DISTRICT OF COLUMBIA COURT OF APPEALS
BOARD ON PROFESSIONAL RESPONSIBILITY

In the Matter of:	:	
	:	
BRYAN A. CHAPMAN,	:	
	:	
Respondent.	:	Bar Docket No. 055-02
	:	
A Member of the Bar of the	:	
District of Columbia Court of Appeals	:	
(Bar Registration No. 439184)	:	

REPORT AND RECOMMENDATION OF THE
BOARD ON PROFESSIONAL RESPONSIBILITY

This matter comes to the Board on Professional Responsibility (the "Board") from Hearing Committee Number Eight (the "Committee"), which concluded that Respondent violated Rule 1.1(a) (competent representation); Rule 1.1(b) (skill and care); and Rule 1.3(a) (diligence and zeal). The Committee recommended a sanction of a 60-day suspension, with 30 days stayed in favor of a one-year period of probation with a practice monitor. The Committee also recommended that during the probationary period, Respondent be required to complete Continuing Legal Education ("CLE") courses in employment discrimination law, federal court procedure, and professional responsibility.[1]

Bar Counsel supports the Committee's Report and Recommendation, and Respondent has filed an exception. After a careful review of the record in this matter and for the reasons set out below, the Board sustains the Committee's findings of violations

[1] In Bar Counsel's recommendation, the CLE requirement referred to federal civil procedure. Bar Counsel's Proposed Findings of Fact Conclusions of Law and Recommendation as to Sanction at 50. The Committee stated that it was adopting Bar Counsel's recommendation, but changed the phrasing to federal *court* procedure. Hearing Committee Report at 20 ("HC Rpt.") We see little difference between the two, but for the sake of clarity, and in light of the Committee's stated intent to accept Bar Counsel's recommendation, we use the phrase federal civil procedure.

but recommends a modified sanction – a 30-day suspension from the practice of law stayed in favor of a one-year period of probation subject to the terms and conditions recommended by the Committee.

I. PROCEDURAL HISTORY

On October 21, 2005, Bar Counsel filed with the Board a Specification of Charges and a Petition Instituting Formal Disciplinary Proceedings in this matter alleging that Respondent, in the course of his representation of Ann Bright, violated the following Rules of Professional Conduct: (a) Rule 1.1(a), in that he failed to provide competent representation with the legal knowledge, skill, thoroughness, and preparation reasonably necessary for the representation; (b) Rule 1.1(b), in that he failed to serve the client with skill and care commensurate with that generally afforded to clients by other lawyers in similar matters; and (c) Rule 1.3(a), in that he failed to represent the client zealously and diligently within the bounds of the law. BX B.[2] Respondent filed an Answer on November 16, 2005, denying the charges. A pre-hearing conference was held on February 7, 2006 and the evidentiary hearing was conducted over four days on March 6, 7, 9, and 10, 2006. HC Rpt. at 2. All exhibits offered by Bar Counsel (BX A - BX E; BX 1 - BX 31) and Respondent (RX 1 - RX 13) were admitted into evidence without objection. Tr. at 615-618, 1108-1110; HC Rpt. at 2. Bar Counsel called two witnesses: Joel Bennett, Esquire, Tr. at 73-302, an expert in employment discrimination litigation, and Ms. Bright, the complainant. *Id*. at 356-606. Respondent appeared *pro se* and testified on his own behalf. He called no other witnesses. *Id.* at 620-641,684-888, 925-1107; HC Rpt. at 2.

[2] Bar Counsel's exhibits will be referred to as "BX." Respondent's exhibits will be referred to as "RX." The transcript of the hearing will be referred to as "Tr."

At the conclusion of the hearing, the Committee announced its preliminary, non-binding determination that Bar Counsel had presented evidence sufficient to permit a finding of a violation of at least one of the alleged charges. Tr. at 1164; HC Rpt. at 2. Bar Counsel and Respondent were provided an opportunity to then present evidence in aggravation and/or mitigation, respectively. Tr. at 1165. Neither offered any additional evidence. *Id.* at 1165-66.

In a brief filed on March 23, 2006, Bar Counsel argued that Respondent violated Rules 1.1(a), 1.1(b), and 1.3(a), and recommended a suspension of 60 days, with 30 days stayed in favor of a one-year period of probation with a practice monitor, with the conditions that he complete CLE courses in employment discrimination law, federal civil procedure, and professional responsibility. In a responsive brief, filed on April 10, 2006, Respondent provided no legal argument on the rules allegedly violated nor did he make any argument regarding sanction. Instead, Respondent set forth the facts, as he saw them, with limited citation to the record. On April 14, 2006, Bar Counsel filed a reply.

The Committee issued its Report and Recommendation on April 26, 2006. The Committee concluded that Respondent had violated each of the rules charged. The Committee adopted Bar Counsel's recommended sanction of a 60-day suspension, with 30 days stayed in favor of a one-year probation with a practice monitor and the requirement that Respondent complete CLE courses in employment discrimination law, federal civil procedure and professional responsibility. HC Rpt. at 20. The Committee added the requirements that the practice monitor provide quarterly reports to the Board and Bar Counsel and that Respondent complete his CLE courses during the one-year probation. *Id.* The Committee further clarified the sanction by adding, "If Respondent

fails to fulfill any of these conditions, including his work with a monitor, he is subject to having the stay lifted and serving the additional thirty days suspension." *Id.* Key to the Committee's conclusions and recommended sanction were its "serious questions about [Respondent's] credibility on many important issues," *Id.* at 9, and Respondent's "unwillingness to accept and acknowledge his errors" and instead "put the blame on his client for his own dereliction in handling discovery matters." *Id.* at 17.

On May 5, 2006, Respondent filed an exception to the Committee's Report, both as to its findings and its recommended sanction. On that same day, Bar Counsel advised the Board that Bar Counsel took no exception to the Committee's Report. On May 30, 2006, Respondent filed his brief with the Board. He provided no legal argument but instead set forth his version of the facts and his legal analysis of Ms. Bright's discrimination claim. He acknowledged that he "committed errors" and argued that an informal admonition was the appropriate discipline. Respondent's Brief at 1, 20.

On June 16, 2006, Bar Counsel filed its brief with the Board supporting the Committee's Report and Recommendation and opposing Respondent's Exceptions. On June 30, 2006, Respondent filed a reply brief. Oral argument was held before the Board on July 6, 2006.

II. FINDINGS OF FACT

The Board has reviewed the Findings of Fact made by the Committee and adopts them as set forth here, with some modifications. *See* Board Rule 13.7 (permitting Board to make additional findings where they are supported by clear and convincing evidence).[3]

[3] We cite to the record before the Committee for findings made by the Board. Findings made by the Committee will be cited to the Hearing Committee report.

1. Respondent is a member of the Bar of the District of Columbia, admitted on October 4, 1993. BX A. Since 1993, Respondent has practiced employment discrimination law in the District of Columbia. HC Rpt. at 2, ¶ 1. He has not attended a CLE course on employment law since 1998. Tr. at 948-49.

2. Ms. Ann Bright, an African American female, was an employee at the Federal Communications Commission ("FCC") Cable Service Bureau. In 1998, she filed a complaint with the FCC in which she alleged discrimination on the basis of her race and gender in job assignments, promotions, performance evaluations, and in retaliation for her meeting with management and/or the union regarding job assignments. HC Rpt. at 3, ¶ 2. Among other corrective actions, Ms. Bright sought retroactive promotion to the GS-14 level. *Id.* Thereafter, she filed a *pro se* complaint in the United States District Court for the District of Columbia against William Kennard, the FCC chairman, alleging racial and gender discrimination in violation of Title VII of the 1964 Civil Rights Act. *Id.* at 4, ¶ 4.

3. After seeing on Respondent's website his advertised expertise as a discrimination attorney, Ms. Bright contacted Respondent by telephone in early August 1999 to inquire as to whether he would represent her in the discrimination case against the FCC. *Id.* at 3, ¶ 2. They spoke for 10 minutes. *Id.* They met on August 6, 1999, at which time Ms. Bright provided Respondent with the *pro se* complaint she had filed in District Court, as well as the FCC Cable Service Bureau Investigatory File concerning her April 20, 1998, complaint of discrimination. HC Rpt. at 3, ¶ 2 & 4, ¶ 4. It was several inches thick. *Id*. at 3, ¶ 2.

4. The investigatory file included, among other things, the following information: Ms. Bright began her employment at the FCC in 1994, bringing with her over 11 years of regulatory experience in utility rates, accounting, and audits, as well as an undergraduate degree in accounting and a master's degree in tax law. HC Rpt. at 3, ¶ 3. Even though she sought to be assigned to cost of service work rather than benchmark work (having conducted over 25 cost of service examinations for previous employers) for the most part, she was assigned to benchmark accounting work during her years at the FCC. *Id.* Between 1996 and 1998, Ms. Bright applied for several GS-14 positions but was never selected. *Id.* In 1998, the two candidates selected over her were a Chinese female and an Indian male. *Id.*

5. At their August 6, 1999 meeting, Respondent agreed to represent Ms. Bright on a 40 percent contingent fee basis with a $3,000 retainer. *Id.* at 4, ¶ 4. The attorney-client agreement provided by Respondent included the goal of reaching a settlement and required the client's full cooperation for a successful outcome. *Id.* at 4, ¶ 5. The agreement expressly stated that the client understood the lawyer's "goal is (1) [to] secure a reasonable settlement for his client, and (2) if a reasonable settlement cannot be secured, to take his client's case to trial. HC Rpt. at 4, ¶ 5. Ms. Bright signed the agreement and provided Respondent with a check for $3,000. *Id.* at 4, ¶ 4. Respondent "absolutely" understood that by this agreement he had committed to "zealously represent [Ms. Bright] . . . in this case, including, if necessary,…preparing her case for trial in federal court and taking it to trial." *Id.* at 4, ¶ 6 (quoting Respondent's testimony at Tr. at 772).

6. Litigation Chronology:

a. On August 12, 1999, Respondent filed an appearance as Ms. Bright's counsel in District Court. HC Rpt. at 4, ¶ 6. Sometime thereafter, Respondent informed Ms. Bright that he knew the government attorney representing the defendant FCC, that he had previously settled another case with him, and that he anticipated reaching a similar result with her case. HC Rpt. at 4-5, ¶ 6.

b. On November 10, 1999, the court entered a scheduling order closing discovery on April 17, 2000, and setting May 1, 2000, as the cut-off date for serving summary judgment motions, later amended to May 23, 2000. *Id.* at 4, ¶ 6.

c. On March 8, 2000, the first session of court-ordered mediation took place. *Id.* at 4, ¶ 6.

d. On March 13, 2000, the government filed document requests and interrogatories on the plaintiff. *Id.* at 5, ¶ 7

e. The parties agreed that Ms. Bright's deposition would take place on March 21, 2000. *Id.* at 5, ¶ 6. Respondent never met with Ms. Bright to prepare her for the deposition, nor did he discuss the substance of it with her in advance. *Id.* Rather, he telephoned her the night before her deposition and told her that he was reading her case in bed and not to bring any documents to the deposition. *Id.* According to Respondent, his manner of preparing a client for a deposition is by talking with them "about the case

on a regular basis over the telephone. By osmosis, the client begins to gradually understand the case the way you do." HC Rpt. at 5, ¶ 6.

f. A second mediation session took place on March 22, 2000, at which time the government advised that it would not go forward with mediation pending the resolution of another internal complaint Ms. Bright had filed with the FCC. BX B at ¶ 13.

g. When discovery closed on April 17, 2000, Respondent had not prepared or served on the defendant any interrogatories or document production requests, nor had he conducted any interviews with any FCC personnel. HC Rpt. at 4 & 5 ¶ 6 & ¶ 7. Respondent never attempted to contact any of the client's nine potential witnesses, even though the FCC investigatory file showed that six of the client's potential witnesses supported her claim that there was discrimination against African American employees in her particular unit of the FCC. *Id.* at 6, & 7 ¶¶ 10, 11. The FCC Investigatory file also contained a list of seven Equal Employment Opportunity ("EEO") complaints filed against the Cable Service Bureau, but Respondent did not seek discovery from the FCC regarding any of them. *Id.* at 7 ¶ 12.

h. Respondent did not forward the government's discovery to his client until April 20, 2000, after discovery closed and responses were already due. *Id.* at 5, ¶ 8. Ms. Bright provided Respondent with written responses to the government's discovery 13 days later, on May 3, 2000. Tr. at 441, 730.[4] Between Ms. Bright's written responses and the FCC investigatory

[4] The Committee's finding that Ms. Bright forwarded the responses by April 23, 2002, is not supported by substantial evidence in the record. HC Rpt. at 5, ¶ 8. Ms. Bright testified that she forwarded her answers

file she had provided to Respondent in August 1999, Respondent had ample information with which to provide adequate responses to the government's discovery. HC Rpt. at 5, ¶ 8. Nonetheless, Respondent claimed that Ms. Bright's draft responses were totally inadequate to assist him, and he failed to file any discovery responses. *Id.* at 5, ¶ 8.

i. On May 23, 2000, the government filed a summary judgment motion against Ms. Bright. *Id.* at 5 ¶ 9. Included with the motion were the required statement of material facts as to which there is no dispute, copies of depositions, signed declarations, and other documents. *Id.* at 5, ¶ 9 & 6, ¶ 9. Respondent filed an opposition on June 7, 2000. *Id.* at 6, ¶ 9. It was only six pages long and failed to contain a "separate concise statement of genuine issues" as required by District Court rules. *Id.* Respondent did attach excerpts of Ms. Bright's deposition testimony and a timeline that Ms. Bright had prepared for the FCC in 1998 regarding her employment there. HC Rpt. at 6, ¶ 9. Respondent never supplied his client with a copy of the government's summary judgment motion nor did he seek to obtain a declaration from her to refute any of the statements in the government's pleadings. *Id.* By not contesting the government's statement of undisputed issues, Respondent conceded that the FCC personnel at issue "did not discriminate against Ms. Bright on the basis of her race or

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on May 3. Tr. at 441. Later, during Respondent's testimony, there was an erroneous reference to April 23, but Bar Counsel corrected the error on the record. *Id.* at 730. We thus find that the answers were forwarded on May 3, 2002.

gender" and that the other candidates had been selected for the position "because their performance had been far superior to [plaintiff's]." *Id.*

j. The District Court granted summary judgment to the government stating, "plaintiff has brought forward no evidence that women or African-Americans were singled out for poorer performance ratings, or that she was singled out for retaliatory purposes . . . [T]his court can find no evidence of sex or race discrimination or retaliation." *Id.* at 8, ¶ 14. The court noted that Ms. Bright "has placed nothing in the record to show that the proffered explanation [for advancing the other two candidates to GS-14] is false, and she has placed nothing in the record from which discrimination can be inferred." *Id.*

7. Respondent's contentions (1) that he requested evidence from Ms. Bright that she did not provide, and (2) without that information, the case could not survive summary judgment were incorrect. *Id.* at 6, ¶ 10. Respondent had the FCC investigatory file, his client's draft discovery responses, as well as information from another client who had filed against the same FCC Cable Service Bureau alleging a hostile work environment. *Id.* at 7, ¶¶ 12-13. Although Ms. Bright's EEO case was a difficult one, it was not hopeless, and the $3,000 Ms. Bright paid to Respondent would have been more than enough to take depositions and have the case reviewed by experts. HC Rpt. at 6, ¶ 10 & 7, ¶ 13, & 8, ¶ 15.

8. Attorneys and clients may choose to reduce or delay costs by delaying discovery in a case until after it becomes clear that settlement is impossible, but doing so requires that the delay not be so long as to allow discovery deadlines to pass

(either by beginning discovery within the deadline or via an agreement with opposing counsel to move the court to extend deadlines). Tr. at 119 (Bennett). Respondent's decision to not conduct discovery in this case prior to the discovery cutoff without any written agreement regarding the extension of such deadlines was unreasonable. *Id.* at 121-22.[5]

9. Ms. Bright was a more credible witness than Respondent. HC Rpt. at 9-11, ¶¶ 16-17. In making its finding in this regard, the Committee noted that Ms. Bright's testimony was "supported by the documentary record rather than contradicted by it." *Id.* at 10, ¶ 17. The record supports the conclusion that Respondent was, in general, less credible than the complainant.

10. The Committee listed a series of specific incidents that caused it to have "serious questions about [Respondent's] credibility." *Id.* at 9, ¶ 16. They included a statement in Respondent's June 3, 2002 letter to Bar Counsel, which the Committee concluded was a "total fabrication," (HC Rpt. at 17) intended to "cast blame on his client for his own failure to follow up on discovery responses." *Id.* at 9, ¶ 16(a). In the letter, written during the course of Bar Counsel's investigation, Respondent stated that he had forwarded the government's discovery request to Ms. Bright but that she did not respond for "a month or two." HC Rpt. at 9, ¶ 16(a) (citing BX 6 at 143-44). In fact, the record establishes that the delay in responding to discovery was attributable to Respondent and not his

[5] Respondent testified that, at least until the time of the second mediation, he had an oral agreement with opposing counsel to put a hold on discovery, a point that tends to be supported by Ms. Bright, insofar as she testified that Respondent advised her that discovery was "on hold" during that period. Tr. at 404, 422 (Ms. Bright), & 690 (Respondent). Even if that were the case, however, Respondent should have put such agreement in writing and, further, there was no testimony that any oral agreement lasted beyond the second mediation on March 22, 2000.

client. *Id.* at 9, ¶ 16(a)-16(c). It shows that Respondent received the discovery request on or about March 13, 2000, and did not fax it to his client until April 20, 2000. *Id.* at 5, ¶ 7-8. Thereafter, Ms. Bright prepared her written responses and sent them to Respondent on May 3, 2000 (within the two-week time frame he had requested). *Id.* at 9, ¶ 16(a); Tr. at 441, 730. The Committee's finding that Respondent's statement to Bar Counsel in his June 3, 2002 letter, that it took "months" for his client to respond to discovery, was a "total fabrication" is supported by substantial evidence in the record, including the Committee's credibility findings.[6] We thus conclude that the statement was deliberately dishonest.[7]

11. The Committee did not expressly find that the other incidents that caused it to question Respondent's credibility established that he was deliberately dishonest.[8] After a careful review of the record, we conclude that the record does not support such findings. We discuss each of the examples cited by the Committee in turn.

[6] Respondent testified that his statement in the letter was "technically" inaccurate, Tr. at 732, but claimed that he had been referring to the fact that in discussions with Ms. Bright, he had sought specific information from his client for use in responding to interrogatories before he faxed them to her and that she was non-responsive to his requests. *E.g.*, *id.* at 967-68 ("She responded, my sense -- she did not respond in the way that I spent months instructing her on what I needed and what we needed to say to survive."). He further testified that he did not have any documents to which he could refer at the time he was writing to Bar Counsel. *Id.* at 731, 734 - 36. In light of the Committee's credibility determinations, we do not accept these self-serving statements without any corroborating evidence.

[7] Respondent made a similar assertion in his March 11, 2002, letter to Bar Counsel in which he stated, "[d]espite repeated warnings that the discovery responses were overdue, months went by before Ms. Bright sent me a totally inadequate set of answers and documents." BX 3 at 76-77. The Committee did not make a finding regarding this statement. Based on the same record evidence and the credibility determinations that support the finding of "total fabrication" regarding the June 3, 2002 letter, we find that the statement in the March 11 letter was also deliberately dishonest.

[8] The Committee found that Respondent "lacked candor" HC Rpt. at 19, "gave misleading, and *possibly* untruthful answers," *Id.* (emphasis added), and has a "tendency to avoid the truth." *Id.* at 20.

a. Respondent's testimony.

The Committee noted three instances of testimony that caused it to seriously doubt Respondent's credibility. First, the Committee questioned Respondent's explanation for failing to conduct discovery before responding to the government's motion for summary judgment. The Committee found that Respondent testified that he did not conduct discovery because he had access to discovery in a companion discrimination case against the FCC that he was handling for another client, Zaida Lebron. HC Rpt. at 10, ¶ 16(e) (citing Tr. at 773). The documentary evidence, however, established that the *Lebron* discovery requests were not filed until after Respondent had filed his summary judgment response in Ms. Bright's case. HC Rpt. at 10, ¶ 16(e). On its face there thus appears to be a conflict between Respondent's testimony and the documentary evidence, but an examination of the record shows that the conflict is less than clear. In response to Bar Counsel's questions regarding discovery, Respondent testified:

> Discovery I feel – well, discovery I know I initiated because I had these two concurrent cases was that I sought all the documentation I could on Patrick Boatang, same person in the [Zaida Lebron] case. I looked through everything I could find out about Patrick Boatang. I saw no point in duplicating that in Ms. Bright's case; simply because I had gotten everything I thought I could get about Patrick Boatang . . .

Tr. at 773. Later in his testimony, and *before* Respondent was confronted with the discovery documents in *Lebron*, Respondent was asked specifically whether he had received the *Lebron* discovery before he filed the motion for summary judgment:

> Q. (Ms. Hetherton) . . . I'm asking you whether you had gotten any documents from the government in the discovery process in the

Lebron case prior to filing the opposition to motion for summary judgment in Ms. Bright's case.

A. (Mr. Chapman) I don't remember the exact timing in terms of anything I asked the government for as far as Mr. Boatang was but what I received from Ms. Lebron almost immediately was boxes of - -

Q. (Chair Bolze): Do you recall when you received these? That's the question.

A. The investigative report or the - -

Q. (Chair Bolze) This discovery in this other case, did you receive it, as you were asked, before or after - -

A. I don't remember exactly. I remember it - - it basically, didn't have anything in there in terms of any other claims that I didn't already know about . . .

Q. (Mr. Dixon) . . . Was that a no to the question, Mr. Chapman, that you did not receive discovery in the Lebron case before you filed the opposition to the motion for summary judgment.

A. I, frankly, don't remember. Yes, I don't remember the sequence.

Tr. at 993-94. While the Committee found that this testimony raised serious questions about Respondent's credibility, it did not make a finding that it was deliberately false. Based on our review of the record, we find the record fails to support such a finding.

Second, the Committee found that Respondent's testimony that he had no information from Ms. Bright concerning incidents of harassment or hostile work environment for use in opposing summary judgment to be "non-credible." HC Rpt. at 10 ¶ 16(f) (citing Tr. at 622) (Respondent testifies that Ms. Bright "never provided me with facts identifying -- on which I could base a pretext argument, incidents of discrimination

by Mr. Boatang . . .)). The Committee did not credit this testimony because the FCC investigatory file Ms. Bright provided Respondent on August 6, 1999, included, among other things, names of complainants with charges similar to hers and prospective witnesses to EEO charges (*Id.* at 10 ¶ 16(f)) and because a review of Ms. Bright's discovery responses shows them to be of some value. *Id*. at 9, ¶ 16(b). The Committee, however, did not make a finding that the testimony was deliberately false. We agree that the record does not support such a finding. While the documentary evidence and the testimony of Bar Counsel's expert indicate that the FCC file and discovery responses provided to Respondent by Ms. Bright were not inadequate and, in fact, would have been useful in opposing the summary judgment motion (thus contradicting Respondent's statements), our review of the record and the Committee's considered analysis on the competence issue establishes that Respondent did not fully understand the law applicable to his client's case and thus may not have understood the value of the information that was at his disposal. *See, e.g.*, Tr. at 209-214 (Respondent's cross-examination of Bar Counsel's expert on the applicable law). Respondent testified that he wanted more specific examples of incidents of harassment experienced by his client because he thought such was necessary to the case, and even Bar Counsel's expert agreed that such specifics (were they necessary) were best obtained from the client in the first instance. *Id.* at 242-43. Respondent's legal opinion was incorrect, but we cannot say that his testimony regarding his client's failure to provide him the information he wanted was deliberately misleading.[9]

[9] For the same reasons, we find that Respondent's statement in his June 3, 2002 letter to Bar Counsel that Ms. Bright's discovery responses "were totally inadequate and completely useless" – which the Committee found "misrepresented the true facts" – was not deliberately dishonest. *See* HC Rpt. at 9, ¶ 16(b).

Third, the Committee found "less than credible" Respondent's testimony that he had no written records to document his claims that he had contacted his client weekly and had constantly reminded her of the need to assert specific instances of harassment. HC Rpt. at 10, ¶ 16(g). Respondent testified that he communicated with Ms. Bright on a regular basis by telephone and e-mail, but he could not produce a written record of these communications because the hard drive on his computer was accidentally destroyed in the Fall of 2000, and he had never printed any of the e-mails. *Id.* (citing Tr. at 779-800, 821-23). The Committee found this "convenient answer less than credible, particularly when Bar Counsel brought out that Respondent had never raised the question of an erased hard drive until a few weeks before the hearing – nearly four years after the commencement of the investigation of Respondent's conduct." HC Rpt. at 10 ¶ 16(g). We agree with the Committee that Respondent's testimony regarding the destroyed hard drive story is convenient, but the Committee did not go so far as to explicitly find that it was deliberately false, and we do not see clear and convincing evidence to support our doing so.

b. Other conduct bearing on credibility.

The Committee raised two other instances of conduct that caused it to question Respondent's credibility. First, in his application for admission to the District of Columbia Bar, Respondent was asked to list all permanent and temporary residences and schools he had attended. Respondent had attended medical or pre-med school in New York (from 1982 to 1985) and Philadelphia (from 1985 to 1986), but he did not list any New York or Philadelphia residences on his Bar application, nor did he list his medical school attendance. *Id.* at 2 & 10, ¶ 16(d). He testified at the hearing that he never resided

in New York or Philadelphia, but commuted from Washington when he had classes, stayed with friends in these other towns, but always considered Washington his home. Tr. at 930-32, 938-39. There was no testimony as to why Respondent did not include his medical schooling in response to a specific request for such information on the application. The Committee made no particular finding regarding Respondent's state of mind when he filled out the application, but mentioned the Bar application "because of [Respondent's] unwillingness to be totally forthcoming on certain key facts in this proceeding." HC Rpt. at 2 n.3. We agree that Respondent's omissions on his Bar application contribute to the conclusion that he is careless and less than fully credible, but cannot say, on this record, that his statements (or lack thereof) were deliberately false or misleading.[10]

Second, the Committee considered that Respondent's retainer agreement with Ms. Bright was on letterhead that identified his practice as "Bryan A. Chapman & Associates, P.C." *Id.* at 9 ¶ 16(c). Respondent had no associates at that time or thereafter, Tr. at 1086, although he had been discussing possible associations with several other attorneys. Tr. at 778-79, 831-32. The Committee properly considered this false representation as bearing adversely on Respondent's credibility.[11]

III. ANALYSIS

The Committee found that Respondent violated Rule 1.1(a) of the D.C. Rules of Professional Conduct by failing to provide competent representation with the legal

[10] Bar Counsel did not charge Respondent with violating any of the rules relating to truthfulness in statements on Bar applications, such as Rule 8.1 or 8.4.

[11] Bar Counsel did not charge Respondent in this proceeding with violating any of the rules relating to truthfulness in advertising services or appropriate firm names, such as Rule 7.1 or Rule 7.5. We also note that, since at least 2001, Respondent's letterhead states "Law Offices of Bryan A. Chapman." *See* BX 1(5); BX 3; BX 6; BX 11. *See also* Letter to Executive Attorney of the Board dated May 5, 2006.

knowledge, skill, thoroughness, and preparation reasonably necessary for the representation; Rule 1.1(b) in that he failed to serve the client with skill and care commensurate with that generally afforded to clients by other lawyers in similar matters, and Rule 1.3(a), in that he failed to represent the client zealously and within the bounds of the law. We address each violation separately.

A. Rule 1.1(a)

Rule 1.1(a) requires that a lawyer "provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness, and preparation reasonably necessary for the representation." D.C. Rules of Prof'l Conduct R.1.1(a). The Comments to Rule 1.1 reiterate that competent representation includes "adequate preparation and continuing attention to the needs of the representation to assure that there is no neglect of such needs." R. 1.1 cmt. 5. Respondent failed to meet this standard. Respondent's failure to engage in any written discovery against the government and/or have a written agreement regarding a "hold" on such discovery, failure to interview witnesses known to support his client's cause, failure to properly prepare his client for her deposition, and failure to marshal the information at his disposal in order to properly respond to the summary judgment motion constitute violations of Rule 1.1(a). *See In re Shorter*, Bar Docket No. 194-96 (BPR Oct. 31, 1997), *recommendation adopted*, 707 A.2d 1305 (D.C. 1998) (per curiam) (otherwise competent attorney who failed to interview witnesses and gain understanding of allegations against client violated Rule 1.1(a)).

B. Rule 1.1(b)

Rule 1.1(b) requires an attorney to "serve a client with the skill and care commensurate with that generally afforded to clients by others in similar matters." R. 1.1(b). Respondent's consistent claims that he did not have the information required to pursue his client's case indicates that he either failed to read the materials she provided to him or, alternatively, utterly failed to understand their import. In either event, there is no question that Respondent's failure to use the information available to him, and his failure to obtain additional information via the many procedures available to him (written discovery, depositions, informal interviews, etc.) within the court imposed deadlines, and his failures to properly respond to the required filings in the court proceedings constituted a failure of the skill and care afforded by other attorneys in similar matters, which was ably described by Bar Counsel's expert in this case. *See In re Nwadike*, 905 A.2d 221 (D.C. 2006) (failure to timely file 26(b)(4) statement constituted violation of Rule 1.1(b)); *In re Sumner*, 665 A.2d 986 (D.C. 1995) (per curiam) (failure to make required filings violated Rule 1.1(a) and (b)).

C. Rule 1.3(a)

Rule 1.3(a) provides that "[a] lawyer shall represent a client zealously and diligently within the bounds of the law." R. 1.3(a). Violations of Rule 1.3(a) have been found where respondents have failed to take action on their clients' behalf. *See, e.g., In re Wright*, 702 A.2d 1251 (D.C. 1997) (per curiam); *In re Lewis*, 689 A.2d 561 (D.C. 1997) (per curiam); *In re Chisholm*, 679 A.2d 495 (D.C. 1996).

The Court has defined neglect as follows:

> Neglect involves indifference and a consistent failure to carry out the obligations which the lawyer has assumed to his client or a conscious disregard for the responsibility owed to the client. The concept of ordinary negligence is different. Neglect usually involves more than a single act or omission. Neglect cannot be found if the acts or omissions complained of were inadvertent or the result of an error of judgment made in good faith.

In re Reback, 487 A.2d 235, 238 (D.C. 1985) (per curiam) (quoting ABA Comm. on Ethics and Prof'l Responsibility, Informal Op. 1273 (1973)), *adopted and incorporated in pertinent part*, 513 A.2d 226, 231 (D.C. 1986) (en banc).

Respondent's conduct in this case meets this standard. Respondent agreed to represent Ms. Bright in August 1999. Between that time and the close of discovery eight months later, he did virtually nothing on the case but talk to his client and attend mediation sessions and his client's deposition. His failures of preparation for litigation were consistent and inexcusable. As noted by the Committee, although Respondent entered into an agreement that required his seeing the case through to trial if necessary, he consistently avoided any preparation for such a trial. He failed to prepare his client for a deposition (other than by osmosis), he failed to initiate any discovery and/or obtain a written agreement that would justify delaying the initiation of discovery, he failed to timely respond to discovery served upon him and/or obtain a written agreement that would justify delaying the initiation of discovery, and he failed to utilize the information available to him in preparing his opposition to the motion for summary judgment. The Board agrees with the Committee that Bar Counsel has established by clear and convincing evidence that Respondent violated Rule 1.3(a).

IV. SANCTION

The Committee recommended a 60-day suspension with 30 days of the suspension stayed on condition that Respondent be placed on probation for a period of one year subject to supervision by a practice monitor and the condition that he complete CLE courses in employment discrimination law, federal civil procedure and professional responsibility. We defer, as we must, to the factual findings and credibility assessments that were central to the Committee's sanction recommendation. *See, e.g., In re Micheel*, 610 A.2d 231, 234 (D.C. 1992). But we owe no deference to the recommended sanction itself, and for the reasons discussed below, propose a reduction of the period of suspension to 30 days, with the same one-year period of monitored probation and CLE requirements recommended by the Committee. *See In re Bernstein*, 707 A.2d 371, 376 n.8 (D.C. 1998).

The appropriate sanction is what is necessary to protect the public and the courts, to maintain the integrity of the profession and "to deter other attorneys from engaging in similar misconduct." *In re Evans*, 902 A.2d 56 (D.C. 2006) (per curiam) (citing *In re Uchendu*, 812 A.2d. 933, 941. (D.C. 2002)). The sanction imposed must be consistent with cases involving comparable misconduct. D.C. Bar R. XI, § 9(g)(1); *In re Dunietz*, 687 A.2d 206, 211 (D.C. 1996). The determination of a disciplinary sanction includes, *inter alia*, the nature and seriousness of the misconduct, prior discipline, prejudice to the client, the respondent's attitude, and circumstances in aggravation and mitigation. *See In re Hutchinson*, 534 A.2d 919, 924 (D.C. 1987) (en banc); *see also In re Slattery*, 767 A.2d 203, 214-15 (D.C. 2001). We address these factors in turn.

A. The Nature and Seriousness of the Misconduct

We find that Respondent's lack of competence, failure to represent his client with skill and care and his neglect of his client's discrimination case were serious. He failed to prepare his client for her deposition, to respond to the government's discovery requests notwithstanding his ability to do so, and to propound any discovery to the government. He also failed to send the government's summary judgment motion to his client and filed an inadequate response in which he effectively conceded that there had been no discrimination on the basis of race. Respondent, in effect, "ignored all discovery, and all preparation to avoid summary judgment, and simply hoped for a settlement." HC Rpt. at 14. As a result of Respondent's lack of competent representation and failure to handle his client's case with diligence and zeal, the District Court granted the government's motion for summary judgment and dismissed the complaint.

B. Prior Disciplinary Actions

Respondent has no prior record of discipline.

C. Prejudice to the Client

It is difficult to assess whether Respondent's client suffered actual prejudice as a result of his misconduct. The Committee recognized that the case was difficult and could have been lost at summary judgment or at trial, "even with the highest level of lawyering." *Id.* at 17. We further note that Ms. Bright ultimately achieved her goal of advancement to GS-14 through a different case she pursued with another lawyer.

D. Attitude of Respondent

The Committee properly considered Respondent's lack of remorse or contrition and his attempt to blame his neglect on his client as aggravating factors. Respondent's

attempts to establish his remorse before the Board fall short of the mark. His claims that he has learned to "reject extremely difficult cases," to "beware of pro se clients who may not want to cooperate" and to perform formal discovery "for your own protection," (Respondent's Brief at 1), do not establish his contrition but instead buttress the Committee's finding of Respondent's "unwillingness to accept and acknowledge his errors." HC Rpt. at 17.

E. Mitigating and Aggravating Circumstances

Respondent offered no evidence in mitigation, apart from his unblemished disciplinary record.

The Committee properly considered the "total fabrication" in Respondent's June 3, 2002 letter to Bar Counsel, that his client had delayed for over a month in responding to discovery, as an aggravating factor. We note however, that this dishonest statement to Bar Counsel is tempered somewhat by Respondent's admission in the answer to the specification of charges that he sent his client the discovery on April 20, 2000 and that she forwarded draft responses on May 3, 2000. BX D at 26, ¶ 15.

Bar Counsel asserts that the testimony which caused the Committee to question Respondent's credibility also should be considered as an aggravating factor because it establishes a "dishonest course of conduct" in defending against this disciplinary proceeding. Bar Counsel's Brief at 46. The Committee, however, concluded that Respondent's testimony was "noncredible," "less than credible" and "possibly untruthful" but it did not make a finding that it was deliberately dishonest. HC Rpt. at 10, & 19. Because the record fails to support that Respondent deliberately presented false testimony to the Committee, we will not consider his testimony as an aggravating factor.

Compare In re Cleaver-Bascombe, Bar Docket No. 183-02 (BPR July 21, 2006), *on remand from*, 892 A.2d 396, 412 (D.C. 2006) (finding testimony of the respondent defending her CJA voucher as written, which the Committee found not to be credible, to be deliberately false where it directly contradicted a finding that the voucher was patently false).

F. The Mandate to Achieve Consistency

We have carefully considered the question of the appropriate sanction and have concluded that a period of suspension, stayed in favor of probation, should be imposed. We find the length of the period of suspension, however, to be a close question. After an examination of Respondent's misconduct in light of the various sanction factors and the applicable case law, we have concluded that the mandate to achieve consistency under D.C. Bar R. XI, § 9(g)(1) requires a reduction in the 60-day suspension recommended by the Committee and Bar Counsel in favor of a 30-day suspension from the practice of law.

The imposition of a disciplinary sanction is not an exact science and in no area is this more evident than in cases of neglect, where the Court has imposed a wide range of sanctions. *See In re Steele*, Bar Docket No. 248-98 at 11 (BPR Apr. 27, 2004), *recommendation adopted*, 868 A.2d 146 (D.C. 2005). A first instance of neglect of a single client matter, without significant aggravating factors, typically results in a reprimand or public censure. *See In re Schlemmer*, 870 A.2d 76, 82 (D.C. 2005) (Board reprimand); *In re Bland*, 714 A.2d 787, 788 (D.C. 1998) (per curiam) (public censure); *see, e.g.*, *In re Rochon*, Bar Docket No. 36-99 at 8 (BPR Dec. 27, 1999), *recommendation adopted*, 746 A.2d 876 (D.C. 2000) (per curiam) (collecting cases of repeated neglect that resulted in a sanction short of suspension).

The neglect of a single client matter aggravated by other violations or a history of prior discipline has resulted in the imposition of a 30-day suspension. *See, e.g., In re Mance*, 869 A.2d 339, 341 (D.C. 2005) (per curiam) (30-day suspension stayed in favor of unsupervised probation for neglect of criminal appeal, lack of competence, skill and care, failure to keep client reasonably informed, failure to withdraw on discharge and conduct prejudicial to the administration of justice; prior discipline); *Bernstein,* 707 A.2d 371 (30-day suspension for neglect of civil action, failure to respond to settlement offer, to keep client reasonably informed and to surrender client's file following termination of representation); *Sumner,* 665 A.2d 986 (30-day suspension for failure to pursue post-conviction relief and an appeal, lack of competence, skill and care, failure to keep client reasonably informed, failure to surrender property or refund legal fee, failure to set forth basis for fee in writing and making a false statement to a third party); *In re Fowler*, 642 A.2d 1327 (D.C. 1994) (30-day suspension for intentional neglect and failure to return fee upon demand); *In re Spaulding*, 635 A.2d 343 (D.C. 1993) (per curiam) (30-day suspension stayed and probation for neglect for failure to comply with discovery deadlines, lack of competence, failure to communicate with client and misrepresentation to client; prior discipline); *In re Banks*, 577 A.2d 316 (D.C. 1990) (per curiam) (30-day suspension for neglect of a personal injury case resulting in loss of client's cause of action; prior discipline).

In cases where the neglect itself is more aggravated and is accompanied by protracted dishonesty or a pattern of multiple instances of neglect, the Court has imposed a 60-day suspension. Thus, *In re Outlaw*, 917 A.2d 684 (D.C. 2007) (per curiam), the respondent neglected her client's civil case for almost two years and allowed the statute

of limitations to pass (based on a miscalculation by one of her subordinates) before meaningful negotiations could occur. In assessing the sanction, the Court found especially "significant" the respondent's protracted dishonesty in failing to inform her client that the statute of limitations barred her claim and in deliberately avoiding disclosing to the client the true posture of the case. Based on violations including the lack of competent representation, skill and care, the failure to keep a client reasonably informed, the unauthorized practice of law and dishonesty, the Court suspended the respondent for 60 days. Other cases where the Court has imposed a 60-day suspension have involved similar aggravating circumstances. *See In re Steinberg*, 878 A.2d 496, 497 (D.C. 2005) (per curiam) (60-day suspension for neglect of a divorce matter, lack of competence, and failure to keep client reasonably informed "based largely on [respondent's] disciplinary history," which included three prior 30-day suspensions and an informal admonition); *In re Drew*, 693 A.2d 1127 (D.C. 1997) (per curiam) (60-day suspension for the intentional neglect of two criminal appeals and multiple related violations, with a disciplinary record of three informal admonitions for similar misconduct, which established a pattern of neglect); *In re Zdravkovich*, 671 A.2d 937 (D.C. 1996) (per curiam) (60-day suspension stayed in favor of a one-year probation for neglect of three clients who were involuntarily committed to Saint Elizabeth's Hospital and conduct prejudicial to the administration of justice).

In reviewing the above mentioned precedent, we find that Respondent's misconduct falls closer to the cases where the Court has imposed a 30-day suspension.[12] Respondent has no disciplinary record. His neglect was in a single matter and relatively

[12] In making this determination, we note that Respondent stated at oral argument that Bar Counsel had "approached" him with an informal admonition.

short-lived, and was not part of a pattern of neglect as evidenced by companion violations or a history of prior discipline. We recognize that Respondent's dishonesty to Bar Counsel in responding to the disciplinary complaint and his lack of remorse are significant aggravating factors. They bring the discipline in this case from the usual sanction for first-time neglect, a reprimand or censure, to a suspension. *See Sumner*, 665 A.2d at 990; *Bernstein*, 707 A.2d at 377. The appropriate period of suspension consistent with discipline imposed in comparable cases is a suspension for 30 days.

The Committee and Bar Counsel find that in *In re Spaulding*, 635 A.2d 343 (D.C. 1993) (per curiam), is the closest case and that it should guide the disciplinary sanction in this matter. HC Rpt. at 18. We agree but find that *Spaulding* supports the imposition of a stayed 30-day suspension and probation. In *Spaulding*, the attorney neglected discovery in a federal employment case, a matter he was not competent to handle. As a result, the case was dismissed with prejudice. The attorney then failed to advise his client of the dismissal until after it had been summarily affirmed by the Circuit Court, and then engaged in conduct involving dishonesty and misrepresentation by giving the client the false impression the case was still alive when in actuality the time for filing a writ of certiorari had expired. The Committee, as here, credited the client's version of events and not the attorney's. The Court imposed a 30-day suspension, stayed in favor of a one-year period of probation with a practice monitor and other conditions.

Bar Counsel asserts that Respondent's dishonesty in his response to the disciplinary complaint and in his testimony, in conjunction with his lack of remorse, distinguish this case from *Spaulding* and warrant a harsher sanction. As we have found, the record does not support a finding of deliberate false testimony to the Committee. In

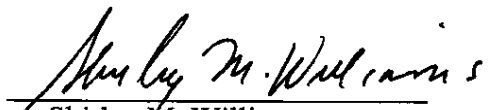
addition, Respondent's dishonesty to Bar Counsel and his lack of remorse are balanced by Spaulding's significant record of prior discipline, including three prior informal admonitions for neglect. We thus find that based on an examination of the overall misconduct in both cases, *Spaulding* is comparable and supports a suspension of 30 days, but not the 60-day suspension recommended by the Committee and Bar Counsel.

We agree with the Committee and Bar Counsel that, as in *Spaulding*, the period of suspension should be stayed in favor of a one-year period of probation. We concur with Bar Counsel that probation is appropriate to address Respondent's law practice management skills and his lack of competence in discrimination law. We recommend that during the period of probation, Respondent be required to (1) complete continuing legal education courses in employment discrimination law, federal civil procedure, and professional responsibility, and (2) be supervised by a practice monitor, who will provide quarterly reports to the Board. If Respondent fails to cooperate in or complete either of his probation requirements, he shall be subject to immediate reinstatement of the stayed 30-day suspension. *See Mance*, 869 A.2d 339 (where Court notes that failure to fulfill conditions of probation will result in lift of stay and institution of remaining suspension).

V. CONCLUSION

Having found that Bar Counsel has proven by clear and convincing evidence that Respondent violated Rules 1.1(a), 1.1(b), and 1.3(a), and for the reasons set forth above, the Board recommends that Respondent be suspended for 30 days, with the suspension stayed in favor of a one-year period of supervised probation during which Respondent will be required to (1) cooperate with a practice monitor who will provide quarterly reports to the Board, and (2) complete CLE courses in employment discrimination law, federal civil procedure, and professional responsibility.

BOARD ON PROFESSIONAL RESPONSIBILITY

By: 
Shirley M. Williams

Dated: JUL 30 2007

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