THIS REPORT IS NOT A FINAL ORDER OF DISCIPLINE*

DISTRICT OF COLUMBIA COURT OF APPEALS
BOARD ON PROFESSIONAL RESPONSIBILITY

Issued
January 26, 2024

In the Matter of:	:	
	:	
CRAIG A. BUTLER,	:	Board Docket No. 22-BD-003
	:	
Respondent.	:	Disc. Docket Nos. 2018-D024;
	:	2018-D211; 2018-D224 &
A Member of the Bar of the District	:	2021-D049
of Columbia Court of Appeals	:	
(Bar Registration No. 451320)	:	

REPORT AND RECOMMENDATION OF THE
BOARD ON PROFESSIONAL RESPONSIBILITY

I. INTRODUCTION

Respondent, Craig A. Butler, Esquire, is charged with multiple violations of the D.C. Rules of Professional Conduct ("D.C. Rules") and the Maryland Attorney Rules of Professional Conduct ("MD Rules") in eight separate client matters that involved appearances before the U.S. Bankruptcy Court for the District of Columbia, the Superior Court of the District of Columbia, and the U.S. District Court for the District of Maryland (Counts I, II, & III). After a three-day hearing and post-hearing briefing, Hearing Committee Number Six found that Disciplinary Counsel had met its burden of proving, by clear and convincing evidence, that Respondent violated D.C. Rules 1.1(a) (competence), 1.1(b) (skill and care), 1.3(a) (diligence), 1.3(c) (reasonable promptness), 1.4(a) (failing to keep client reasonably informed), 8.4(d) (serious interference with the administration of justice), and MD Rules 19-301.1

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

(competence), 19-301.3 (diligence and promptness), and 19-308.4(d) (prejudice to the administration of justice).[1] Several of these violations occurred in more than one Count and involved repeated occurrences affecting multiple clients. The Committee recommended a sanction of a six-month suspension, with 90 days stayed in favor of one-year of unsupervised probation with conditions.

Disciplinary Counsel does not take exception to the findings or recommendations in the Hearing Committee Report.[2] Respondent takes exception to the Committee's factual findings and argues that the Committee should have granted his motion to sever the charges and to recuse the Chair. Respondent further contends that without expert testimony, the evidence was not sufficient to establish that Respondent's conduct fell below the standard of care.

For the reasons explained below, we adopt the Hearing Committee's factual findings, including its detailed credibility findings, as supported by substantial evidence in the record. We agree with the Committee's decision to deny

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[1] Because the underlying conduct in Count III arose in connection with a matter pending in Maryland federal court, Disciplinary Counsel charged violations of the MD Rules. *See* D.C. Rule 8.5(b)(1) ("For conduct in connection with a matter pending before a tribunal, the rules to be applied shall be the rules of the jurisdiction in which the tribunal sits, unless the rules of the tribunal provide otherwise.").

[2] Disciplinary Counsel had recommended a sanction of a one-year suspension with a fitness requirement in its post-hearing briefing, but it did not take exception to the Hearing Committee's sanction of a six-month suspension. As explained in greater detail in Section IV, we adopt the Committee's recommended suspension period of six months, but believe fitness is warranted as originally argued by Disciplinary Counsel.

Respondent's severance and recusal motion and find that the D.C. and MD Rule violations are supported by clear and convincing evidence.

Our sanction recommendation, however, differs from the Hearing Committee's recommendation. We recommend that Respondent's license be suspended for the entire six-month period and that a showing of fitness be required upon Respondent's application for reinstatement. We believe a partially stayed suspension is not warranted due to the aggravating nature of Respondent's serious neglect both of his clients and his responsibilities as an officer of the court, over an extended period of three years. We further have a serious doubt about Respondent's ability to conform his conduct to the Rules of Professional Conduct given that his ethical lapses continued despite his being aware of Disciplinary Counsel's investigation and despite the repeated admonishments and orders to show cause from the courts. A fitness requirement is therefore appropriate.

II. FINDINGS OF FACT

A. Standard of Review

The Board may make its own findings of fact, but it "must accept the Hearing Committee's evidentiary findings, including credibility findings, if they are supported by substantial evidence in the record." *See In re Klayman*, 228 A.3d 713, 717 (D.C. 2020) (per curiam) (quoting *In re Bradley*, 70 A.3d 1189, 1193 (D.C. 2013) (per curiam)); *see also In re Thompson*, 583 A.2d 1006, 1008 (D.C. 1990) (defining "substantial evidence" as "enough evidence for a reasonable mind to find sufficient to support the conclusion reached").

B. Respondent's Objections

Respondent takes exception to Findings of Fact ("FF") 4-5, 9-10 16, 25-26, 30-31, and 58. His objections involve the weight given to evidence and the Hearing Committee's credibility findings. For example, he argues the Hearing Committee did not give enough weight to the evidence of the education of Tony Robinson, Respondent's client (FF 4-5). *See* Resp. Br. at 6-7. He also contends that the Committee should not have given weight to hearsay evidence consisting of the bankruptcy judge's admonishment in an order (FF 25-26) and a bankruptcy trustee's statement to Mr. Robinson (FF 30-31). *Id*. at 12. Respondent finally challenges the Committee's decision to credit Mr. Robinson's recollection of what was discussed at a meeting with Respondent (FF 9-10, 16) and to find Respondent's testimony less credible (FF 152), including its decision not to credit his claim that an imposter client appeared at a hearing (FF 58). *Id*. at 6-9, 14-15.

Respondent's objections, however, are unavailing. A review of factual findings for substantial evidence does not permit the Board to reweigh the evidence. The weight or value given to a piece of evidence "'fall[s] primarily within the sphere customarily left to the factfinder.'" *In re Johnson*, 298 A.3d 294, 310 (D.C. 2023) (quoting *In re Temple*, 629 A.2d 1203, 1208 (D.C. 1983)). A factual finding that is supported by substantial evidence in the record as a whole, is not to be disturbed on review "even though there may also be substantial evidence in the record to support

a contrary finding." *In re Godette*, 919 A.2d 1157, 1164 (D.C. 2007) (citation omitted). Further, a hearing committee may rely on hearsay evidence when making its factual findings. *See In re Kennedy*, 605 A.2d 600, 603 (D.C. 1992) (per curiam) (rejecting the respondent's argument that a hearing committee erred by admitting hearsay). Because disciplinary cases are not subject to the strict rules of evidence, hearsay evidence is admissible and, in certain circumstances, is sufficient to establish a Rule violation by clear and convincing evidence. *Id*.

As to the Committee's credibility findings, specifically its finding that Mr. Robinson's testimony was credible regarding what was discussed at a meeting and its decision not to credit Respondent's claim that his client, Languel Jones, did not make an appearance and did not file the *pro se* Motion to Vacate Default and Opposition to Motion for Summary Judgment (after Respondent both failed to appear at a status hearing and failed to respond to Mr. Jones' requests for information), we have no reason to set aside the Hearing Committee's credibility findings which are supported by substantial evidence. *See* FF 47, 58, 151-152. As the Court of Appeals recently explained: "Both the Board and this court must accept the Hearing Committee's credibility findings as determinations of subsidiary fact, so long as substantial evidence in the record supports them and they are not infected by any mistake of law." *In re Krame*, 284 A.3d 745, 755 (D.C. 2022).

We adopt the Hearing Committee's Findings of Fact 1-150 and summarize the key facts as they relate to the Rule violations and sanction recommendation. We

also make supplemental fact findings established by clear and convincing evidence, citing directly to the transcript and exhibits. *See* Board Rule 13.7.

Count I (Robinson)

Count I relates to Respondent's representation of a single client in federal bankruptcy court, resulting in violations of Rules 1.1(a) and (b) (competence and skill and care), 1.3(a) and (c) (diligence and reasonable promptness), and 1.4(a) (failing to keep client reasonably informed).

In March 2017, Mr. Robinson retained Respondent to represent him in a Chapter 13 bankruptcy for the purpose of saving his home from foreclosure. FF 3. Pursuant to 11 U.S.C. § 362, the filing of a petition triggers an automatic stay of foreclosure proceedings. FF 8. On March 7, 2017, Respondent filed a Chapter 13 bankruptcy petition on behalf of Mr. Robinson. FF 6. U.S. Bank National Association ("U.S. Bank") held a note for Mr. Robinson's home mortgage and Wells Fargo Home Mortgage ("Wells Fargo") was the loan service provider. FF 7. Respondent agreed to keep Mr. Robinson informed of the status of his case and to respond to any motion to terminate the bankruptcy stay. FF 5. Mr. Robinson did not understand bankruptcy law or procedures, and he relied on Respondent to explain documents from the bankruptcy court. FF 4.

Respondent, however, failed to explain to Mr. Robinson that he had to make monthly payments of $500 to the Chapter 13 Trustee and monthly mortgage payments of $1,971.26 to Wells Fargo starting in April 2017 pursuant to a repayment plan submitted by Respondent. FF 6, 9, 10. Based on his meeting with Respondent

in March, Mr. Robinson was under the mistaken impression that those payments would start only after their plan had been approved. FF 10. Only after he met with the bankruptcy trustee in the summer of 2017, did Mr. Robinson realize that he had missed required monthly payments in April through August. FF 10. From September 2017 until February 2018, after being advised of his obligation by the bankruptcy trustee, Mr. Robinson timely made his required monthly payments to the trustee and to the bank. FF 15.

Mr. Robinson was anxious about the consequences of the delinquent mortgage payments for April through August. Although he immediately paid the late trustee fees in lump sum (paying the entire five months for a total of $2,500 on August 10, 2017, *see* FF 13), he could not pay all the overdue mortgage payments, but Respondent assured him that he would submit a revised payment plan and negotiate a consent order with the creditors. FF 12. However, Respondent did neither.

On August 17, 2017, Respondent filed a Second Amended Chapter 13 Plan, but he admittedly failed to address the nearly $10,000 (for the five months at $1,971.26) in overdue mortgage payments, and he did not obtain agreement to a consent order. FF 14. After the Second Amended Chapter 13 Plan was filed, Respondent's communication with Mr. Robinson was minimal. FF 16 (noting a 3-minute call on August 18 and November 14, and no calls in December). On December 12, 2017, U.S. Bank filed a motion to lift the automatic stay, erroneously claiming that Respondent had missed post-petition mortgage payments for August

to December 2017[3] and erroneously claiming that Mr. Robinson had "little or no equity in the Property [so that] the Property is not necessary for an effective reorganization." FF 17; *see* FF 18-19.

Respondent was served by paper and electronic copy of U.S. Bank's motion to lift the automatic stay, but he never told Mr. Robinson about the motion or forwarded the information despite also receiving a letter clearly titled, "Subject: Urgent. Please forward enclosed documents to client." FF 20. He never informed Mr. Robinson about the deadline of December 26, 2017 to file an opposition and he failed to file an opposition. FF 21. During the hearing, Respondent's only explanation for his failure to file any opposition, was that the motion may have been "missed" during an office move and that his office was very busy handling a lot of foreclosure defense cases. FF 20. Although the notification regarding the motion to lift the stay was sent by paper mail and electronically, Respondent missed both notifications:

> I missed it. You know, when you see a lot of filings, you know, coming in different cases – the way that it comes to our office is that we see multiple filings. And you know, if I didn't see – I didn't see it when it came in, in December, so I missed the email and I didn't see the notice come in the mail.

Tr. 365; *see also* Tr. 634 (Respondent: "honestly, . . . I believe we just got overwhelmed . . . just trying to keep up with all of the emails, you know, from time to time . . . we missed them.").

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[3] Mr. Robinson had begun paying his regular mortgage payments from September through December of 2017. FF 18; *see also* DCX 73 at 1-5 (bank statements showing withdrawn monthly amounts from September 2017 to January 2018).

The Committee found that Respondent had three substantive arguments to oppose the lifting of the stay: (1) U.S. Bank omitted the fact that Mr. Robinson had been making regular plan payments for the past four months (since September 2017), (2) U.S. Bank failed to object to the plan before its confirmation, and (3) Mr. Robinson had equity in his home given its value on Zillow and as calculated by the D.C. Office of Tax and Revenue. FF 19, 25 (noting that U.S. Bank had erroneously stated that Mr. Robinson's home was "underwater"). Independent of the substantive basis for denying the motion to lift the automatic stay, the bankruptcy court could have issued an order allowing a cure of the post-petition defaults over a reasonable period of time if Respondent had opposed U.S. Bank's motion. FF 26.

However, because the motion was unopposed, on January 18, 2018, the bankruptcy court granted U.S. Bank's motion to lift the automatic stay, which allowed U.S. Bank to foreclose on the property and take possession. FF 24. On February 2, 2018, Respondent first learned that his house was in active foreclosure when a Wells Fargo representative explained the reason Wells Fargo had rejected his most recent mortgage payment. FF 28. It was not until February 5 or 6 that Respondent finally responded to Mr. Robinson's inquiries and, even then, Respondent did not disclose that the foreclosure resulted from the failure to oppose U.S. Bank's motion to lift the automatic stay. FF 29-30. Respondent then "continued to ignore Mr. Robinson's calls, emails, and text messages." FF 31.

On February 28, 2018, the bankruptcy trustee informed Mr. Robinson that Respondent had failed to oppose U.S. Bank's motion to lift the automatic stay, which

allowed the U.S. Bank to foreclose on his property. FF 31. It was not until July 10, 2018, that Respondent called Mr. Robinson and admitted to Mr. Robinson that he would still have been in possession of his home if an opposition to U.S. Bank's motion had been filed. FF 34. Mr. Robinson fired Respondent and completed his bankruptcy case in May 2020 with successor counsel. FF 35.

Count II (Jones, Geremew, Becton, Potts, Fitzgerald)

Count II relates to Respondent's representation of five separate clients in different matters and in different courts, resulting in violations of D.C. Rules 1.1(a) and (b) (competence and skill and care), 1.3(a) and (c) (diligence and promptness) and 8.4(d) (serious interference in the administration of justice).[4]

Languel Jones. In August 2015, Mr. Jones hired Respondent to defend him in a civil foreclosure case in D.C. Superior Court; Respondent agreed to "provide a comprehensive set of legal services," including foreclosure defense litigation. FF 36. However, when the mortgage company filed a motion for summary judgment in August 2017, Respondent failed to file an opposition. FF 39. With the motion unopposed, the D.C. Superior Court granted the mortgage company's motion on October 3, 2017, and scheduled a post-judgment status hearing for January 12, 2018. FF 40. On January 11, 2018, Mr. Jones, acting *pro se*, filed a Motion to Vacate

[4] Disciplinary Counsel does not take exception to the Committee's finding that the evidence was not clear and convincing that D.C. Rule 1.3(a) was violated for each of the four clients identified in Count II. *See* HC Rpt. at 60-61 (Rule 1.3(a) was not violated during the representation of Mr. Becton and Mr. Potts). We adopt those findings.

Default and an Opposition to Motion for Summary Judgment. FF 40. In the Motion to Vacate Default, Mr. Jones complained about being unaware of the summary judgment motion when it was filed and that he had made "several phone calls to his attorney to ascertain the status of the case . . . with no response from [Respondent]." FF 45. Respondent admittedly did not tell Mr. Jones about the motion for summary judgment or the fact that the court had granted the unopposed motion. FF 40-41.

On January 12, Respondent did not appear at the post-judgment status hearing, but Mr. Jones and the counsel for the mortgage company were present, and the D.C. Superior Court vacated its summary judgment order (while expressing concern that the mortgage company had incurred costs for the scheduling and advertising of the scheduled January 23 foreclosure sale) and set another hearing date for February 16, 2018. FF 44, 49-50. During the January 12 hearing, Mr. Jones advised the court that Respondent had not told him about the mortgage company's motion for summary judgment, and that he only learned about the court's order granting summary judgment upon checking the court docket. FF 46. The court wrote and filed a letter that was sent to the Office of Disciplinary Counsel (regarding Respondent's conduct in failing to communicate with Mr. Jones), and it was also sent to both parties. FF 50; DCX 32 at 8. On January 17, the mortgage company filed a response to Mr. Jones' *pro se* Opposition to Motion for Summary Judgment, but Respondent did not file a reply or any pleading to supplement Mr. Jones' filing. FF 51.

On February 14, 2018, the court ordered Respondent to appear at the February 16 hearing. FF 53. During his appearance, Respondent claimed that the person who

appeared at the January 12 hearing was not Mr. Jones but an imposter and also suggested that Mr. Jones did not prepare or file the Motion to Vacate and the Opposition to Motion for Summary Judgment, but the court found both assertions unbelievable. FF 47, 56. Respondent acknowledged that he had not communicated with Mr. Jones since the summer of 2017. FF 55. (In his *pro se* Motion to Vacate Default, Mr. Jones complained that he had submitted a loan modification in May 2017 but never heard back from Respondent. FF 45.) When the court asked Respondent whether "there [was] anything else that [he] wanted to say on the motion for summary judgment . . . since [he was] representing Mr. Jones," Respondent replied "No, Your Honor." FF 57. Ultimately, Respondent appeared more concerned about the court's letter to the Office of Disciplinary Counsel than Mr. Jones' case:

> THE COURT: So I think there's going to be investigation of this, Mr. Butler, by disciplinary counsel. So for the record, I did write a letter to disciplinary counsel of the bar, regarding allegations made by purportedly Languel Jones in a motion. And I forwarded the *pro se* motion to disciplinary counsel. . . . I don't know what to do with what you've represented [about an imposter], Mr. Butler. I find it strange that somebody with no interest in these proceedings would start filing *pro se* filings pretending to be Languel Jones.

DCX 41 at 9-10.

Brian Geremew. On January 17, 2018, Respondent filed a Chapter 13 bankruptcy petition on behalf of client Brian Geremew. FF 59. On February 15, the bankruptcy trustee moved to dismiss because Mr. Geremew had not provided the required documents, failed to make any Chapter 13 payments, and failed to appear at the first meeting of creditors. FF 60. The trustee filed a notice with her motion,

warning: "IF YOU FAIL TO FILE A TIMELY OBJECTION, THE MOTION MAY BE GRANTED BY THE COURT WITHOUT A HEARING." FF 61. The opposition was due by March 8, but with no opposition filed, the court dismissed the case on March 22 and terminated the automatic bankruptcy stay. FF 61, 64.

On May 9, 2018, Respondent filed a second Chapter 13 bankruptcy petition on Mr. Geremew's behalf. FF 75. Because this was his second petition, the automatic stay that applied was shortened to 30 days unless Respondent filed a motion to extend the stay. FF 76. The motion to extend the stay was not filed immediately but on May 28 (19 days after he had filed the petition). FF 77, 79. Respondent blamed his staff for not putting the motion to extend the stay on his "tasks list" and asserted that the delay was "inadvertent." FF 77. On June 6, Respondent failed to appear for the hearing on the motion to extend the stay, despite having received the bankruptcy court's scheduling order. FF 81-82. The court ordered Respondent to show cause why his attorney's fees should not be reduced. FF 83. At the show cause hearing, Respondent told the court that his office had mis-calendared the hearing and that his prior delay in filing the motion to extend the stay was due to his father's illness. FF 84. The court reduced his fees, noting Respondent's "inadequate representation of his client's interests" and finding that Mr. Geremew "did not receive the level of representation to which the client was entitled." FF 85.

Spencer Becton. On April 25, 2018, Respondent filed a Chapter 13 bankruptcy petition for Spencer Becton; because it was his second petition, the stay would expire in 30 days. FF 67. Respondent, however, waited until May 11, 2018

(more than two weeks) to file a motion to extend the automatic bankruptcy stay. FF 70. Respondent failed to attach the required notice to creditors to his motion, as required by local rules. FF 72. On May 14, 2018, Respondent received notice of the deficiency and was warned by the clerk that if it was not cured, the court could strike the motion to extend the automatic stay. FF 73. Despite this, Respondent did not cure the deficiency and on June 26, the court dismissed Respondent's motion to extend. FF 74.

Theodore Potts. On May 29, 2018, Respondent, who was also representing Theodore Potts in his foreclosure case in D.C. Superior Court, filed a Chapter 13 bankruptcy petition in federal bankruptcy court on Mr. Potts' behalf. FF 86-87. In the petition, he failed to note that Mr. Potts had a prior bankruptcy case. FF 89. In his written response to during the disciplinary investigation, Respondent stated that he "determined that [Mr. Potts] did have prior bankruptcy filings . . . [but he] inadvertently" checked the wrong box. *Id.* Respondent filed a request to waive the requirement of a certificate of completion of credit counseling. FF 90.

On May 31, 2018, the bankruptcy court issued an "Order Denying Request for 30-day Waiver of Credit Counseling and to Show Cause Why Case Ought Not to Be Dismissed for Failure to File Certificate of Prepetition Credit Counseling." FF 91. The court ordered that within seven days, Mr. Potts had to file a certificate of completion of credit counseling or show good cause why the case should not be dismissed. FF 91-92. Respondent received a copy of the order through the court's electronic filing system, but he did not respond to the order. FF 92-93. The court

dismissed Mr. Pott's bankruptcy case on June 8, 2018, after receiving no response from Respondent. FF 94.

Alexander Fitzgerald. On May 28, 2018, Respondent filed a Chapter 13 bankruptcy petition on behalf of Alexander Fitzgerald and moved to extend the automatic stay. FF 95-96. Respondent, however, failed to file the required notice to creditors; on June 1, 2018, the court issued an "Order Directing the Debtor to File Notice of Opportunity to Oppose and Notice of a Hearing." FF 97-98. Respondent failed to respond to the court's order, so on June 19, the court *sua sponte* provided notice to the creditors and ordered the creditors, client Fitzgerald, and Respondent to appear on June 26, 2018 for a hearing. FF 99-100.

In its order, the court explicitly stated that it would deny the motion to extend the automatic stay if Respondent did not personally appear, and the court also stated that Respondent was required to show cause why his fees should not be reduced for failing to file the required notice and failing to respond to the June 1 order. FF 100. On June 26, neither Respondent nor Mr. Fitzgerald appeared even though Respondent had received e-notification of the order. FF 101, 103. As promised, the court denied the motion to extend and sanctioned Respondent by reducing his fee. FF 104-105.[5]

[5] On September 27, 2018, Respondent represented to Disciplinary Counsel that his failure to respond to the court's electronic notices as described in Counts I and II was "temporary" and that he had hired new staff and implemented new systems to ensure that he would respond timely to future court notices. FF 106. However, in the *Clayton* matter (Count III) which occurred afterwards, he continued to ignore important notices.

Count III (Clayton)

Count III relates to Respondent's representation of a single client in a personal injury case filed in U.S. District Court for the District of Maryland ("Maryland federal court"), resulting in violations of MD Rule 19-301.1 (competence), 19-301.3 (diligence and promptness), and 19-308.4(d) (prejudice to the administration of justice).

On December 21, 2018, Respondent filed a personal injury complaint on behalf of George Clayton in Maryland federal court. FF 107. Mr. Clayton was rear-ended by the defendant's truck driven by the defendant's employee on December 21, 2015. FF 108. Respondent filed the personal injury complaint on the last day to file under the statute of limitations. FF 108. Even though Respondent had previously handled approximately ten personal injury cases, he failed to take the necessary steps to obtain a summons to serve the defendant. FF 109-110.

On December 27, the Maryland federal court notified Respondent that the required summons was not yet provided; additionally, the court notified Respondent that he had 14 days to file a consent or declination to proceed before a magistrate. FF 111. Respondent did not respond, so on January 11, 2019, the court issued an order to show cause which required Respondent to appear on February 22. FF 112. When Respondent failed to appear, the court issued a second order to show cause, but Respondent again did not appear. FF 113-114.

By June 2019 (more than five months after filing the complaint), Respondent had not served the defendant and still had not filed the afore-mentioned consent or

declination to proceed before a magistrate. FF 115. On June 4, the Maryland federal court ordered Mr. Clayton to show cause within 14 days as to why his complaint should not be dismissed for failing to serve the defendant. FF 116.

On June 18, 2019, Respondent requested 30 days to effect service and attached an Affidavit of Attempted Service; he also represented that he had not received prior email notifications from the Maryland federal court because his email server had been hacked. FF 117-18; *see also* FF 119. Respondent told the court that his PACER email address had been wrong, but that it had been updated with his current address to ensure he received future mailings. FF 120. The Maryland federal court granted the 30-day extension to serve the defendant, but Respondent subsequently did not do anything to procure the summons or serve the defendant in July or August. FF 122, 124.

On August 15, the Maryland federal court ordered Respondent to appear at a show cause hearing on August 29, but Respondent failed to appear. FF 125-126. At the show cause hearing, the court noted Respondent's "chronic dereliction of his duty as counsel and as an officer of this court" and stated that Respondent had not "upheld his duties . . . as the attorney for Mr. Clayton." FF 126. The court added that "at this point, it would stretch the bounds of reality that a practicing attorney would not have fixed his ECF problem, which he claims occurred back in March." FF 127. The court issued an order that referenced Respondent's repeated failures to appear at the show cause hearings and failures to respond to the orders. FF 130. The court's order required Respondent to appear on September 5 or be held in contempt. FF 130.

Respondent failed to appear on September 5, and the court's clerk conducted an inquiry and found out that Respondent had not updated his email address with the court, despite his June 18 representation to the court that he had done so. FF 131-32. After locating Respondent's cell phone number from another member of the bench, the court called Respondent while still on the record so that the conversation could be transcribed. FF 131-133. The court proceeded to question Respondent about Mr. Clayton's case, noting that the complaint was filed on the last day permitted by the statute of limitations. FF 134 (the court: "I am trying my best not to pour this case out, although you're giving me little to no choice."). Respondent blamed the process server for not having yet perfected service, but the court reminded Respondent that he had not yet filed a *proposed summons* even after being instructed to do so, and an approved summons was necessary to serve the defendant. FF 136. The court admonished Respondent for misrepresenting to the court that he had updated his contact information with ECF. The court emphasized that the court and its staff "had to expend time and energy and resources" to reach him. FF 138.

On October 1, 2019, the court felt it had no choice but to dismiss Mr. Clayton's case.

> [Respondent] knew at the time he filed the action that limitations expired the very next day [and] should have anticipated the consequences of untimely service, and cannot now use the statute of limitations to shield his chronic carelessness. . . . [C]ounsel did nothing to obtain a proper summons even after being specifically warned, or attempt service by alternative means, or attempt service *at all* since

> counsel's last court appearance, the Court simply cannot extend service deadlines again.

DCX 70 at 7.

III. DISCUSSION

A. Standard of Review

We review *de novo* the Hearing Committee's legal conclusions and its determinations of ultimate fact. *See Klayman*, 228 A.3d at 717; *Bradley*, 70 A.3d at 1194 (Board owes "no deference to the Hearing Committee's determination of 'ultimate facts,' which are really conclusions of law and thus are reviewed *de novo*").

B. The Motion to Sever and the Recusal Motion

Before the Hearing Committee Chair, Respondent moved to sever the charges (the three counts separately docketed by Disciplinary Counsel) and argued that the three counts should be tried separately before three different Hearing Committees. Respondent also suggested that since the Chair considered his motion to sever, the Chair should be recused from hearing any of the counts because he was aware of the separately docketed matters and the substance of those charges. Disciplinary Counsel opposed the motion, arguing that the Court, the Board, and the Hearing Committee routinely consider joined matters in disciplinary cases.

On May 2, 2022, the Hearing Committee issued an order denying Respondent's motion to sever and motion to recuse, noting that Respondent had cited no evidence to support either his speculation that a Hearing Committee is unable to fairly consider the evidence of the three counts and that Respondent had cited no authority for the premise that a respondent is entitled to have factual

defenses to each count "'considered without comparison being made about the effectiveness of a defense to another charge under a different factual predicate.'" May 2, 2022 Order, p.1 (quoting Respondent's Motion to Sever Charges, p.2).

The Court of Appeals has regularly permitted the consolidation of separately docketed matters involving different disciplinary facts. *See, e,g*., *In re Hines*, 482 A.2d 378, 383 (D.C. 1984) (per curiam) ("It is not unusual for a single committee to weigh at one time charges against an attorney stemming from his dealings with more than one client; indeed, such cases are almost routine.").[6] Consolidation of separately docketed matters is also permitted when the cases do not involve the same respondents. *See In re Dickens*, 174 A.3d 283, 301 n.15 (D.C. 2017) (Court denying the respondent's due process claim where one committee heard consolidated matters involving two respondents, even though the respondent was not charged in each of the docketed matters). Even in the context of criminal cases, a trial court's denial of a motion to sever is upheld on appeal absent a showing of "the most compelling prejudice" which could not be ameliorated. In *Bailey v. United States*, 10 A.3d 637, 642 (D.C. 2010), the Court of Appeals explained that prejudice by itself is not a sufficient reason to sever criminal charges because the possibility of prejudice occurs whenever offenses are joined in a single indictment. Because discipline cases

[6] In *In re Ponds*, a severance was granted but it was in the unusual context of a Chair's request to the Board (and with agreement of both parties) that the significant misappropriation charges be tried first, and the lesser charges be severed for a later hearing. *See In re Ponds*, Board Docket No. 17-BD-015, at 14 (BPR June 24, 2019).

are not decided by a jury, but a three-member hearing committee, the need to ameliorate prejudice through severance does not exist.

In regard to the motion to recuse, because we find that it is appropriate and consistent with the purpose of the discipline process for one hearing committee to hear the consolidated disciplinary charges, the motion to recuse was properly denied. *See Hines*, 482 A.2d at 383 ("[T]he simultaneous consideration of respondent's cases is fully consistent with the main purpose of the disciplinary process. . . . An attorney's competence can be evaluated only by a disciplinary process that measures his or her behavior as a whole, not by separate inquiries into isolated instances of alleged misconduct.").

C. Given the Nature of Respondent's Misconduct, Expert Testimony Was Not Required for Disciplinary Counsel to Prove that Respondent Lacked Competence and Skill and Care.

Respondent argues that an expert was required to establish the standard of care as it relates to bankruptcy and foreclosure proceedings in the *Robinson* and *Jones* representations. *See* Resp. Br. at 15. Disciplinary Counsel responds that expert testimony was not required because Respondent's misconduct was not connected to a specific legal specialty but to obvious errors in failing to act: "The Hearing Committee did not need an expert to explain why a lawyer cannot ignore required filings or disregard court orders." ODC Reply Br. at 7.

A violation of D.C. Rules 1.1(a) and/or (b) may be proven where an attorney's "conduct is so obviously lacking that expert testimony showing what other lawyers generally would do is unnecessary." *In re Nwadike*, Bar Docket No. 371-00 at 28

(BPR July 30, 2004), *findings and recommendation adopted*, 905 A.2d 221, 227, 232 (D.C. 2006); *In re Schlemmer*, Bar Docket Nos. 444-99 & 66-00, at 13 (BPR Dec. 27, 2002), *recommendation adopted in relevant part*, 840 A.2d 657 (D.C. 2004) (remanding to the Board for further consideration of the appropriate sanction).

The Court has determined that competent representation requires the "legal knowledge, skill, thoroughness, and preparation reasonably necessary for the representation." *See In re Drew*, 693 A.2d 1127, 1132 (D.C. 1997) (per curiam) (appended Board Report) (lawyer who has requisite skill and knowledge, but who does not apply it for particular client, violates obligations under Rule 1.1(a)). Rule 1.1(b) mandates that "a lawyer shall serve a client with skill and care commensurate with that generally afforded to clients by other lawyers in similar matters." The comments to D.C. Rule 1.1 state 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." Rule 1.1, cmt. [5].

In regard to failing to file an opposition to U.S. Bank's motion to terminate the automatic stay in the *Robinson* matter (Count I), the Committee found that:

> Failing to oppose a motion to terminate a client's stay is clearly a serious deficiency in representation; it is clear that no lawyers working on similar matters would serve a client similarly unless there was a clear strategic reason, communicated clearly and in advance of the deadline to oppose the Bank's motion . . . [and] [t]he evidence here shows that Respondent had no such strategy and did not timely communicate with Mr. Robinson about any meaningful legal strategy.

HC Rpt. at 50 (citing FFs 21-34).

When describing Respondent's failure to file an opposition to the mortgage company's motion for summary judgment in the *Jones* matter (Count II), the Committee emphasized not only the failure to file an opposition, but also Respondent's failure to appear at the January 12, 2018 post-judgment hearing, his failure to file any supplemental or late opposition once the D.C. Superior Court vacated its order granting summary judgment upon Mr. Jones' *pro se* filing, his lack of communication with Mr. Jones, and his inability to address the motion for summary judgment when asked directly by the Court at the February 16th hearing. *See* FF 40-41, 44-46, 51-52, 55; HC Rpt. at 52-53. According to the Committee, Respondent did not represent Mr. Jones with the preparation reasonably necessary for the representation nor the skill and care commensurate with that generally afforded clients by other lawyers in similar matters. *See Drew*, 693 A.2d at 1132. "Opposing dispositive motions, appearing at hearings, and defending your client's interests before the court are clearly rudimentary aspects of the skill and care generally afforded clients by attorneys practicing in any area of law, including civil foreclosure, where properties and residences are often at stake." HC Rpt. at 53 (citing Rule 1.1, cmt. [5]).

For the same reason, an expert was not required to establish the violation of MD Rule 19-301.1 (competence) in the *Clayton* matter (Count III). In representing Mr. Clayton in his personal injury case in Maryland federal court, Respondent failed to file a proposed summons so that the defendant could be served, failed to comply with the court's repeated orders to show cause, failed to personally appear even when

threatened with contempt (requiring the court to locate his cellphone number and to call him so that his statements could be made part of the transcribed record), and failed to take any action on Mr. Clayton's case so that the defendant could be served before the court had no choice but to dismiss his case with prejudice. *See* FF 110, 113-116, 120-141; HC Rpt. at 66-67. Respondent's conduct was "so obviously lacking" in the *Clayton* representation that an expert did not have to be called for Disciplinary Counsel to have met its burden of proof.

Accordingly, we agree with the Hearing Committee that the deficiencies were so obvious that expert testimony was not needed for Disciplinary Counsel to meet its burden of proof in this instance. The lack of competence and skill and care by Respondent were based on general obligations including appearing in court for scheduled hearings, communicating with clients and filing responsive pleadings, and expert testimony was not required for the Hearing Committee to reach its conclusions by clear and convincing evidence.

IV. SANCTION

The sanction imposed in an attorney disciplinary matter must protect the public and the courts, maintain the integrity of the legal profession, and deter the respondent and other attorneys from engaging in similar misconduct. *See, e.g.*, *In re Hutchinson*, 534 A.2d 919, 924 (D.C. 1987) (en banc); *In re Martin*, 67 A.3d 1032, 1053 (D.C. 2013); *In re Cater*, 887 A.2d 1, 17 (D.C. 2005). "In all cases, [the] purpose in imposing discipline is to serve the public and professional interests . . . rather than to visit punishment upon an attorney." *In re Reback*, 513 A.2d 226, 231

(D.C. 1986) (en banc) (citations omitted); *see also In re Goffe*, 641 A.2d 458, 464 (D.C. 1994) (per curiam). The sanction must not "foster a tendency toward inconsistent dispositions for comparable conduct or . . . otherwise be unwarranted." D.C. Bar R. XI, § 9(h)(1); *see, e.g.*, *Hutchinson*, 534 A.2d at 923-24; *Martin*, 67 A.3d at 1053; *In re Berryman*, 764 A.2d 760, 766 (D.C. 2000).

The purpose of imposing sanction is not to punish the respondent but "to serve the public and professional interests identified and to deter future and similar conduct." *Goffe*, 641 A.2d at 464.

A. Six-Month Suspension Without a Stay

We agree with the Hearing Committee that Respondent's repeated misconduct involving eight clients over a period of three years warrants a lengthy suspension. For that reason, we recommend that Respondent's license to practice law be suspended for a six-month period. *See In re Untalan*, 174 A.3d 259, 259-260 (D.C. 2017) (per curiam) (six-month suspension for violations of Rules 1.1(a), 1.1(b), 1.3(a), 1.3(b)(1), 1.3(c), 3.4(c), and 8.4(d) arising from seven separate appellate matters); *In re Murdter*, 131 A.3d 355, 357 n.2, 358 (D.C. 2016) (per curiam) (appended Board Report) (six-month suspension for violations of Rules 1.1(a), 1.1(b), 1.3(a), 1.3(b)(1), 1.3(c), 3.4(c), and 8.4(d) where the respondent's "indifference to his client obligations [in five criminal appeals] went hand-in-glove with disregarding multiple related orders of this court"); *In re Lyles*, 680 A.2d 408 (D.C. 1996) (per curiam) (appended Board Report) (six-month suspension and

fitness requirement for violations of Rules 1.1(b), 1.3(a), and 8.4(d) arising from lack of competence and neglect in four bankruptcy matters).

Unlike the Hearing Committee, however, we do not believe Respondent is an appropriate candidate for a partially stayed suspension and probation. While a stayed suspension is sometimes warranted where the counsel's misconduct is a "deviation from [his] regular course of responsible legal practice" or where "substantial mitigating factors" exist, *In re Askew*, 96 A.3d 52, 61 (D.C. 2014) (per curiam), here, that is simply not the case. Here, the only mitigating factor is Respondent's lack of prior discipline but that does not outweigh the aggravating factors of repeated misconduct and his client's known vulnerabilities. *See Lyles*, 680 A.2d at 417 (appended Board Report) (ability to zealously and effectively represent clients is "essential [where] bankruptcy clients are often unsophisticated individuals who require clear and firm legal guidance in order to avoid losing their most cherished possessions.").

The Court of Appeals recently discussed the appropriate use of stays in *In re Dobbie* & *Taylor*, No. 21-BG-0024, slip. op. at 69-70 (Dec. 7, 2023):

> Stays of suspensions are typically reserved for situations where attorneys commit clearly sanctionable conduct, but under circumstances that explain or blunt their culpability. *See, e.g., In re Peek*, 565 A.2d 627, 631-34 (D.C. 1989) (concluding that the attorney's clinical depression was causally connected to his misconduct and therefore a sufficient mitigating factor to warrant a stay); *In re Mooers*, 910 A.2d 1046, 1046-47 (D.C. 2006) (similar). *Cf. In re Pearson*, 228 A.3d at 428 (declining to impose a stay, even where the Hearing Committee had recommended one, because the sanctions factors were generally aggravating).

Here, because the sanction factors are generally aggravating, we decline to impose a stay despite the Committee's recommendation. *See In re Pearson*, 228 A.3d 417, 428 (D.C. 2020) (per curiam).

B. A Fitness Requirement is Warranted

A fitness showing is a substantial undertaking. *Cater*, 887 A.2d at 20. In *Cater*, the Court held that "to justify requiring a suspended attorney to prove fitness as a condition of reinstatement, the record in the disciplinary proceeding must contain clear and convincing evidence that casts a serious doubt upon the attorney's continuing fitness to practice law." *Id*. at 6. Proof of a "serious doubt" 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.

In this matter, we have a serious doubt about Respondent's ability to conform his conduct with the ethical rules for attorneys licensed in D.C. and Maryland. Twice, Respondent represented that he had taken corrective action to improve his responses to court notices and attendance in court. First, he told Disciplinary Counsel on September 27, 2018 (in a written response to its investigation) that his conduct in failing to respond to court notices and make required appearances was "temporary." *See* FF 106. He stated that he had "now engaged new staff and ha[d] implemented systems to make sure we respond to notices in a timely manner." DCX 45 at 3. However, in subsequent months and the following year, he continued to fail to file responses and make appearances in matters in which he was counsel.

He then erroneously represented to the Maryland federal court that he had corrected his address on file with the court, when he had not. *See* FF 119-120

(representing on March 27, 2019 that he had updated his PACER address with his current address). Respondent had a continuing obligation and duty, which he acknowledged in his testimony (FF 121), to promptly notify the clerk of the court of any changes to email address, which he recognized but failed to comply with despite repeated warnings from three separate courts that he was not complying with filing deadlines. Respondent's "chronic dereliction" of the most basic responsibilities as an officer of the court is troubling. FF 126 (Maryland federal court noting that Respondent had not "upheld his duties as an officer of the court or as the attorney for Mr. Clayton.").

The gravity and "pervasiveness" of the conduct affecting several clients over an extended period of time warrants the fitness requirement. *See In re Ryan*, 670 A.2d 375, 381 (D.C. 1996) (court sanction of a four-month suspension with a fitness requirement and payment of restitution for neglect of five clients from 1989 to 1991). In *Ryan*, the respondent "habitually ignored agency deadlines" for vulnerable clients who sought to change their status in the United States and risked deportation. *Id*. at 378. The Hearing Committee in *Ryan* noted that "despite a heavy caseload and the importance of meeting deadlines, respondent did not maintain any calendar system to record due dates." *Id*.

Here, Respondent failed to inform Mr. Robinson of U.S. Bank's motion to lift the automatic stay, never filed an opposition, which in the bankruptcy judge's words, "deprived the court of the right to use its discretion to establish a schedule for cure payments over a reasonable period of time." DCX 27 at 3.

Mr. Robinson's home went into active foreclosure because of Respondent's dilatory failures to meet his basic obligations to Mr. Robinson. Similarly, Respondent failed to keep Mr. Jones informed that a dispositive motion had been filed in his case, failed to file an opposition and when presented with an opportunity to expand on Mr. Jones' *pro se* opposition, Respondent declined to do so, instead focusing his concerns on the court's letter to Disciplinary Counsel concerning his inadequate representation.

In Mr. Geremew's case, Respondent's filed a deficient Chapter 13 bankruptcy petition and failed to oppose the bankruptcy trustee's motion to dismiss. With respect to the second petition filed on Mr. Geremew's behalf, Respondent failed to file an extension of the abbreviated stay and failed to appear on the motion to extend the stay. At the show cause hearing, the court noted Respondent's "inadequate representation of his client's interests" and that Mr. Geremew "did not receive the level of representation to which the client was entitled." FF 85.

Similarly, Respondent failed to timely file a motion to extend the stay in Mr. Becton's case; his late filing was deficient, and he failed to cure the deficiencies despite receiving notice, which resulted in the court dismissing Respondent's motion to extend.

Respondent also made deficient bankruptcy filings on behalf of Mr. Potts and failed to respond or otherwise cure the deficiencies despite receiving notices from the court, which resulted in the dismissal of Mr. Potts' case. Respondent made deficient bankruptcy filings on behalf of Mr. Fitzgerald and failed to appear at the

show cause hearing wherein the court had explicitly warned him that his failure to appear would result in the denial of Respondent's motion to stay. His failure to appear and otherwise cure the identified deficiencies, unsurprisingly, resulted in the denial of the motion to extend.

Respondent's inability to both respond to court notices and obtain and a serve a simple summons on the defendant—a basic requirement for any litigator—caused the dismissal of Mr. Clayton's personal injury case, *see* FF 148-150, which was filed one day prior to the expiration of the statute of limitations.

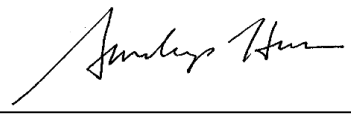
Respondent's repeated failures to keep his clients informed, respond to court notices, file proper documents, cure deficient filings and respond to dispositive motions display a pattern of behavior that warrants fitness. Respondent's clients were vulnerable individuals who sought his services to help them keep their homes. Respondent repeatedly failed to provide the most basic functions an attorney must perform on behalf of his clients. Despite being aware of the disciplinary complaints and Disciplinary Counsel's investigation related to Counts I and II, Respondent still did not remedy the notice problems in his office and failed to make required filings, causing the Maryland federal court in Count III to issue four orders to appear which were similarly ignored. We have a serious doubt whether Respondent recognizes the seriousness of his misconduct given the pervasive pattern of his behavior and the flimsy excuses he provided when he was forced to account for his neglect before the courts and in the instant disciplinary proceeding.

V. CONCLUSION

For the foregoing reasons, the Board finds that Respondent violated D.C. Rules 1.1(a) (competence), 1.1(b) (skill and care), 1.3(a) (diligence), 1.3(c) (reasonable promptness), 1.4(a) (failing to keep client reasonably informed), 8.4(d) (serious interference with the administration of justice), and MD Rules 19-301.1 (competence), 19-301.3 (diligence and promptness), and 19-308.4(d) (prejudice to the administration of justice), and should receive the sanction of a six-month suspension with a requirement of fitness for reinstatement.

We further recommend that Respondent's attention be directed to the requirements of D.C. Bar R. XI, § 14, and their effect on eligibility for reinstatement. *See* D.C. Bar R. XI, § 16(c).

BOARD ON PROFESSIONAL RESPONSIBILITY

By: 

Sundeep Hora
Vice Chair

All members of the Board concur in this Report and Recommendation, except Dr. Hindle who did not participate.