in their economic interest to accept the potentially conflicted representation of a single counsel, over the more costly, conflict-free representation if each had their own counsel. There is no evidence in the record to support that argument. Indeed, even when a conflict actually arose between Mr. Ridley and the Fishers, Respondent failed to obtain their consent to continue joint representation.

For the reasons discussed above, the Board agrees with the Hearing Committee that Disciplinary Counsel proved by clear and convincing evidence that Respondent violated Rules 1.7(b)(1), 1.7(b)(2), and 1.7(b)(3).

C. Rule 8.4(d)

The Hearing Committee found that Disciplinary Counsel did not prove a violation of Rule 8.4(d) when he filed the "praecipe" against the Fishers. We agree with the Hearing Committee.

Rule 8.4(d) prohibits a lawyer from engaging in "conduct that seriously interferes with the administration of justice." Disciplinary Counsel has the burden of proving that Respondent's conduct was improper, that it bore directly on the judicial process with respect to an identifiable case or tribunal, and that it tainted the judicial process in more than a *de minimis* way. *In re Hopkins*, 677 A.2d 55, 60-61 (D.C. 1996). An attorney violates the Rule if his or her conduct causes the unnecessary expenditure of time and resources, in more than a *de minimis* way, in a judicial proceeding. *See In re Cole*, 967 A.2d 1264, 1266 (D.C. 2009).

The Hearing Committee found that Respondent's filing of a "praecipe" was improper and bore directly on the judicial process in the plaintiffs' case against the Trustee. However, as the "praecipe" was filed on Friday, October 28, 2011, and the court, without citing case law, summarily dismissed it on Thursday, November 3, 2011—less than one week later. The Committee found that Disciplinary Counsel did not prove that Respondent's impact was more than *de minimis*. The Board agrees.

Disciplinary Counsel correctly argues that the court's efficiency in and of itself should not benefit the Respondent by saving him from a Rule violation, that the clients filed an opposition to the "praecipe," and that the "praecipe" had the *potential* to seriously interfere with the administration of justice, if it had not been summarily dismissed. We find none of these arguments persuasive. The court dismissed the "praecipe" because it was defective on its face; there was little potential that it would interfere with the administration of justice (other than the time necessary to dispose of it). *See In re Hallmark*, 831 A.2d 366, 375 (D.C. 2003) (respondent's "untimely submission of an obviously deficient [CJA] voucher did not seriously interfere with the administration of justice, or her client"). *In re Edwards* does not support Disciplinary Counsel's argument that the filing of a response brief constitutes "serious interference." In *Edwards*, the successor personal representative had to take corrective actions to recapture the value of an estate, including filing suit against the respondent. 902 A.2d 56, 69 (D.C. 2006) (appended Board report). This is much more serious than the facts found here. The Board will not extend Rule

8.4(d) to every situation in which a lawyer's erroneous motion or other application is denied, without more. Accordingly, the Board adopts the Hearing Committee's conclusion and declines to find a violation of Rule 8.4(d).

IV. SANCTION

The Hearing Committee recommends that Respondent be suspended for three months and that, as a condition of reinstatement, he be required to successfully complete six hours of ethics-related CLE courses approved by Disciplinary Counsel, including the "Ethical Issues in Representing Multiple Clients in Civil Cases" course offered by the D.C. Bar or a similar course approved by Disciplinary Counsel. Disciplinary Counsel seeks a one-year suspension with reinstatement conditioned on a demonstration of fitness to practice law. Respondent asks that the Board find no violation and that the case be dismissed but, if a suspension is warranted, that a showing of fitness not be required.

The Board finds that the Hearing Committee properly analyzed the appropriate sanctions for Respondent's violations of Rules 1.3(b)(2) and 1.7(b)(1), (2), and (3), taking into consideration certain aggravating and mitigating factors. For the same reasons set forth in the attached Hearing Committee Report, the Board agrees that a three-month suspension, with reinstatement conditioned on the completion of six hours of ethics-related CLE courses approved by Disciplinary Counsel, including a course on representing multiple clients in civil cases, is the appropriate sanction in this case. The Hearing Committee actually recommended two separate three-month suspensions, one for each violation, to run concurrently.

However, as this matter involves one docketed matter and one representation, albeit of three clients, the Board considers all of the Respondent's conduct together in making a single recommendation of sanction.

Disciplinary Counsel seeks a fitness requirement, citing to Respondent's questioning of Mr. Fisher during the disciplinary hearing, which sought to elicit privileged information, and to other alleged disclosures of attorney-client privileged information. Disciplinary Counsel's Br. at 5, 20. The Hearing Committee appropriately considered these factors set forth in *In re Cater*, 887 A.2d 1, 6, 21, 25 (D.C. 2005) and found that a fitness requirement is not appropriate in this case. For all the reasons stated by the Hearing Committee, the Board agrees. While Respondent's conduct violated the Rules of Professional Conduct, and while the Board is concerned about the dangers of disclosing privileged information, the Board is not truly skeptical about Respondent's ability to abide by the rules in the future, especially after he receives relevant CLE. Accordingly, the Board declines to recommend a fitness showing before reinstatement.

Conclusion

For the foregoing reasons, the Board adopts the findings of fact, conclusions of law, and the ultimate recommended sanction of the Ad Hoc Hearing Committee, as set forth in its Report and Recommendation, which is attached hereto. The Board finds that Respondent violated Rules 1.3(b)(2) and 1.7(b)(1), (2), and (3). While the Board declines to separate the sanctions for the Rule 1.3 and Rule 1.7 violations, as recommended by the Hearing Committee, the Board agrees with the

overall recommended sanction of a three-month suspension with reinstatement conditioned on Respondent's completion of six hours of ethics-related CLE courses approved by Disciplinary Counsel and related to the representation of multiple clients.

BOARD ON PROFESSIONAL RESPONSIBILITY

By: /JC/
Jason Carter

Dated: July 6, 2017

All members of the Board concur in this Report and Recommendation, except for Mr. Bernstein who is recused, and Mr. Kaiser who did not participate.

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

In the Matter of:	:	
	:	
ANTHONY M. RACHAL, III,	:	
	:	
Respondent.	:	Board Docket No. 14-BD-062
	:	Bar Docket No. 2012-D180
A Member of the Bar of the	:	
District of Columbia Court of Appeals	:	
(Bar Registration No. 229047)	:	

REPORT AND RECOMMENDATION OF THE AD HOC HEARING COMMITTEE

Respondent, Anthony M. Rachal, III, is charged with violating Rules 1.3(b)(1) and (2), 1.7(b)(1), (2), and (3), and 8.4(d) of the District of Columbia Rules of Professional Conduct (the "Rules"), arising from his representation of three clients in litigation concerning a trust. Bar Counsel contends that Respondent committed all of the charged violations, and should be suspended for one year with a fitness requirement as a sanction for his misconduct. Respondent contends that he did not commit any of the alleged Rule violations, and that he should not be sanctioned.

As set forth below, the Hearing Committee finds clear and convincing evidence that Respondent violated Rules 1.3(b)(2) and 1.7(b)(1), (2), and (3) as charged by Bar Counsel. The Hearing Committee finds that Bar Counsel has not proven a violations of Rules 1.3(b)(1) or 8.4(d). The Hearing Committee recommends that Respondent be suspended for three months, as the sanction for the Rule 1.3(b)(2) violation, and suspended for three months for the Rule 1.7(b)(1), (2) and (3) violations, with the sanctions to run concurrently. The Committee also recommends that Respondent's reinstatement be conditioned upon the successful completion of six hours of ethics-related Continuing Legal Education ("CLE") courses approved by Bar Counsel, including

the "Ethical Issues in Representing Multiple Clients in Civil Cases" course offered by the D.C. Bar, or a similar course approved by Bar Counsel.

I. PROCEDURAL HISTORY

On July 29, 2014, Bar Counsel served Respondent with a Specification of Charges ("Specification"). The Specification alleges that beginning in 2009, in connection with his representation of Patrick Ridley, Madlyn Ridley-Fisher, and Harold Fisher, Respondent violated the following Rules:

- 1.3(b)(1), by intentionally failing to seek the lawful objectives of a client through reasonably available means permitted by law and the disciplinary rules;
- 1.3(b)(2), by intentionally prejudicing or damaging a client during the course of the professional relationship;
- 1.7(b)(1), by representing a client with respect to a matter even though the matter involved a specific party or parties and a position to be taken by that client in a matter was adverse to a position taken or to be taken by another client in the same matter even though that client was unrepresented or represented by a different lawyer;
- 1.7(b)(2), by representing a client with respect to a matter even though such representation was or was likely to be adversely affected by representation of another client;
- 1.7(b)(3), by representing a client with respect to a matter even though such representation of another client was or was likely to be adversely affected by such representation; and
- 8.4(d), by engaging in conduct that seriously interfered with the administration of justice.

Respondent filed an answer on September 8, 2014. A hearing was held on January 12-14, 2015, before this Ad Hoc Hearing Committee (the "Hearing Committee"), composed of William J. O'Malley, Jr., Esquire, Chair, David Bernstein, Public Member, and Leslie H. Spiegel, Esquire, Attorney Member. Bar Counsel was represented at the hearing by Joseph N. Bowman, Esquire, who was assisted by Melissa Lovell of the Office of Bar Counsel. Respondent appeared *pro se*.

Prior to the hearing, Bar Counsel submitted Bar Exhibits ("BX") A through D and 1 through 6. All of Bar Counsel's exhibits were received into evidence without objection. Transcript of Proceedings ("Tr.") 492. During the hearing, Bar Counsel called three witnesses: Harold Fisher Jr. and Madlyn Ridley-Fisher, two of Respondent's former clients, and James Larry Frazier, Esquire, who represented the Trustee in the underlying matter. After the hearing, Bar Counsel moved to admit BX 7 into evidence, which the Hearing Committee accepted on February 5, 2015.

During the hearing, Respondent referenced Respondent's Exhibits 1 and 2. Tr. 97. He did not move them into evidence.[1] During the hearing, Respondent called Brian Hopson, the successor Trustee, and Jerome Sheldon, a former Chairman of the D.C. Teachers Federal Credit Union, as witnesses. Tr. 501, 520.

At the conclusion of the initial phase of the hearing, the Hearing Committee made a preliminary, non-binding determination that Respondent violated at least one Rule of Professional Conduct. *See* Board Rule 11.11. Neither party presented additional evidence in aggravation or mitigation of sanction. Tr. 603.

After the close of the hearing, Bar Counsel filed Proposed Findings of Fact, Conclusions of Law and Recommendation as to Sanction and a reply brief. Respondent filed a Reply to Bar Counsel Findings of Fact and Conclusions of Law, and Recommendation as to Sanction.[2]

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[1] As indicated in the transcript, Respondent failed to comply with the Committee's pre-hearing Order and brought exhibits 1 and 2 to the hearing without giving advance notice to Bar Counsel or the Committee. Respondent did not move his exhibits into evidence, and they were never admitted, however, the Committee will admit Respondent's Exhibit 1. Neither party's brief relies on or cites to those exhibits.

[2] Because Respondent did not clearly indicate in his Reply to Bar Counsel Findings of Fact and Conclusions of Law his position with regard to Bar Counsel's proposed findings of fact, the Committee ordered that he file an additional pleading responding to each of the numbered

II. STANDARD OF REVIEW

Bar 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) (applying clear and convincing evidence standard to charge of misappropriation) ("*Anderson II*"); Board Rule 11.6. 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 Bar Counsel, who bears the burden of proof." *In re Allen*, 27 A.3d 1178, 1184 (D.C. 2011) (citation and internal quotations omitted). Clear and convincing evidence is more than a preponderance of the evidence, it is "evidence that will produce in the mind of the trier of fact a firm belief or conviction as to the facts sought to be established." *In re Cater*, 887 A.2d 1, 24 (D.C. 2005) (citation omitted).

On the basis of the record as a whole, the Hearing Committee makes the following findings of fact and conclusions of law set forth below, each of which is supported by clear and convincing evidence.

III. FINDINGS OF FACT

1. Respondent is a member of the District of Columbia Bar, having been admitted on May 27, 1976, and subsequently assigned Bar number 229047. BX A (Registration Statement).[3]

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paragraphs constituting Bar Counsel's proposed findings of fact. The Committee also directed that Bar Counsel respond to that additional pleading.

[3] References to Bar Counsel's Exhibits will be as follows: "BX_" identifying specific pages within the exhibits as "BX_ at _." References to Respondent's Exhibits will be as follows: "RX _" identifying specific pages within the exhibits as "RX_ at _." References to specific pages in the transcripts will be as follows: "Tr._, ll. _," identifying the witness or speaker in parenthesis. Specific findings of fact will be referred to as: "FF_."

2. Patrick Ridley and his mother,[4] Madlyn Ridley-Fisher, were the beneficiaries of the Virginia P. Ridley Trust (the "VPR Trust"). BX 5 at 51, 53, 86-93. Ms. Ridley-Fisher was the minority beneficiary of the trust (35%) and her son (who was Virginia P. Ridley's grandson by birth) Patrick Ridley, was the majority beneficiary (65%). Ms. Ridley-Fisher's husband, Harold Fisher, although not a beneficiary, was a creditor of the trust. BX 4 at 45, 106, 112; BX 5 at 50-63; RX 1 at 1-2. The complainants in this matter are Madlyn Ridley-Fisher and her husband, Harold Fisher. BX 1, 2, and 3.

3. Brenda L. Hopkins, Esquire, was designated by the VPR Trust as the successor Trustee to the grantor, Mrs. Virginia Ridley, and served in that role after Mrs. Ridley died on December 7, 2002. BX 5 at 90, Tr. 417 (Ridley-Fisher).

4. The VPR Trust was to terminate on Patrick Ridley's 35th birthday, August 9, 2007, according to Ms. Hopkins's lawyer, but Patrick Ridley and Madlyn Ridley-Fisher "acquiesced to [Hopkins'] contingent service to April 2, 2009, when [Respondent] asked [Hopkins] to resign." Tr. 81; *see also* RX 1, and BX 4, p. 100, ¶ 18.

5. By letter dated September 24, 2008, Madlyn Ridley-Fisher[5] advised Ms. Hopkins

[4] Respondent objected to this finding of fact proposed by Bar Counsel out of concern that it "implies" that Madlyn Ridley-Fisher is not the natural mother of Patrick Ridley but is his non-blood mother by adoption. The legal nature of Mrs. Ridley-Fisher's parenthood is irrelevant to any issue before this Committee, and in any case the Committee finds that there is no such implication in the Finding of Fact. If compelled to make a finding, in the absence of any evidence to the contrary, we would find that relationship is as testified to by Mrs. Ridley-Fisher. In point of fact, Mrs. Ridley-Fisher testified that Patrick Ridley was indeed her son by Virginia P. Ridley's deceased son. Tr. 368, ll. 6-7, Tr. 490, l. 20 through 491, l. 17.

[5] Respondent objected to this Finding of Fact proposed by Bar Counsel on the ground that written communications in this matter were in fact prepared by Mr. Fisher. This is relatively clear in the record as established in the testimony of Mrs. Ridley-Fisher. Tr. 474-475. There Mrs. Ridley-Fisher made it clear that her husband prepared the documents because Mrs. Ridley-Fisher was uncomfortable with computers. She also made clear that she reviewed the documents before they

of her disagreement with the way in which she was administering the VPR Trust. BX 5 at 98. Mrs. Ridley-Fisher was concerned about Ms. Hopkins' claims that there was no money in the trust to pay bills associated with the maintenance of trust property, while at the same time refusing to liquidate those assets by selling the property. *Id.*; *see also* Tr. 127 (Respondent). Mrs. Ridley-Fisher asked Ms. Hopkins to take the necessary steps to terminate the trust. Tr. 380-381 (Ridley-Fisher), Tr. 142 (Frazier).

6. When Ms. Hopkins ignored Mrs. Ridley-Fisher's request, Mrs. Ridley-Fisher proceeded with what she felt was her only other option, taking legal action to have Ms. Hopkins removed as trustee from the VPR Trust. Tr. 384-385 (Ridley-Fisher), Tr. 143 (Frazier).

7. In early 2009, Patrick Ridley, Madlyn Ridley-Fisher, and Harold Fisher wanted to have Ms. Hopkins removed as trustee, have the trust pay Harold Fisher what he was owed, and distribute the remaining funds to the heirs. Tr. 315-317 (Fisher), 467 (Ridley-Fisher).

8. On February 4, 2009, Respondent mailed the clients a letter attaching a retainer agreement and an invoice for his retainer fee. Sometime between that date and on or about March 4, 2009, the plaintiffs each signed the retainer agreement. BX 4, pp. 15 – 16, RX 1, Tr. 1, p. 171, l. 14 through 177, l. 12. After several preliminary meetings with Respondent, Patrick Ridley, Madlyn Ridley-Fisher, and her husband, Harold Fisher, met with and retained Respondent to represent them in their efforts, among other things, to remove Brenda Hopkins, Esquire, as trustee of the VPR Trust; to have a new trustee appointed; to collect all unpaid debts owed to the trust; and to reimburse Mr. Fisher for services he had provided and funds he had advanced on behalf of

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were transmitted and this is clear given that all documents which were not electronic mail were signed by Mrs. Ridley-Fisher. Thus, it is clear on the record that Mrs. Ridley-Fisher adopted the documents as her own before they were transmitted.

the VPR Trust. BX 1 at 6-9; BX 4 at 15-16; BX 5 at 50-63. There is no dispute that the VPR Trust was indebted to Mr. Fisher. BX 4 at 106, 116, 122-123, BX 5 at 65.

9. Before Respondent entered into a retainer agreement with Patrick Ridley, Madlyn Ridley-Fisher, and Harold Fisher, Respondent met with some or all of them on three separate occasions to discuss the facts, issues, risks, interests, and legal strategies to obtain the desired results in closing the Trust. Tr. 315, ll. 15-22, and Tr. 316, ll. 1-2.

10. When Patrick Ridley, Madlyn Ridley-Fisher, and Harold Fisher retained Respondent, Respondent did not advise or warn them of possible conflicts of interest between them; he did not advise them of the potential consequences of a conflict of interest; and he did not seek a waiver of conflicts from his clients. BX 1 at 6-9; Tr. 186, 311-312 (Fisher); 372-373 (Ridley-Fisher). While Respondent inquired of Mr. and Mrs. Fisher if there was any disagreement among them regarding litigation on the VPR Trust (Tr. 316, 11.1-2), at no time during his entire representation of Madlyn Ridley-Fisher and Harold Fisher (Complainants), did Respondent advise Complainants of any potential conflict of interest. Tr. 311-312 (Fisher), and 475-478 (Ridley-Fisher).

11. At the February 4, 2009 meeting, Respondent was directly asked if he would take this matter on a contingency basis. Respondent told the clients they would be responsible for his hourly fees. Respondent declined to take this as a contingency fee case because of the risk he perceived regarding whether or when the Trustee might be removed and whether the Successor Trustee would agree to pay Respondent's fees. The retainer agreement signed on or about March 4, 2009 did not address whether the funds for the clients' hourly fee payments to Respondent would come from their disbursements from the Trust or from some other source. Tr. 271, ll. 13-22; Tr. 272, ll. 1-17; Tr. 273, ll. 1-19 (Fisher). Respondent also discussed with his clients the

uncertainties as to when the Trustee would be removed. Tr. 465 (Ridley-Fisher).

12. Respondent told the Hearing Committee he would not have taken the case if he knew the clients were going to decide to pay him from the VPR Trust funds, because he did not know how long it would take to remove Ms. Hopkins as Trustee. Tr. 462 (Respondent). At the hearing, Respondent expressed concern that the clients had unilaterally converted the retainer agreement into a contingency fee agreement without his approval. Tr. 459 (Respondent).

13. On April 27, 2009, pursuant to his retainer agreement, Respondent filed a complaint, styled *Patrick S. Ridley, Madlyn Ridley-Fisher, and Harold Fisher, Jr. v. Brenda L. Hopkins,* Case No. 2009 LIT 000017 (the "*Ridley* matter"), in the Superior Court of the District of Columbia, seeking removal of Ms. Hopkins as Trustee of the VPR Trust, the appointment of Brian Hopson as successor Trustee, attorney's fees, costs, and any other relief the court deemed proper. BX 5 at 50-63.

14. On July 23, 2009, Ms. Hopkins, through her lawyer, James Larry Frazier, Esquire, filed her answer and a counterclaim for, *inter alia,* her trustee fees. BX 5 at 7; 28-37.

15. On November 10, 2010, the court issued an order directing that Ms. Hopkins resign as Trustee and appointing Brian Hopson – the next Successor Trustee designated by the VPR Trust - as Substitute Trustee. BX 5 at 90-91; Tr. 138 (Frazier). The court also ordered that Mr. Hopson "shall not distribute any assets or pay any claims raised in the action by the Plaintiffs without court approval or after the claims asserted by Defendant (resigning trustee) in her counterclaim have been satisfied or settled and paid in full." BX 5 at 22-23.

16. In February 2011, Respondent sent a letter to his clients expressing his concern that he had already sent several invoices, and a substantial outstanding balance remained. BX 3

at 28. Respondent asked that the clients take out a loan to pay his fees. *Id.*[6]

17. On August 18, 2011, Patrick Ridley sent an e-mail to Mr. Hopson, Successor Trustee, urging him to cease communicating with his co-plaintiff, Mr. Fisher. Mr. Ridley instructed Mr. Hopson not to "take any more telephone calls from Harold Fisher." BX 4 at 118. Mr. Ridley stated that Respondent's attorney's fees were now more important than the debt owed to Mr. Fisher and that he "need[ed] ALL of this money in order to be able to pay [Respondent] all his current fees, for I do not have the money to pay him right now and he needs to be paid RIGHT NOW." *Id.* Mr. Ridley expressed his fear that Respondent "may walk. We are only 11 days away from the trial on Aug. 29th. Please don't let this slip away from us." *Id.* Mr. Ridley also stated that "[Respondent] threatened to quit today, if a sizeable payment to him is not paid soon. That cannot be allowed to happen. Alas, please call [Respondent] as soon as you can regarding this matter so that he can be [paid] his fees (based on the agreed-upon 65/35 percentages, of course)." *Id.*

18. Respondent did not withdraw from the case prior to trial. BX 5 at 2. He represented the plaintiffs at the trial which began on August 29, 2011 and concluded on October 3, 2011. *Id.* At the conclusion of the trial, the case was continued - first to October 11, 2011 and then again to October 18, 2011 - pending an oral ruling from the trial court. *Id.*

19. On October 18, 2011, Patrick Ridley, Ms. Ridley-Fisher, Mr. Fisher[7] and

[6] Before the Hearing Committee, Respondent expressed concern that his clients were engaged in a pattern of incurring legal services and not compensating their attorneys despite their agreements to do so. Tr. 431-432 (Respondent).

[7] By earlier order of the court Mr. Fisher, who was merely a creditor and not a beneficiary of the VPR Trust, had been dismissed as a plaintiff from the attempt to replace Ms. Hopkins as trustee. He did, however, appear as noted.

Respondent appeared at the court for a status hearing to receive Judge Campbell's oral ruling. Ms. Hopkins, the original trustee, and her lawyer Mr. Frazier also appeared. BX 5 at 1-2. In its oral opinion the court ruled, *inter alia*, that plaintiffs failed to prove that the original trustee, Ms. Hopkins, breached her fiduciary duty to the VPR Trust and directed that "Attorney Frazier is to submit an order to chambers directing successor trustee to pay trustee's fees granted in the trustee's counterclaim." BX 5 at 1. Accordingly, Mr. Frazier drafted a proposed order directing Successor Trustee, Brian Hopson, to pay $51,936.49 to the original Trustee, Brenda Hopkins, which Mr. Frazier submitted to chambers for signature. BX 6; Tr. at 52-53 (Frazier).[8]

20. Immediately after the October 18, 2011 status hearing, Patrick Ridley, Harold Fisher, and Madlyn Ridley-Fisher met with Respondent in the hallway outside the courtroom. During the course of that meeting, in reply to questions from the clients, among other things, Respondent advised his clients that the VPR Trust must maintain funds sufficient to pay Ms. Hopkins her fees. BX 5 at 14 ("The specific question raised was, 'What can we do with the money not awarded to Brenda Hopkins?' As this question was asked of him more than once, his answer was the same - 'You can do whatever you want as long as there is money to pay Brenda.'"); Tr. at 327, 349 (Respondent told Mr. Fisher that, "as long as you don't touch the escrow funds that the judge put aside for Ms. Hopkins, you can do anything you want with the rest of the funds.") (Fisher).[9]

[8] Respondent, on behalf of the remaining plaintiffs, had an opportunity to address Mr. Frazier's proposed order. Three years later, on September 30, 2014, the court issued a written order, similar to the one Mr. Frazier submitted to chambers, directing Mr. Hopson to pay $51,936.49 from the VPR Trust to Ms. Hopkins, owed to her for fees and expenses over and above the $34,100 that the VPR Trust had already paid her. RX 1; Tr. at 55-57 (Frazier).

[9] At the hearing before the Committee, Respondent strongly contended that in this hallway meeting he told the Fishers that the oral decision was not final, that it had to first be reduced to writing as directed by the court for a proposed order, and that the signed order would be subject to motions

21. Sometime shortly after the October 18, 2011 hallway meeting, Harold Fisher drafted an e-mail to be sent to Brian Hopson, the Successor Trustee, requesting him to send a check for $9,613.34 to reimburse Mr. Fisher for expenses he had incurred on behalf of the VPR Trust. BX 4 at 127; Tr. at 187-190 (Fisher). After Ms. Ridley-Fisher reviewed and approved the draft, Mr. Fisher sent the e-mail to Mr. Hopson. Tr. at 190 (Fisher). Mr. Hopson, in turn, paid $9,613.34 to Mr. Fisher out of trust proceeds. BX 1 at 4; BX 2 at 17-18: BX 4 at 126; Tr. at 191 (Fisher).

22. Thereafter, the developing tension among the beneficiaries became increasingly evident as the three clients began to dispute among themselves. This tension was complicated by the fact that the majority beneficiary, Patrick Ridley, was estranged from his mother (minority beneficiary, Madlyn Ridley-Fisher) and step-father (Harold Fisher). Patrick Ridley objected to the disbursement to Harold Fisher to pay the trust's debt to Fisher, and the Successor Trustee very clearly expressed this. *See* BX 2, pp. 17 – 20, *see also*, BX 2, pp. 14 – 16. It is very clear that at this point, the beneficiaries and the creditor (Respondent's clients) were not in substantial agreement. *Id.*

23. When Respondent learned that Mr. Hopson had paid Mr. Fisher, he instructed Mr. Hopson that it was Respondent's opinion that Hopson should demand that Mr. Fisher return the money to the VPR Trust. BX 3 at 49. Accordingly, on October 20, 2011, Mr. Hopson sent the

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for reconsideration within ten days by either one side, or both sides, of the litigation which could affect the impact of that day's oral decision. In his cross-examination of Mr. Fisher, Respondent pressed Mr. Fisher to say Respondent had advised them they could not use the money because the judge's order was not "final," but Mr. Fisher repeatedly denied that happened. Tr. 328, 348, 350-51. He described a lengthy conversation in which the clients tried and failed to get clear answers to their questions about the use of the money, including whether they could use it to pay the trust's bills; they were anxious because, based on their past experience, Respondent "would be screaming bloody murder if you're not paid when you could be paid as a result of this." Tr. 349 (Fisher). Although we disagree with Respondent's version of events in the hallway, and find that he told his clients that they could spend the money in the Trust as long as there was enough to pay Ms. Hopkins, we do not find that Respondent testified falsely.

following e-mail to Mr. Fisher:

> greetings harold and madelyn: i just got off the phone with mr. rachall who informed me he was unaware of this transaction request. i was under the impression that we were working in a coordinated effort, not one of manipulation and deception. he is suggesting that the funds be returned and i am asking that we follow his recommendation and then work out a distribution that all agree to ...

BX 4 at 126 (punctuation/lowercase in the original); Tr. at 198 (Fisher).

24. On October 24, 2011, Respondent sent a letter to Mr. and Mrs. Fisher accusing them of misleading the Successor Trustee, Mr. Hopson, when they asked him to reimburse Mr. Fisher $9,613.34 for his expenses. BX 3 at 49 ("Upon learning of [the $9,613.34 payment], I asked Mr. Fisher to return the funds which you both mislead [sic] the Trustee Hopson into releasing funds from the [VPR Trust]."). Respondent demanded that the Fishers return the money to Mr. Hopson. Respondent also sent a copy of this privileged communication not only to Mr. Ridley but also to Mr. Hopson, who was not his client. *Id.* Respondent further stated, "[u]nless I hear from you by the end of today, I will file a Praecipe to inform the court and direct you to return the funds immediately to the Escrow Account maintained by the Trustee." *Id.* He mailed the letter by regular mail. Tr. 324 (Fisher). The record nowhere reflects that at this point Respondent advised or warned the Fishers concerning the now apparent conflict of interest between them and Patrick Ridley.

25. After receiving the October 24, 2011 letter from Respondent and before Respondent filed the praecipe, Mr. Fisher spoke with Respondent by telephone. Respondent warned that he would file the praecipe if the disbursed funds were not returned to the trust. Tr. 324-330 (Fisher). Mr. Fisher told Respondent that both he and his wife objected to Respondent filing the praecipe. *Id.* Respondent answered that they should not keep the money because Ms. Hopkins had to be paid first. *Id.* Mr. Fisher refused to return the money to the VPR Trust. BX 4

at 125-126; Tr. at 198-199 (Fisher). Respondent admitted having a discussion with the Fishers before he filed the praecipe, and that they refused to return the funds and expressed their disagreement with his proposed praecipe. Tr. 120 (Respondent).

26. Respondent testified that he never agreed to represent the Fishers "in conflict with a court order." Tr. 456 (Respondent). Respondent testified "I would not . . . agree to work with them to the point of perjury. I can't do that. *I'm in a conflict if they want to do it." Id.* (emphasis added).[10]

27. On October 28, 2011, Respondent filed a "praecipe" in the *Ridley* matter on behalf of Patrick Ridley and Brian Hopson, stating as follows:

> Trustee Brian Hopson has informed me that Plaintiffs Madlyn Fisher and Harold Fisher requested and received payment of $9,500.00 *(sic)*[11] from the Trust Escrow Account without the knowledge of counsel or Plaintiff Patrick [Ridley], the majority heir, before the order was executed and made final in this matter. *Trustee Hopson would not have done so but for the misrepresentation to him that the parties were all in agreement and the decision was final.*
>
> Plaintiff Patrick Ridley has not consented to this release of funds. The Trustee Hopson and counsel have both requested the return of these funds to the Escrow Account per this court's prior order.
>
> *Plaintiff Patrick* S. *Ridley and Trustee Brian Hopson request that the court enter an Order of Judgment directing the return of these funds as noted in the revised proposed Order of Judgment drafted by Defendant.*

BX 5 at 17-18 (emphases added); Tr. at 178-180 (Fisher); 373 (Ridley-Fisher).

28. Along with his praecipe, Respondent submitted to the court a "Revised

[10] Respondent apparently viewed the only conflict at issue as a dispute between himself and the Fishers about the distribution of the money Mr. Fisher was owed. At the Hearing, Respondent asked, "Mr. Fisher, isn't really the conflict that we had relative to the order was one in terms of following that order in terms of preserving the $9,000 as a part of the trust moneys, was not that the conflict?" Tr. 351 (Respondent).

[11] This appears to be an error, as the amount paid to Mr. Fisher was $9,613.34. *See* BX 1 at 4; BX 2 at17-18: BX 4 at 126; Tr. at 191 (Fisher).

JUDGMENT AND ORDER." BX *5* at 19-21; Tr. at 54-56 (Frazier). Respondent's proposed order was clearly motivated, at least in part, by the disputed disbursal to Mr. Fisher. It was substantially identical to the proposed order submitted by Ms. Hopkins's lawyer, Mr. Frazier. One critical difference with regard to the matter before the Committee was that it included the following language:

> IT IS FURTHER ORDERED, that Plaintiffs Madlyn Fisher and Harold Fisher shall return to Trustee Brian Hopson the payment of $9,500 from the Trust Escrow Account.

BX 5 at 21. No similar language or request appeared in the proposed order submitted by Mr. Frazier. Compare BX 6; Tr. at 53-56 (Frazier).

29. Respondent filed his "praecipe" with the Clerk of Court with no motion to seal and served copies upon the Fishers, Brian P. Hopson, James Larry Frazier, Esquire, and Patrick S. Ridley. BX 5 at 17-18.

30. Respondent filed his "praecipe" and "Revised JUDGMENT AND ORDER" with the court without Mr. Fisher's or Ms. Ridley-Fisher's authorization, and in direct contravention of Mr. Fisher's instructions. Tr. at 186, 311-312, 328 (Chair: ". . . did you give Mr. Rachal any direction with regard to your interest whether or not he should file that praecipe?" Fisher: ". . . I asked him not to file it.") (Fisher); 373 (Ridley-Fisher). Respondent admitted he was never given any reason to believe that Mr. or Mrs. Fisher consented to his filing of the praecipe. Tr. 125 (Respondent).

31. On October 31, 2011, Mr. Fisher and Ms. Ridley-Fisher filed their *pro se* "Opposition to [Respondent's] Praecipe." BX 5 at 13-15; Tr. at 178-182 (Fisher). They argued, in opposition to the filing by their own lawyer, that they made no misrepresentations to Mr. Hopson; that the payment to Mr. Fisher was for a valid debt that the VPR Trust owed to Mr. Fisher;

and that "[Respondent's] position of giving advice to the Heirs and Trustees seems self-serving and duplicitous." BX 5 at 14.

32. On November 3, 2011, the court, ruling on the papers filed, issued the following order:

> This is before the Court on the "Praecipe" filed by attorney Anthony Rachal, apparently on behalf of one of his three clients and Trustee Brian Hopson, seeking relief from his other two clients.
> First, a "praecipe" is not an appropriate means for seeking court action on a substantive and apparently disputed point. Second, the Court does not understand how Mr. Rachal, acting on behalf of one client, could ask the Court to take action against two others. Finally, the true "movant" here, if there is one, is the Trustee, Mr. Hopson, whom Mr. Rachal does not purport to represent, and who is the person who may have made an unauthorized distribution from the trust. If the Trustee wishes the Court to take some action, then it is the Trustee who must file the appropriate petition or motion (not a praecipe) and serve it on all parties.
>
> The "Praecipe" is DENIED.

BX 5 at 10 (emphasis in the original).

33. The Trustee, Mr. Hopson, never moved for Mr. Fisher to return the $9,500 after the court denied Respondent's praecipe. Tr. 50 (Fisher).

34. On January 27, 2012, the Fishers requested Respondent to provide copies of the transcripts in the *Ridley* matter in his possession, and for which they paid $250 on August 14, 2009, and $500 on November 5, 2010. BX 1 at 10; BX 3 at 19; Tr. at 178 (Fisher). To date, Respondent has failed to provide the transcripts to the Fishers. Tr. at 177-178 (Fisher).

35. On September 30, 2014, the court issued its dispositive order. The court concluded that "the plaintiffs failed to carry their burden on the claims that went to trial." It awarded, in addition to the $34,100 in trustee fees already paid to the original trustee, $51,936.49 in fees and reimbursement. *Id.* at 3-4. The court did not order Mr. Fisher to repay the $9,613 to the VPR Trust. RX 1.

36. While Respondent claimed throughout the hearing that there had been no final order in the underlying litigation and it therefore remained an open case (*see, e.g.*, Tr. 57-59, 72, 112-13, 121), Respondent never filed a motion to withdraw from the representation of the Fishers despite his alleged misconduct in advocating a position adverse to theirs, despite Judge Campbell's order denying Respondent's "praecipe," and despite these ongoing disciplinary proceedings. BX 5 at 1.

III. CONCLUSIONS OF LAW

A. Respondent Violated Rule 1.3(b)(2).

Bar Counsel contends that Respondent violated Rules 1.3(b)(1) and 1.3(b)(2) when he stopped trying to recover Harold Fisher's debt from the VPR Trust, and asked the trial judge to order Mr. Fisher to return the money paid to him. He thereby intentionally damaged Mr. Fisher's and Ms. Ridley-Fisher's interests by claiming that they had defrauded the trust. Respondent does not address Rule 1.3 in his brief but instead contends that any action he took was for the "purpose of protecting the client," that "Respondent's single Praecipe (sic) filing had no ill effect upon the Fishers in this action," and that Bar Counsel failed to prove "actual harm." Respondent's Brief at 9-10.

Rule 1.3(b)(1) provides that "[a] lawyer shall not intentionally . . . [f]ail to seek the lawful objectives of a client through reasonably available means permitted by law and the disciplinary rules[.]" Rule 1.3(b)(2) provides that "[a] lawyer shall not intentionally . . . prejudice or damage a client during the course of the professional relationship." "Intent must ordinarily be established by circumstantial evidence, and in assessing intent, the court must consider the entire context." *In re Ukwu*, 926 A.2d 1106, 1116 (D.C. 2007).

Neglect is deemed intentional for the purposes of Rule 1.3(b) when it "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 (citations omitted); *see In re Reback*, 487 A.2d 235, 240 (D.C. 1986) (per curiam), *adopted in relevant part*, 513 A.2d 226, 229 (D.C. 1986) (en banc). "Neglect of a client's matter, often through procrastination, can 'ripen into . . . intentional' neglect in violation of Rule 1.3(b) 'when the lawyer is aware of his neglect' but nonetheless continues to neglect the client's matter." *In re Vohra*, 68 A.3d 766, 781 (D.C. 2013) (appended Board Report) (quoting *In re Mance*, 869 A.2d 339, 341 n.2 (D.C. 2005) (per curiam)).

The allegation that Respondent intentionally failed to seek his clients' lawful objectives is premised upon Respondent's alleged failure to pursue Mr. Fisher's claim for payment of funds he was owed by the Trust. [12] Respondent sought recovery of the amount due Mr. Fischer through the trust litigation. On the facts here, Respondent's failure to take any action during the few days between the October 18th hearing and payment by Hobson of the Trust's debt to Fisher on or about October 20th, Respondent (whatever his intent) cannot reasonably be said to have intentionally neglected the Fishers' interests in violation of Rule 1.3(b)(1).

To establish a violation of Rule 1.3(b)(2), Bar Counsel must demonstrate "actual prejudice or damage to the client." *In re Cohen*, 847 A.2d 1162, 1165, n.l (D.C. 2004). "[I]t is sufficient to

[12] The record is unclear on the nature of Respondent's advice to the Fishers in the hallway on October 18th. The Fishers were quite clear that they understood Respondent to be advising them that they could use Trust funds to reimburse Mr. Fisher, so long as they did not reduce the Trust below the amount due to Ms. Hopkins as a result of Judge Campbell's oral opinion. FF 20. Respondent did not testify regarding the hallway conversation. However, Respondent's October 28th "praecipe" and his advice to Mr. Hobson when he learned of the payment to Mr. Fisher are circumstantial evidence that Respondent believed that the Fishers were not entitled to take money from the Trust. While it is clear from the record that the Fishers and Respondent did not have the same understanding of that hallway conversation, given the record and our resolution of the issues, it is unnecessary to make a credibility finding on this point. Whatever Respondent's advice in that hallway conference, the events between October 18th and 28th make clear that once Respondent learned of the reimbursement, he did not act in accordance with the requirements of Rule 1.3(b)(2).

establish a violation of [the predecessor to Rule 1.3(b)(2) by showing] that the lawyer was 'demonstrably aware' that prejudice or damage to the client would result from his conduct, and that such prejudice or damage did, in fact, result." *In re Robertson*, 612 A.2d 1236, 1250-51 (D.C. 1992) (appended Board Report) (by failing to prepare tax returns, respondent "knowingly created a grave risk" that his client would lose claims for refunds and would be financially damaged).

It seems to us beyond peradventure that Respondent's "praecipe" was intended to prejudice and damage his clients' interests as they expressed them to Respondent in the Superior Court hallway on October 18, 2011, and that such prejudice and damage was inflicted during and in the course of Respondent's professional relationship with those clients. Respondent compounded his violation when he advised the Trustee to act against his clients' interests and, after learning that the payment had already been made, convinced Mr. Hopson to demand the return of the Trust's check. Respondent did not represent the Trust. He was not responsible for any action Mr. Hopson took, and he was not protecting any interest of the Fishers in advising Mr. Hobson not to pay Mr. Fisher and, having learned that Mr. Fisher had been paid, advising Mr. Hopson to demand that the money be returned. Respondent clearly acted "to prejudice or damage [the Fishers] during the course of the [Respondent's] professional relationship" with the Fishers.

As noted above, to find a violation of Rule 1.3(b)(2), it is not sufficient to find that an attorney intended to prejudice or damage a client. Bar Counsel must demonstrate "actual prejudice or damage to the client." *Cohen*, 847 A.2d at 1165. In considering this issue, the Committee reviewed Respondent's "praecipe" which states:

> Trustee Brian Hopson has informed me that Plaintiffs Madlyn Fisher and Harold Fisher requested and received payment of $9,500.00 *(sic)* from the Trust Escrow Account without the knowledge of counsel or Plaintiff Patrick [Ridley], the majority heir, before the order was executed and made final in this matter. *Trustee Hopson would not have done so but for the misrepresentations to him that parties were all in agreement and the decision was made final.*

BX 5, pp. 17 – 18 [Emphasis supplied]. This document was filed in the public record of the Superior Court of the District of Columbia. See BX 5, pp. 1 and 17, Docket Date 10/28/2011. We must determine if the Respondent's action in filing this "praecipe" constituted "actual prejudice or damage to the client."

The case law establishes that even minimal prejudice or damage suffices, so long as it was "actual" for the client during the relevant time period. *See In re Hines*, 482 A.2d 378, 382 n.13 (D.C. 1984) (per curiam). Thus, in *Hines*, prejudice was found to exist where a respondent's nonpayment of settlement proceeds jeopardized a client's standing with her bank, albeit in an "indirect" way. *See also In re Green*, Bar Docket No. 203-93 (BPR July 29, 1996), *aff'd*, 689 A.2d 560 (D.C. 1997) (per curiam) (prejudice existed due to delay in recovery); *In re Fogel*, Bar Docket No. 434-77 (BPR July 26, 1979), *aff'd*, 422 A.2d 966 (D.C. 1980) (per curiam) (prejudice by delay and effect of pending lawsuit in employment). The issue in this case is whether Respondent can escape a finding that he was in violation of Rule 1.3(b)(2) because the Court did not elect to pursue with the Fishers the issues raised in Respondent's "praecipe."

In *Fogel*, for example, actual prejudice was deemed to exist even though the client's appeal rights were ultimately preserved. Similarly, in *Green*, actual prejudice existed because the attorney's failure to diligently pursue a case delayed his client's ultimate recovery of damages through the efforts of successor counsel. In both cases, in other words, the impact of the attorneys' misconduct was ultimately rectified by subsequent events; however, those subsequent events did not erase the interim prejudice to the clients' interests, nor serve to void the attorneys' violations of Rule 1.3(b)(2).

Respondent has advanced the argument that no actual prejudice or damage was incurred by the Fishers and he cannot be held to have violated Rule 1.3(b)(2) without actual prejudice or

damage. Thus, the question is whether Respondent's conduct is more similar to *Cohen* or to *Fogel* and *Green*. In this case, there is nothing ephemeral about the fact of Respondent's October 28, 2011, filing. However, the Board in *In re Toppelberg*, Bar Docket 191-02 (BPR July 26, 2006), *recommendatio*n *approved*, 906 A.2d 881 (D.C. 2006), found that even though Toppelberg's failure to pay a client's debt increased his client's liability by nearly 200 percent, the client was not prejudiced or damaged because the respondent paid the debt and the client did not suffer "financial ramifications or other type of inconvenience." The Board said, "if there was the slightest additional evidence in the record that [the client] had been inconvenienced during the time period prior to Toppleberg's payment [the client's creditors], we would not hesitate to agree with Bar Counsel that actual prejudice occurred." Board Report at 37.

Two things distinguish the instant matter from *Toppelberg.* First, unlike *Toppelberg, Fogel*, and *Green*, Respondent did not merely neglect the interests of his clients. He affirmatively acted *against* those interests. And secondly, having affirmatively acted against the interests of his clients, Respondent has left on the permanent record of the Superior Court of the District of Columbia in a document that can be accessed by either Mr. or Mrs. Fisher's name, an allegation that Mr. and Mrs. Fisher made "misrepresentations."[13] We find by clear and convincing evidence that Respondent has violated Rule 1.3(b)(2).

B. Respondent Violated Rules 1.7(b)(1), (2), and (3).

Bar Counsel contends that Respondent violated Rule 1.7 when he simultaneously represented Mr. Ridley and the Fishers, who had opposing interests in the trust litigation, and ultimately took a position in favor of Mr. Ridley that was adverse to the Fishers' interests.

[13] *See Toppelberg, supra*, where the Board noted that if there had merely been an unfavorable report in the client's credit report, they would have found that the client there had suffered actual prejudice and damage.

Respondent contends that his clients executed a "clear and constructive waiver of potential and future conflicts" by agreeing to the plan of action stated in their retainer agreement.

Rule 1.7(b) states, in pertinent part, that:

> Except as permitted by paragraph (c) below, a lawyer shall not represent a client with respect to a matter if:
>
> (1) that matter involves a specific party or parties, and a position to be taken by that client in that matter is adverse to a position taken or to be taken by another client in the same matter, even though that client is unrepresented or represented by a different lawyer;
>
> (2) such representation will be or is likely to be adversely affected by representation of another client; [or]
>
> (3) representation of another client will be or is likely to be adversely affected by such representation. . . .

Rule 1.7(c) provides that a lawyer may represent a client in a matter covered by Rule 1.7(b) if "each potentially affected client provides informed consent to such representation after full disclosure of the existence and nature of the possible conflict and the possible adverse consequences of such representation" and "the lawyer reasonably believes that the lawyer will be able to provide competent and diligent representation to each affected client." Comment [28] explains "under District of Columbia substantive law, the lawyer bears the burden of proof to demonstrate the existence of consent." *See also, e.g.*, *In re Shannon*, Bar Docket No. 2004-D316 at 25-26 (BPR Nov. 27, 2012) (providing that once Bar Counsel has proven an improper business transaction with a client under Rule 1.8(a), the respondent must come forward with evidence that the transaction was authorized by an exception to the rule), *recommendation adopted*, 70 A.3d 1212 (D.C. 2013); *Griva v. Davidson*, 637 A.2d 830, 845 (D.C. 1994) (finding that the party had not carried its burden to prove disclosure and consent in a non-disciplinary case concerning an alleged breach of a fiduciary duty to a client) (citing *In re Hansen*, 586 P.2d 413, 415 (Utah 1978)

("[U]nder [Rule 1.7], [the] burden is on the attorney to show he or she made full disclosure and obtained [the] client's consent.")).

1. Respondent violated Rule 1.7(b)(1) by representing Mr. Ridley in connection with the praecipe and by communicating with the Trustee to seek the return of Mr. Fisher's payment.

Unless the exception in subsection (c) applies, Rule 1.7(b)(1) prohibits an attorney from representing a client in a matter if the matter involves specific parties and the client's position is adverse to that of another client. Respondent violated that subsection by representing Mr. Ridley in connection with his efforts to recover the Trust's payment to Mr. Fisher. In particular, Respondent violated the subsection when he filed the praecipe and when he communicated with the Trustee about the payment.

The position set out in the praecipe with respect to the repayment of the funds was clearly adverse to the position of the Fishers in the same matter. The praecipe that Respondent filed on Mr. Ridley's behalf asked the court to "direct[] the return of these funds" received by Mr. Fisher and stated that the Trustee would not have made the payment "but for the misrepresentation to him that the parties were all in agreement and the decision was final." FF 27. As Respondent was well aware when he filed the praecipe, Mr. and Mrs. Fisher unsurprisingly took the position in the same matter that they had made no misrepresentation to the Trustee or anyone else, and that the payment was proper since Mr. Fisher was a creditor of the Trust. FF 25. Respondent and the Fishers agree that the Fishers did not want to return the funds to the Trust, and did not want the Respondent to file the praecipe asking the court to direct them to do so. FF 21, 25, 31.

Respondent never discussed the implications of this obvious conflict of interest with his clients. FF 24. He neither sought nor obtained informed consent from the Fishers to act on Mr. Ridley's behalf in connection with the return of the funds generally, or the filing of the praecipe

specifically, as Rule 1.7(c)(1) required. FF 22, 25, 30. In fact, he filed it over his clients' express objection. FF 25, 30.

Moreover, even if Respondent had obtained the Fishers' informed consent to file the praecipe (which it is undisputed, he did not), he could not "reasonably believe" that he could "provide competent and diligent representation to each affected client" while doing so. *See* Rule 1.7(c)(2). His representation of the Fishers was necessarily compromised by his public assertion to the court that his clients made a misrepresentation to the Trustee to obtain funds to which they were not entitled. FF 27, 29, 30, 32. Respondent could not have adequately represented the Fishers' interest in retaining the payment and asserting its propriety while taking a position exactly to the contrary on Mr. Ridley's behalf.[14]

Respondent also violated Rule 1.7(b)(1) by seeking return of the funds through the Trustee. Respondent approached the Trustee directly "suggesting that the funds be returned," and the Trustee then asked Respondent's clients to return them. FF 23. As noted above, that position was plainly adverse to the Fishers' position that the payment was a proper payment to a creditor, and the Fishers never consented to that conflict.[15] FF 22, 24. Similarly, when Respondent sent the Trustee and Mr. Ridley a copy of his October 24, 2011 letter to the Fishers, he once again publicly

[14] Respondent suggests that his filing "had no ill effect upon Fishers [sic] in this action." Respondent's Reply to Bar Counsel filed May 4, 2015, ¶ 30. The fact that his efforts against his own clients were unsuccessful does not eliminate the conflict. *See Cohen*, 847 A.2d at 1165 n.1 (respondent violated Rule 1.7(b) even though the client was not prejudiced by respondent's conduct). Moreover, as noted in the discussion above of Respondent's violation of Rule 1.3(b) (see section III.A.), Respondent in fact did prejudice his clients by alleging in a public document filed in their own suit that they made a "misrepresentation" to the Trustee.

[15] It is important to note here that Respondent never represented the Trust and as such, he had no fiduciary duty to the Trust or the Trustee. While Respondent may have believed he had to protect the interests of Mr. Ridley, that he somehow believed he had a duty to the Trust and the Trustee, underscores his lack of understanding of principles of conflict of interest as expressed in Rule 1.7.

advocated a position directly adverse to his clients' interests, without obtaining his clients' consent to that conflict of interest. FF 24.

2. Respondent's representation of Mr. and Mrs. Fisher violated Rule 1.7(b)(2).

Under Rule 1.7(b)(2), informed consent to joint representation is required if an attorney's representation of one client "will be or is likely to be adversely affected by representation" of the other client. *In re Szymkowicz,* App. No. 14-BG-0884, slip op. at 18 (D.C. Sept. 17, 2015). Respondent violated Rule 1.7(b)(2) in two ways. First, throughout the joint representation he failed to make adequate disclosures to his clients about the potential conflicts inherent in the representation and to obtain the clients' informed consent to that representation. Second, when an actual conflict of interest arose between Mr. Ridley and the Fishers, he failed to obtain the Fishers' consent to continuing the joint representation even when it became clear that his representation of Mr. Ridley would adversely affect his representation of the Fishers.

The funds in the Trust were not unlimited, and from the beginning of the representation, there was a possibility that the interests of the three clients in the Trust's funds or other matters related to the Trust could conflict. *See* FF 5 (describing disputes with the original Trustee about the handling of Trust property). Mr. Ridley was the majority beneficiary, Mrs. Fisher was the minority beneficiary, and Mr. Fisher was a creditor of the Trust. FF 2. Among other possible conflicts, an heir of the Trust might have claimed funds also claimed by a creditor (as in fact essentially happened when Respondent asserted on Mr. Ridley's behalf that the Trustee should not have made a distribution to Mr. Fisher).

At the onset of the representation, no actual conflict was apparent. The three clients had an agreed-upon goal of removing Brenda Hopkins as Trustee and accomplishing other objectives. FF 8. However, simply by the varying nature of the three clients' legal interests in the trust funds,

the potential for conflict was apparent. Respondent's representation of any of the joint clients was "likely to be adversely affected by" his representations of the others. *See* Rule 1.7(b)(2); *Szymkowicz*, slip op. at 20 (informed consent was required where two clients' interests generally coincided, [but where] there was evidence indicating a substantial risk that those interests did or might diverge in particular respects relevant to the conduct of the joint representation."). Respondent therefore had an obligation to make "full disclosure of the existence and nature of the possible conflict and the possible adverse consequences of such representation." *See* Rule 1.7(c)(1). Respondent never discussed with his clients the possibility that their interests could conflict.[16] FF 10. Accordingly, he never obtained his clients' informed consent to the representation. Indeed, throughout the hearing Respondent seemed unaware that a potential conflict existed in the joint representation or that he had any obligation pursuant to Rule 1.7(c) to discuss that potential conflict with his clients or obtain their informed consent to it. FF 10, 22, 24, 26 (n.10), 30, 36; Respondent's Reply to Bar Counsel filed May 4, 2015, Proposed Findings of Fact ¶24 (Respondent asserting that "in reality it was a conflict between Mr. Fisher, a dismissed party, and the order of the court which [Mr. Fisher] did not want to follow any longer when the trial order was not yet final. In other words, [Mr. Fisher] was in a dispute with me and my interpretation of the order, and not in a true conflict created with the other parties").

Moreover, once an actual conflict arose between Mr. Ridley and the Fishers, Respondent

[16] Respondent suggests that the "potential conflicts . . . of the case were discussed" in his early interviews with his clients and that the clients "willingly waived any objection to possible conflicts." Respondent's Reply to Bar Counsel filed May 4, 2015, Proposed Findings of Fact ¶1. In light of Respondent's own testimony at the hearing, as well as the testimony of the Fishers, that assertion is not credible. FF 10-11; Tr. at 319, l. 14-320, l. 9.

continued to represent Mr. Ridley[17] even though his representation of the Fishers would be "adversely affected" by his representation of Mr. Ridley. As discussed above in section III.B.1, Respondent's filing of the praecipe and communications with the Trustee about the payment to Mr. Fisher contradicted the Fishers' instructions to him and were directly adverse to the Fishers. Respondent did not seek or obtain the Fishers' informed consent to that representation as required by Rule 1.7(c). *See* Section III.B.1. Even at that point, Respondent apparently failed to identify the conflict of interest between the clients, and he seemed unaware that he was required to obtain the clients' informed consent to continue the joint representation. FF 26 (n.10), 36. Respondent's representation of Mr. Ridley violated Rule 1.7(b)(3).

In the same way that Respondent violated Rule 1.7(b)(2) by his representation of the Fishers, he violated Rule 1.7(b)(3) in his representation of Mr. Ridley. As noted in section III.B.2. above, in light of the clients' different positions with respect to the Trust, Respondent's representation of the Fishers was "likely to be adversely affected by" his representation of Mr. Ridley. Accordingly, he had an obligation to provide Mr. Ridley and the Fishers the explanation required by Rule 1.7(c)(1). Respondent entirely failed to discuss that potential conflict with his clients or to obtain their informed consent to the joint representation. *See* section III.B.2. above.

Similarly, when the actual conflict arose between Mr. Ridley's interest and the Fishers' interest in the disputed payment, Respondent continued to represent Mr. Ridley without the clients' informed consent even though at that point his representation of the Fishers was clearly "adversely affected" by his work on Mr. Ridley's behalf. Section III.B.2.; FF 27, 29, 30, 32. Respondent's failure to address either the potential or the actual conflict created by his representation of Mr.

[17] Respondent apparently continued to represent the Fishers after the conflict arose, although he was working against their interests on Mr. Ridley's behalf when he filed the praecipe and communicated with the Trustee about the disputed payment. Finding of Fact No. [34].

Ridley violated Rule 1.7(b)(3).

C. Respondent Did Not Violate Rule 8.4(d).

Bar Counsel contends that Respondent violated Rule 8.4(d) when he filed his praecipe, which wasted the court's time and forced his clients, the Fishers, to file a *pro se* opposition. Respondent contends that he did not violate Rule 8.4(d) because his praecipe was intended to ensure compliance with a court order.

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), Bar 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, where the impact is more than *de minimis*. *See In re Cole*, 967 A.2d 1264, 1266 (D.C. 2009). Conduct can bear directly upon the judicial process and taint the judicial process in more than a *de minimis* way when it delays a court's consideration of identifiable cases. *See In re Toppelberg*, Bar Docket No. 191-02 at 53 (BPR July 21, 2006), *recommendation adopted*, 906 A.2d 881, 881 (D.C. 2006) (per curiam).

The Committee does not believe that Respondent's actions in filing his October 28, 2011 "praecipe" violated Rule 8.4(d). Respondent's conduct was improper and it bore directly on the judicial process in the case against the Trustee. However, the Committee finds that Bar Counsel

has failed to establish by clear and convincing evidence that Respondent's conduct in filing the praecipe tainted the judicial process in more than a *de minimis* way. Respondent's pleading was filed late on a Friday and in all likelihood did not reach Judge Campbell's chambers until late on the following Monday. By the following Thursday, November 3, 2011, Judge Campbell's order denying Respondent's "praecipe" was signed, filed, and mailed to all parties. The order contains no citation to any law or fact; it shows that the court summarily decided the matter because a "praecipe" is not an appropriate means for seeking court action on a substantive and apparently disputed point.

On this record the Committee cannot, and does not find that Respondent tainted the judicial process in more than a *de minimis* way.

IV. RECOMMENDATION AS TO SANCTION

The appropriate sanction is one that is necessary to protect the public and the courts, to maintain the integrity of the profession, and to deter Respondent and other attorneys from engaging in similar misconduct. *See In re Martin*, 67 A.3d 1032, 1053 (D.C. 2013) (citing *In re Scanio*, 919 A.2d 1137, 1144 (D.C. 2007)). The sanction imposed must also be consistent with cases involving comparable misconduct. *See* D.C. Bar R. XI, § 9(h)(1); *In re Elgin*, 918 A.2d 362, 373 (D.C. 2007); *In re Berryman*, 764 A.2d 760, 766 (D.C. 2000). The determination of a disciplinary sanction takes into account: (1) the seriousness of the conduct at issue; (2) the prejudice, if any, to the client which resulted from the conduct; (3) whether the conduct involved dishonesty and/or misrepresentation; (4) the presence or absence of violations of other provisions of the disciplinary rules; (5) whether the attorney had a previous disciplinary history; (6) whether or not the attorney acknowledged his or her wrongful conduct; and (7) circumstances in mitigation of the misconduct. *See In re Vohra*, 68 A.3d 766, 784 (D.C. 2013) (citing *In re Hutchinson*, 534 A.2d 919, 924 (D.C.

1987) (en banc)).

Bar Counsel has asked the Hearing Committee to recommend a one-year suspension with reinstatement conditioned on a demonstration of fitness. Respondent has requested that the Committee not recommend any suspension, and that if any suspension is warranted, that it not recommend a fitness requirement. For the reasons described below, we recommend that Respondent be suspended for three months as the sanction for the Rule 1.3(b)(2) violation, and suspended for three months for the Rule 1.7(b)(1), (2) and (3) violations, with the sanctions to run concurrently. The Committee further recommends that as a condition of reinstatement, Respondent be required to successfully complete six hours of ethics-related CLE courses approved by Bar Counsel, including the "Ethical Issues in Representing Multiple Clients in Civil Cases" course offered by the D.C. Bar, or a similar course approved by Bar Counsel.

A. Seriousness of the Misconduct

Simply put, we cannot imagine how Respondent could have conceived that it was proper to file a pleading in which he disparaged his clients and asked the court to take an action which was clearly against the wishes and interests of those clients, irrespective of the interests of any other client. This was not a situation in which an attorney pursued a course of action that was arguably in the interests of his clients. Rather, it was a course of action that was clearly and unequivocally against the expressed wishes of the Fishers and which could not reasonably be viewed as in any way furthering their interests. The act itself, *i.e.*, the filing of the praecipe seeking an order against his clients, demonstrates that Respondent was, at best, insensitive to questions of conflict of interest which may arise in the course of multiple representations. However, Respondent's failure to include in his retainer agreement in this matter any discussion of the possibility of such conflicts in a multiple representation makes his failure to identify that

possibility preeminently clear. Further, Respondent failed to discuss the possibility of a conflict and to explain his ethical obligations should such a conflict arise during the course of his representation of the three clients in this matter.

That Respondent lacked an understanding of his obligations to his client presents a problem, but in the context of the ongoing professional relationship with the Fishers, Respondent's violation is aggravated by the state of his relationship with the clients and the fact that his less than happy relationship centered principally on fees owed. Nothing is more basic to a lawyer's ethical obligations to his client than that he faithfully and ethically advance his client's interests.

That Respondent never recognized these issues, did no research to resolve the issues, nor sought advice from Bar Counsel or an ethics attorney, again underscores the limits of his knowledge in this area. That the potential issues pursuant to Rule 1.7 were not apparent to Respondent when the representation commenced presents one concern. That those issues were still not perceived when Respondent undertook to file the praecipe in which he disparaged his clients and their interests, presents yet another much more grave concern.

The Committee finds that Respondent's misconduct was serious.

B. Prejudice to Client

The Fishers obtained reimbursement from the Trust and, despite Respondent's efforts, have never been required to surrender those funds. Nonetheless, the permanent (and we assume immutable) record of the Superior Court of the District of Columbia contains a document, discoverable by research directed at the Fishers by name, in which Respondent disparages the Fishers and their honesty. While monetary damages might be reimbursable, damages such as those suffered by the Fishers cannot be undone, a principle recognized by courts in reviewing damage awards for slander and libel. On this basis the Committee finds that prejudice to the Fishers is

substantial.

C. Whether the Conduct Involved Dishonesty and/or Misrepresentation

While we have noted that the circumstances of this matter might lend themselves to support an allegation that Respondent's motives in filing the praecipe were self-serving, we explicitly find that Respondent's actions did not involve dishonesty or misrepresentation.

D. Violation of Other Disciplinary Rules

The only Disciplinary Rules violated are Rules 1.3 and 1.7.

E. Prior Discipline

Over a long career in the practice of law, mostly as a sole practitioner, Respondent has no history of prior discipline.

F. Acknowledgment of Wrongful Conduct

Respondent does not admit or concede any wrongful conduct.

G. Other Circumstances in Aggravation and Mitigation

The Committee accepts that Respondent, however mistakenly, believed that he could not ethically permit the Fishers to obtain reimbursement as they requested or, the reimbursement having been made, not bring it to the attention of the court. His situation was analogous to that faced by a criminal attorney who knows his client intends to testify perjuriously or present false evidence to the court. The cases and the hornbooks on ethics are replete with discussions of an attorney's obligations to the courts, his clients, and his profession in such circumstances. Not only does the entire record reflect that Respondent failed to consult those sources, more egregiously, it reflects that Respondent had absolutely no appreciation for the ethical implications of multiple representation.

Respondent's belief that he had an ethical duty to prevent the reimbursement sought by the

Fishers does not excuse his violations here. An attorney representing a defendant who intends to perjure himself has obligations to the trial court and his profession which place the attorney in a quandary. Nevertheless, that quandary does not permit the attorney to disclose the fact of the proposed perjury. Similarly, Respondent's belief that he had an ethical duty to prevent the reimbursement sought by the Fishers until the Trust had paid the former trustee did not permit him to reveal to the court and others that the Fishers had taken an action against the interests of the Trust and Mr. Ridley.

In weighing our recommendation on sanction, we have considered in aggravation the seriousness of Respondent's violation of an attorney's fiduciary duty to his clients and Respondent's total failure to recognize the potential for and the actual existence of a conflict of interest in a multiple-party representation, as well as Respondent's failure to accept responsibility in this matter. We have considered in mitigation Respondent's heretofore spotless disciplinary record and his heart-felt, but mistaken, belief of his responsibilities in this matter. We have also considered the fact that Respondent is a sole practitioner for whom any suspension will have a most serious effect.

H. Sanctions for Comparable Misconduct

In its opinion in *In re Barber*, ___ A.3d ___, D.C. App. No. 13-BG-1501, slip op. at 10-11 (Nov. 12, 2015), the Court of Appeals quoted with approval the Board's recommendation in *In re Foster*, 699 A.2d 1110, 1112 (D.C. 1997) (appended Board report) where the Board wrote:

> Under the Court's ruling in *Matter of Thompson*, 492 A.2d 866, 867 (D.C. 1985), where two or more separately docketed matters are before the Board involving the same respondent, the question as to sanction should be: If all the matters were before the Board simultaneously, what would be its recommendation as to the appropriate discipline?

In *Foster*, the Court approved the Board's recommended sanction in a matter where two separate

Committees heard charges against the respondent and recommended lesser sanctions to the Board which then recommended that the respondent be disbarred. The clear import of the Court's finding in *Foster* and *Barber* is that the Court wants Hearing Committees and the Board to advise the Court on a comprehensive sanction for the respondent's misconduct, considering all the violations at the time the recommendation is made.

Consequently, in order to extend and apply the Court's preference for a unitary approach to sanction, in our discussion and recommendation we have undertaken to advise the Court first as to the sanction we would recommend for each violation we have found and then to advise the Court as to how we would apply those individual sanctions in a comprehensive sanction for the Respondent.

1. Sanctions for Violations of Rule 1.3(b)(2)

The most serious aspect of Respondent's violation of Rule 1.3 is that the conduct was intentional. The great majority of recent matters involving similar violations have been matters in which the charged respondent failed to take appropriate action. *See, e.g., In re Pye*, 57 A.3d 960 (D.C. 2012) (per curiam) (Respondent failed to act with "reasonable promptness" in disbursing the inheritance from the estate to the heirs.); *In re Omwenga*, 49 A.3d 1235 (D.C. 2012) (per curiam) (Respondent failed to take action for significant periods of time in numerous immigration matters); *In re Fox*, 35 A.3d 441 (D.C. 2012) (per curiam) (Respondent never took steps necessary to develop a client's case for presentation to a court, allowed three years to pass before advising that he would not pursue her claims, allowed the statute of limitations to run on a false imprisonment claim, and erroneously informed the client that the statute of limitations had run on her civil rights claim); *In re Silva*, 29 A.3d 924 (D.C. 2011) (Respondent failed to prepare an easement agreement for his client, deceived the client about the status, and provided the client with an ERA on which

he signed the names of representatives of the adjacent landowners and other parties and signed the notarizations of those signatures using names of fictitious D.C. notaries.); *In re Mabry,* 11 A.3d 1292 (D.C. 2011) (per curiam) (Respondent neglected and abandoned his representation by failing to file an accounting or properly probate an estate, and engaged in other conduct that intentionally prejudiced and damaged the client); *In re Shariati,* 31 A.3d 81 (D.C. 2011) (per curiam) (more than 100 rules violations in eleven client representations).

These matters generally resulted in substantial penalties for the respondents. In *Pye*, the respondent was ordered disbarred and to pay restitution with legal interest as a condition of reinstatement. The respondent in *Omwenga* was also ordered disbarred and to pay restitution with legal interest as a condition of reinstatement. A three-year suspension with a fitness requirement was imposed in *Silva,* and *Mabry* was ordered disbarred and directed to make restitution with interest. In important respects, these matters are factually distinct from the instant matter. *Pye* involved charges of intentional misappropriation and commingling for which disbarment is mandatory. In *Omwenga*, the respondent was found to have committed 58 violations of 20 Rules in four matters, with substantial aggravating factors, including dishonesty, two prior informal admonitions involving three separate clients, the complainants' status as noncitizens, which made the misconduct difficult to detect, as well as the respondent's failure to demonstrate any remorse or to accept responsibility for the misconduct. In *Shariati,* the Court found more than 100 rules violations in eleven client representations with aggravating factors including the dishonest and deceitful nature of the misconduct as well as lack of remorse. The Court ordered the respondent disbarred and required the payment of damages with interest. In *Mabry*, a finding of intentional misappropriation of client funds, compelling disbarment, was the determinative factor.

Thus, with the exception of *In re Fox,* 35 A.3d 441, 441 (D.C. 2011) (which is

distinguishable on several grounds, *see below*), the recent cases involving violations of the same Rules as this Committee has found against Respondent have involved more serious charges (intentional misappropriation), more egregious circumstances (multiple clients and Rule violations), and dishonesty in dealing with the complainants and Bar Counsel. The end result in those matters is thus not as instructive as we might hope in determining what sanction the Committee should recommend to the Board. In *Fox,* which did not involve intentional neglect or harm to the client, the Court accepted the recommendation of the Committee adopted by the Board imposing a 45-day suspension. Though Bar Counsel urged a finding of dishonesty, the Committee and the Board specifically declined to find such by clear and convincing evidence, but did find in mitigation that the respondent had twenty-four years of practice with only one informal admonition in an unrelated matter, issued after the respondent's representation in the underlying matter. With regard to Respondent's violations of Rule 1.3, the Committee finds that in light of the Court's approved sanction in *Fox* the appropriate sanction here would be a period of suspension, that is, we recommend that Respondent be suspended for three months to be served concurrently with his sanction for violation of Rules 1.7(b)(1), (b)(2), and (b)(3), *infra*

2. Sanctions for Violations of Rule 1.7

Respondent's Rule 1.7 violation involved his mistaken failure to adequately and correctly advise his clients of the potential consequences of his representation of multiple clients.

The Court in *In re Smith*, 70 A.3d 1213 (D.C. 2013) (per curiam), dealt with a matter in which Smith represented two heirs who had potentially adverse interests with respect to the valuation of the real property and personal property of an estate, which was at issue in three separate litigations. *In re Omwenga, supra,* also involved violations of Rule 1.7. The respondent in *Elgin*, 918 A.2d 362, represented a client in a suit brought by a credit card company to recover

charges incurred by the respondent (Elgin), who was thus a potential third-party defendant. The client's interest was in establishing Elgin's legal liability for the charges, but Elgin did not provide the client with an explanation of this conflict necessary for her to make an informed decision about his representation. In another matter, the respondent prepared a will for an elderly client, while at the same time representing the elderly woman's caretaker, who was accused of exploiting and neglecting the client. *In re Long*, 902 A.2d 1168 (D.C. 2006) (per curiam). The respondent represented adverse parties in court proceedings without disclosure of potentially adverse consequences, and without the clients' consent to the representation. The respondent in *In re Evans*, 902 A.2d 56 (D.C. 2006) (per curiam), used a probate proceeding to facilitate the closing of a real estate transaction in which he had a financial interest, without disclosing his potential conflict of interest to his client. In *In re Butterfield*, 851 A.2d 513 (D.C. 2004) (per curiam), the Court addressed a matter in which the respondent failed to perform a conflicts check and represented a new client in a matter in which its interests were adverse to the interests of an existing client. Butterfield's law firm routinely failed to utilize its conflict identification system and failed to take effective action to address the conflict. The respondent in *In re Cohen*, 847 A.2d 1162 (D.C. 2004), was a partner who failed to adequately supervise an associate in his firm (his son) in a matter involving continued representation of two clients with conflicting interests in a copyright matter.

Finally, the respondent in *In re Hager*, 812 A.2d 904 (D.C. 2002), entered into a settlement agreement in a potential class action whereby the defendant manufacturer would pay $225,000 in legal fees to Hager in return for his agreeing not to disclose the fact and amount of payment to clients and to not use information against the manufacturer. We think that *Hager* is particularly relevant here because in that opinion the Court quoted Bar Counsel with approval when counsel

said "[Respondent's] misconduct strikes at the heart of the attorney-client relationship, that is, the trust that clients place in their attorneys to pursue their legal interests." *In re Hager*, 812 A.2d at 921. While we recognize the seriousness of conflict violations such as Hager's, the perfidy and ethical numbness presented by the respondent in *Hager* is not present here. We conclude therefore that the sanction imposed in *Hager*, a one-year suspension, would certainly be disproportionate to the violations in the instant matter.

As we have already noted, the sanction in *In re Omwenga, supra,* was a function of more serious circumstances present there and absent here. Similarly the respondent in *In re Smith, supra*, among numerous other charges, was found to have recklessly misappropriated client funds suggesting that a sanction of disbarment for Respondent would be inappropriate here.

It is our view that the sanctions in *Elgin, Long, Evans, Butterfield, and Cohen* are more instructive in devising a sanction for Respondent. In *Elgin*, finding very similar violations and noting similar aggravating and mitigating circumstances, the Court approved a six-month suspension, with reinstatement conditioned on restitution to the client. In *Long* noting, *inter alia*, a previously unblemished disciplinary history, the Court approved a 30-day suspension, which was stayed pending a 30-day probation period. Faced with a very serious disciplinary history, the Court in *Evans* nonetheless imposed a six-month suspension with reinstatement conditioned on the completion of six hours of CLE courses in probate law and legal ethics. The final 90 days of Evans' suspension were stayed on condition that Evans agrees to probation for one year, subject to oversight by a practice monitor. *See also, In re Shay*, 756 A.2d 465, 483 (D.C. 2000) (90-day suspension for conflict of interest, dishonesty, false statements, and failure to withdraw). Having violated only Rules 1.7(b)(1) and (2), Butterfield's sanction was a 30-day suspension and Cohen, who was found vicariously responsible for the associate's violation of several rules but who had

an unblemished record over an extended career, was also suspended for 30 days.

For his violation of Rule 1.7 we recommend that Respondent be suspended for three months to be served concurrently with his sanction for violation of Rule 1.3(b)(2), *supra*.

3. Sanction recommendation for the entirety of Respondent's misconduct

Considering the above and after a review of sanctions in other similar matters involving Rules 1.3(b)(2) and 1.7(b)(1), (b)(2) and (b)(3), the most compelling fact in our view is that in a court pleading filed for no other meaningful purpose, Respondent harmed his client. In other words, Respondent's violation was not an argument included in an otherwise extensive pleading or in a pleading filed for some other legitimate purpose. Rather, it was integral to a pleading filed for no other purpose than what was ultimately the violation itself. Respondent violated a principle fundamental to our profession's relationship with courts and clients. While the resolution of such questions is complex, the recognition of the issues is basic, so basic as to be plain to even the untrained eye. Respondent's unblemished prior disciplinary history notwithstanding, his misconduct was extensive and requires a significant response. Given Respondent's total failure to in any way recognize his violations or the fundamental role the rules underlying those violations play in the responsible practice of our profession, we recommend a three month suspension for his violation of Rule 1.3(b)(2), and for his violation of Rules 1.7(b)(1), (2), and (3), a three month suspension, the sanction to be served concurrently with the sanction recommended for his violations of Rule 1.3(b)(2), *supra*. With respect to either sanction, Respondent should be required to successfully complete six hours of ethics-related Continuing Legal Education ("CLE") courses approved by Bar Counsel, including the "Ethical Issues in Representing Multiple Clients in Civil Cases" course offered by the D.C. Bar, or a similar course approved by Bar Counsel, as a condition of reinstatement.

H. Fitness Requirement

Bar Counsel contends that a fitness requirement is warranted because Respondent gave an incomplete response to a subpoena, failed to follow proper procedures during the hearing, gave misleading testimony, demonstrated a lack of understanding of the disciplinary rules, and showed no remorse. Respondent contends that he should not be required to prove fitness because the misconduct was isolated and not likely to be repeated. While Bar Counsel accurately characterizes Respondent's actions in this matter, we believe that Respondent has the better of the argument.

The Court established the standard for imposing a fitness requirement in *In re Cater*, 887 A.2d 1 (D.C. 2005). "[T]o justify requiring a suspended attorney to prove fitness as a condition of reinstatement, the record in the disciplinary proceeding must contain clear and convincing evidence that casts a serious doubt upon the attorney's continuing fitness to practice law." *Id.* at 6. Proof of a "serious doubt" involves "more than 'no confidence that a Respondent will not engage in similar conduct in the future.'" *In re Guberman*, 978 A.2d 200, 213 (D.C. 2009). It connotes "real skepticism, not just a lack of certainty." *Id.* (quoting *Cater*, 887 A.2d at 24).

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

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

Cater, 887 A.2d at 22.

In addition, the Court found that the five factors for reinstatement set forth in *In re*

Roundtree, 503 A.2d 1215, 1217 (D.C. 1985), should be used in applying the *Cater* fitness standard. They include:

> (a) the nature and circumstances of the misconduct for which the attorney was disciplined;
>
> (b) whether the attorney recognizes the seriousness of the misconduct;
>
> (c) the attorney's conduct since discipline was imposed, including the steps taken to remedy past wrongs and prevent future ones;
>
> (d) the attorney's present character; and
>
> (e) the attorney's present qualifications and competence to practice law.

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

We consider that Respondent's violations are serious, reflecting as they do on the core of an attorney's ethical obligations to his clients. The circumstances, including Respondent's failure to address in his retainer agreement or in any way address with the clients the ethical problems which might arise in the representation of multiple clients, or to consider the consequences of his action in filing the praecipe, indicate that Respondent completely failed to recognize the ethical concerns in multiple representation. Moreover there has been no substantial indication in the record, including any filing by Respondent, that Respondent appreciates and understands the seriousness of his misconduct, or that his clients suffered prejudice as a result. Given that the Fishers suffered no monetary damages Respondent cannot be expected to make them whole, but given the nature of the harm the Committee finds, they did suffer, and there has been no effort by Respondent to right that wrong. Indeed, Respondent denies the Fishers suffered any harm by his filing of the praecipe.

While we are hard put to understand some of Respondent's tactics in the course of these disciplinary proceedings, including his failure to comply with the Committee's directions for pre-

hearing and post-hearing filings and his determined efforts to attack the Fishers' motives rather than address the conduct under review, the Committee is clear that Respondent is an honest man with every intention to pursue and fulfill his ethical obligations and honorably perform as a member of the Bar. The problem here is that for whatever reason, be it a deficiency in his training or that he has not encountered multiple representation in his practice, Respondent clearly does not understand the ethical implications of the representation of multiple clients in the same matter. That said, as we understand the Court in *Cater*, a "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." Trusting as we do in Respondent's character and his heretofore ethical conduct, we do not believe that Bar Counsel has carried its burden of proving by clear and convincing evidence that there is a serious doubt as to Respondent's ability to practice law ethically. We nonetheless believe that given the fundamental nature of Respondent's violation here and his resolute denial of any error, Respondent and his future clients would be well-served if Respondent were to acquire some instruction in the law of conflict of interest and the representation of multiple clients. Our recommended sanction in this matter therefore includes a requirement that before resuming the practice of law, Respondent successfully complete six hours of CLE courses in ethics and the representation of multiple clients.

V. CONCLUSION

For the foregoing reasons, the Committee finds that Respondent violated Rules 1.3(b)(2) and Rules 1.7(b)(1), (2), and (3). The Hearing Committee recommends that Respondent be suspended for three months, as the sanction for the Rule 1.3(b)(2) violation, and suspended for three months for the Rule 1.7(b)(1), (2) and (3) violations, with the sanctions to run concurrently. We also recommend that, prior to reinstatement, Respondent be required to complete six hours of ethics-related CLE courses approved by Bar Counsel, including the "Ethical Issues in Representing Multiple Clients in Civil Cases" course offered by the D.C. Bar, or a similar course approved by Bar Counsel.[18]

AD HOC HEARING COMMITTEE

/WJO/
William J. O'Malley, Jr., Chair

/DB/
David Bernstein, Public Member

/LHS/
Leslie H. Spiegel, Attorney Member

Dated: November 25, 2015

[18] So as not to delay Respondent's reinstatement to the Bar if the Court adopts our recommendation, we further recommend that Respondent be given credit for completing any CLE courses approved by Bar Counsel while this matter is pending before the Board and the Court.