DISTRICT OF COLUMBIA COURT OF APPEALS
BOARD ON PROFESSIONAL RESPONSIBILITY

Issued
July 31, 2018

In the Matter of:	:	
	:	Board Docket Nos. 14-BD-052 &
DAVID B. NOLAN, SR.,	:	14-BD-054
	:	
Respondent.	:	Bar Docket Nos. 2009-D285,
	:	2011-D295, 2011-D422,
A Suspended Member of the Bar of the	:	2011- D434, 2012-D183,
District of Columbia Court of Appeals	:	2012-D397, & 2012-D193
(Bar Registration No. 379804)	:	

REPORT AND RECOMMENDATION OF THE
BOARD ON PROFESSIONAL RESPONSIBILITY

In this consolidated matter, an Ad Hoc Hearing Committee found that Respondent, among other things, neglected two client matters, failed to communicate with his clients, charged unreasonable fees and failed to provide an accounting thereof, engaged in dishonesty, failed to respond to Disciplinary Counsel's request for information, failed to comply with Board and Court orders, engaged in serious interference with the administration of justice, was convicted of serious crimes, made knowing false statements of fact to a tribunal, and committed criminal acts that reflected adversely upon his honesty, trustworthiness, or fitness as a lawyer. In its thoughtful report, the Committee determined that Respondent engaged in seventeen violations of the D.C. Rules of Professional Conduct and two violations of D.C. Bar Rule XI, and recommended that Respondent be suspended for three years, with reinstatement conditioned on proof of fitness, restitution and

compliance with all outstanding Disciplinary Counsel subpoenas and all related Court and Board orders.

Neither Disciplinary Counsel nor Respondent took exception to the Report and Recommendation. The Board concurs with the Hearing Committee's factual findings, as supported by substantial evidence in the record, and makes limited additional findings of its own. In addition, with limited exceptions, the Board agrees with its conclusions of law, as supported by clear and convincing evidence. Finally, the Board concurs with the Hearing Committee's recommended sanction.

I. PROCEDURAL HISTORY

On December 29, 2010, Respondent was convicted in the Arlington Circuit Court, 17th Judicial Circuit of Virginia, of one count of "No Operator's License," in violation of Va. Code § 46.2-301, and three counts of misdemeanor Failure to Appear, in violation of Va. Code § 19.2-128(C). On December 17, 2012, the Court suspended Respondent pursuant to D.C. Bar R. XI, § 10(c), and referred the matter to the Board to determine whether Respondent's failure to appear convictions involved moral turpitude within the meaning of D.C. Code § 11-2503(a). Order, *In re Nolan*, D.C. App. No. 12-BG-1892 (Dec. 17, 2012 (amended Dec. 26, 2012)). On January 25, 2013, the Board issued an order concluding that Respondent's crime did not involve moral turpitude *per se* and referred the matter to a Hearing Committee to determine (1) whether Respondent's conviction involved moral turpitude on the

facts in light of any aggravating or mitigating circumstances, and (2) what final discipline is appropriate in light of Respondent's conviction of a serious crime.

On June 30, 2014, Disciplinary Counsel filed (i) a six-count Specification of Charges arising out of his handling of two client representations[1] and (ii) a two-count Specification of Charges, arising out of his criminal conviction.[2] Both Specifications were served on Respondent, but he did not file an Answer to either Specification. On December 22, 2014, the Board Chair granted Disciplinary Counsel's motion to consolidate the matters for all purposes.

A hearing was held on May 7, 2015, before the Ad Hoc Hearing Committee. Disciplinary Counsel was represented at the hearing by Traci M. Tait, Esquire, and Joseph Perry, Esquire. Respondent did not appear at the hearing, or otherwise participate in these proceedings, other than to file a motion to dismiss. The Board concurs with the Hearing Committee's recommendation that Respondent's motion to dismiss be denied and so denies it.

II. FINDINGS OF FACT

The Hearing Committee's detailed factual findings, summarized below, are supported by substantial evidence on the record as a whole, and we adopt them as our own. *See* Board Rule 13.7; *see also In re Speights*, 173 A.3d 96, 102 (D.C.

[1] The Hearing Committee inadvertently stated that this Specification was filed on July 1, 2014. Disciplinary Counsel amended this Specification on March 16, 2015.

[2] Disciplinary Counsel did not charge Respondent with committing a crime involving moral turpitude.

2017) (per curiam) (weight and relevance of evidence is "within the ambit of the Hearing Committee's discretion"). The Board makes limited additional findings of fact, supported by clear and convincing evidence. *See* Board Rule 13.7.

A. Background

1. Respondent was admitted to the Bar of the District of Columbia Court of Appeals (the "Court") on June 25, 1984, and assigned Bar No. 379804.

B. Count I (Sagars, 2009-D285)

2. Ajay and Archana Sagar were the principals of Pixl, a Virginia-based technology company. They are U.S. citizens. In April 2004, Pixl received a contract from the United States Department of Agriculture Forest Service to provide technical support for the Forest Service's computer systems. As they continued their work with the federal government, the Sagars became increasingly concerned with the contract fulfilment process, the government's failure to timely pay Pixl's invoices, and other matters. Ad Hoc Hearing Committee Finding of Fact (FF) 6-10.

3. In or around December 2005, Pixl retained Respondent as counsel to address their contract administration concerns. Respondent convinced the Sagars that they had a good case that he could resolve in a couple of months. In or around May 2006, Pixl entered into a written retainer agreement with Respondent, but the Sagars were unable to locate a copy of the agreement by the time of the hearing. Under this retainer agreement, Pixl agreed to pay Respondent $1,800 per month, although it is unclear whether the scope of the agreement included Respondent representing Pixl both in Pixl's contractual dispute with the Forest Service, *and* in a

separate lawsuit brought against it by IRM Consulting, another government contractor. At a minimum, the Sagars retained Respondent to resolve the issues that Pixl was having with Forest Service. FF 11-14.

4. Between December 2005 and June 2008, Pixl paid Respondent a total of $88,887.70. FF 13.

5. Respondent assured the Sagars that he could resolve Pixl's issues quickly, that they had a meritorious case against the government, and that it would take a couple of months to resolve the matter. FF 16. He did not provide them with detailed information concerning his strategy. He advised them that they needed to exhaust their administrative remedies and then promptly file a lawsuit in federal court. FF 17.

6. During the representation, Respondent went to Pixl's offices to draft all documents using Pixl's computers. The Sagars then performed the remaining tasks (such as printing and mailing the documents) on their own time and at their own expense. FF 19.

7. On May 26, 2007, Respondent caused the Sagars to sign a new retainer agreement. The Hearing Committee found that under the terms of this new agreement, the Sagars agreed to pay Respondent $3,600 per month as an "Advance Payment," and one third of the "winnings" (the total amount recovered after certain adjustments). Pixl and the Sagars then owed Respondent the difference between the "winnings" and the total amount of all monthly payments made to Respondent. The new agreement did not allow the Sagars to terminate the representation for a year.

According to Respondent, he needed a minimum of one year to obtain the results he had promised. Neither the Sagars nor Pixl agreed that Respondent could treat the advanced fees and his own before they were earned. FF 21-24.

8. Respondent filed a civil rights claim with the USDA's Office of Civil Rights, asking that an EEO counselor be appointed to investigate the appearance of "prohibited discrimination concerning disparate treatment and disparate impact against minorities and people of color." FF 27. Respondent did not discuss the contents of the civil rights claim or the investigation process with the Sagars before filing it. FF 28. The Office of Civil Rights responded to the filing and advised that the notice could not be processed because it had not been filed within 180 days of the alleged discriminatory event, which involved the transfer of certain Pixl employees to another contractor. While the date by which the notice needed to be filed expired before Respondent was retained, he did not discuss the significance of the response with the Sagars. FF 29.

9. Respondent subsequently filed actions in a number of forums on the Sagars' behalf. He filed a "certified contract claim" with the Forest Service's contracting officer. He filed a protest with the Government Accountability Office (GAO) objecting to a Forest Service solicitation on April 13, 2007. The GAO denied the protest because Pixl was not an eligible bidder for the solicitation. FF 34-36. Respondent filed another protest with the GAO objecting to the award of a contract to a third party. The GAO denied this protest on August 20, 2007 because Pixl was not an interested party. FF 37. Respondent subsequently filed actions asserting a

variety of claims on behalf of the Sagars and Pixl. Each case was ultimately dismissed because of Respondent's incompetence or inaction:

a. On June 27, 2007, Respondent filed a garbled and incoherent class action complaint in the United States District Court for the District of Columbia against the Secretary of Agriculture seeking relief on behalf of ill-defined classes ("the classes of race (Asiatic, Brown, female and Asiatic couple)") and seeking damages and injunctive and other relief to prevent discrimination and tortious interference with contract, among other things, "in violation of federal statute, the laws of the District of Columbia, [and] the Fifth and Thirteenth Amendments to the Constitution of the United States" and the federal RICO statute. FF 38-43. When the defendant filed a motion to dismiss, Respondent failed to respond and the complaint was dismissed with prejudice on December 11, 2007. FF 38-72. The Sagars repeatedly asked Respondent for status updates. He assured the Sagars that he had heard nothing from the Court, never informed them that the case had been dismissed or discussed the significance of the dismissal. FF 69-72.

b. On November 21, 2007, while the District Court action was pending, Respondent filed a complaint in the United States Court of Federal Claims. Again, Respondent's complaint was disorganized, rambling, and filled with irrelevant allegations. When the government moved to dismiss, the Court *sua sponte* granted Respondent an extension in which to respond but Respondent still failed to do so. The Court then ordered him to show cause why the case should not be dismissed, and he still failed to respond. Consequently, this action was also

dismissed on April 9, 2008. Despite the Sagars' repeated inquiries about the status of the case, Respondent never informed them of any developments in the case or of the case's dismissal. FF 73-100.

c. On May 21, 2008, Respondent filed a Notice of Appeal to the Civilian Board of Contract Appeals purportedly from an October 6, 2007 final decision by the Forest Service contracting officer refusing to pay a Pixl invoice. The final decision date was actually November 7, 2007, not October 6, 2007. Respondent had 90 days from the date his clients received the final decision to appeal to the Contract Appeals Board, *i.e.*, by February 2008. Because Respondent missed this jurisdictional time limit, the Contract Appeals Board eventually dismissed this action on July 2, 2009. FF 101-102, 127-130.[3]

10. In early June 2008, the Sagars received correspondence from a Forest Service employee that their District Court action and the Court of Federal Claims action had been dismissed. FF 103. When they asked Respondent whether this was true, he denied it. These denials were intentionally false, misleading and deceptive. FF 104-106. The Sagars then contacted the clerk's offices of the respective courts and confirmed that their cases had been dismissed. FF 107-108.

11. In June 2008, the Sagars notified the Contract Appeals Board that Respondent no longer represented them. They sought new counsel, and they stopped

[3] Respondent was aware of the Contracting Officer's denial no later than November 21, 2007 (the day he filed in the Court of Federal Claims) because he knew about the denial before he filed in the Court of Federal Claims. FF 76.

paying Respondent because the second retainer agreement Respondent drafted expired at the end of April 2008. The Sagars formally fired Respondent by letter in August 2008. FF 118-119.

12. At various times during the representation and after the Sagars discharged him, the Sagars asked Respondent for their complete file, including an accounting of the fees he received from them. Respondent never provided the file or an accounting; indeed, he did not even respond to their requests. FF 121-122.

13. In July 2009, the Sagars filed a disciplinary complaint. By letter dated July 15, 2009, Disciplinary Counsel wrote Respondent to inform him that it had initiated a formal investigation, based on the Sagars' complaint. Disciplinary Counsel requested that Respondent provide a written response to the Sagars' allegations by July 27, 2009. Disciplinary Counsel mailed the complaint with the inquiry letter to the address Respondent had most recently listed with the D.C. Bar but received no written response from Respondent by the due date. By letter dated August 13, 2009, Disciplinary Counsel again wrote Respondent to remind him of his obligation to respond to the inquiry, enclosing the complaint and providing until August 20, 2009 for response. Although Disciplinary Counsel mailed the complaint with the inquiry letter to the address Respondent had most recently listed with the D.C. Bar, Disciplinary Counsel received no written response from Respondent by the due date. FF 133-136.

14. By subpoena *duces tecum* dated October 13, 2009, Disciplinary Counsel directed Respondent to produce his client file in the underlying matter.

Although Respondent finally provided a written response to the Sagars' disciplinary complaint by e-mail message dated October 23, 2009, Respondent failed to produce documents in response to the subpoena. Respondent's response was full of conclusory assertions regarding the "sound and vigorous representation" that he had allegedly provided to Pixl, the allegedly poor business judgment and practices of Pixl and Ajay Sagar, and the results allegedly obtained by Respondent's efforts, but failed to respond to the complaint's allegations regarding (1) the dismissals of the District Court action and the Court of Federal Claims action because of Respondent's failure to file any response whatsoever to the Government's motions to dismiss in those cases, and (2) his alleged false statements to the Sagars that he had heard nothing from either court. Disciplinary Counsel made repeated attempts thereafter to obtain additional information from Respondent to no avail. To the extent that he provided any responses, they were nonresponsive or unrelated to the disciplinary investigation. FF 140-149.

15. By subpoena *duces tecum* dated August 2, 2012, Disciplinary Counsel directed Respondent to produce financial records relating to funds he had received in the Sagar case. Disciplinary Counsel sent the subpoena by certified and first-class mail. Respondent failed to claim the certified mail (and it was returned), but the copy sent by regular mail was not returned by the U.S. Postal Service. Respondent failed to produce any of the subpoenaed records. FF 162.

16. By order dated June 6, 2013, the District of Columbia Court of Appeals directed Respondent to comply with Disciplinary Counsel's outstanding subpoenas within ten days of the Court's order but Respondent failed to comply. FF 164.

17. Respondent did not provide a substantive response to Disciplinary Counsel's inquiry, produce the client file in question, or comply with the Court's order. FF 165; Tr. 144, 154-56.

C. Count II (Turley, 2011-D295)

18. By letter dated July 26, 2011, Disciplinary Counsel wrote Respondent to inform him that Disciplinary Counsel had initiated a formal investigation into his handling of an appeal to the United States Court of Appeals for the District of Columbia Circuit on behalf of Herbert Travis. The Department of Labor had ruled against Mr. Travis in a workers' compensation administrative action, and Mr. Travis retained Respondent to handle further litigation. The Department of Labor's counsel, Sheldon Turley, filed a disciplinary complaint alleging that Respondent had failed to protect Mr. Travis's interests by, *inter alia*, letting important deadlines lapse. Disciplinary Counsel requested that Respondent provide a written response to the allegations, and included with the complaint and enclosures a subpoena *duces tecum* for the client file in the underlying matter. FF 166-167.

19. Disciplinary Counsel mailed the complaint package to Respondent at the address he had listed with the D.C. Bar. Respondent did not respond, and the package was not returned in the mail. FF 168.

20. By letter dated March 15, 2012, Disciplinary Counsel wrote Respondent informing him, i*nter alia*, that Disciplinary Counsel had not received either his response to the previous inquiry or the subpoenaed documents, and that Disciplinary Counsel would move to enforce the enclosed subpoena *duces tecum* if he refused to produce the documents Disciplinary Counsel sought. Respondent was served personally with Disciplinary Counsel's letter and enclosures on March 19, 2012. By letter dated March 22, 2012, Respondent provided a nonresponsive submission, failing to produce the client file in question. FF 169-170.

21. By order dated June 6, 2013, the District of Columbia Court of Appeals directed Respondent to comply with Disciplinary Counsel's outstanding subpoenas within 10 days of the Court's order. Respondent failed to comply with the order, which had been sent to him, and not returned by the Post Office. FF 172-173.

D. Count III (SunTrust, 2011-D422)

22. On or about October 4, 2011, Disciplinary Counsel received a notice from SunTrust Bank that Respondent had overdrawn his Interest on Lawyers Trust Account (IOLTA). Disciplinary Counsel sent Respondent a package under cover of an inquiry letter dated December 1, 2011, enclosing the notice and other documents. In its inquiry letter, Disciplinary Counsel asked Respondent, *inter alia*, to provide specific information about the activity in his IOLTA between June 1, 2010 and October 31, 2010. Disciplinary Counsel enclosed a subpoena *duces tecum* for records in support of the requested information. FF 174-177. Respondent responded

to this inquiry, claiming to have had no activity in his IOLTA during that period, but produced no records in support of his response. FF 178.

23. Thereafter, Disciplinary Counsel made multiple attempts to elicit the records and responses specified in its inquiries, but Respondent refused to respond substantively to Disciplinary Counsel, despite personal service and mailed correspondence that was never returned to Disciplinary Counsel. FF 179-185. By order dated June 6, 2013, the District of Columbia Court of Appeals directed Respondent to comply with Disciplinary Counsel's outstanding subpoena within 10 days of the Court's order, but Respondent failed to comply. FF 189.

E. Count IV (Currie, 2011-D434)

24. Robert D. Currie was a civilian inmate services counselor with the Arlington County Virginia, Sheriff's Office from September 2002 until July 2011. Mr. Currie met Respondent while Respondent was incarcerated in the Arlington County Detention Center. During that time, Mr. Currie consulted generally with Respondent about the possibility of retaining him. FF 192-193.

25. Mr. Currie filed two Charges of Discrimination with the Equal Employment Opportunity Commission, one on September 10, 2009, and another on January 26, 2011, both alleging discrimination by his employer. FF 194.

26. On or about May 28, 2011, Mr. Currie received a right to sue letter relating to the September 2009 EEOC Charge of Discrimination. Mr. Currie had 90

days from the date he received the right to sue letter – until August 26, 2011 – to file his complaint in federal court. FF 196.

27. On July 7, 2011, Mr. Currie was placed under administrative investigation (and later on administrative leave). Sometime thereafter, Mr. Currie telephoned Respondent to inform him that he wished to file a federal employment discrimination complaint in Virginia immediately. FF 197.

28. On July 22, 2011, Mr. Currie met with Respondent at Respondent's residence to discuss preparing a federal complaint. Mr. Currie told Respondent he believed that he was going to be fired from his job in the immediate future and wanted his complaint filed before any further negative action could be taken against him. FF 198.

29. Mr. Currie hired Respondent that day because he did not believe he could draft the complaint himself and Respondent had claimed "he had a long history of civil rights type experience." FF 199. Mr. Currie understood that Respondent would be willing to do the work for a discounted rate due to Respondent's apparent animus toward the Sheriff's Office. Respondent agreed then that he would prepare the federal complaint over the weekend and provide a finished product for Mr. Currie to file *pro se* in court by July 25, 2011.[4] At that meeting, Mr. Currie paid Respondent $900 to prepare the complaint by July 25, 2011. FF 199-203.

[4] Respondent was neither licensed to practice in Virginia, nor admitted in the Alexandria federal court. FF 201.

30. Respondent had not regularly represented Mr. Currie before undertaking this representation. However, he did not provide any writing to Mr. Currie communicating the basis or rate of the fee Respondent had charged, or the expenses for which Mr. Currie would be responsible. FF 204.

31. Respondent did not produce the promised federal complaint on July 25, 2011, as agreed. In the following days, Mr. Currie tried unsuccessfully to reach Respondent to obtain the complaint, leaving multiple telephone messages for Respondent and sending him e-mails. Mr. Currie—as he had feared—was fired on July 28, 2011, before he could file federal suit. FF 206.

32. After Mr. Currie's termination, he filed a third Charge of Discrimination with the EEOC on August 4, 2011. Mr. Currie alleged racial, gender and age discrimination, as well as retaliation, based on further incidents, including his termination from employment. At some point after the termination, Respondent gave Mr. Currie advice about how this third EEOC Charge should be written, specifically advising Mr. Currie to add the claim of age discrimination. FF 208.

33. Around this time, Respondent agreed to meet with Mr. Currie on August 15, 2011, telling Mr. Currie that the complaint was ready to be picked up. When Mr. Currie arrived at Respondent's home to get the complaint, Respondent informed him that it was not ready. Respondent presented a retainer agreement to Mr. Currie seeking an additional $1,800 payment, ostensibly to represent Mr. Currie in connection with his August 4, 2011 EEOC Charge of Discrimination. The retainer also acknowledged that $900 had already been paid for the preparation of the federal

complaint, but changed the completion date to August 26, 2011, the last possible day Mr. Currie could file that complaint. Respondent tried to convince Mr. Currie to sign the retainer agreement and agree to the additional fee despite still not having prepared the federal complaint. FF 209-212.

34. Mr. Currie declined to pay an additional fee because Respondent had not produced the complaint during the original agreed-upon time frame. Respondent became upset at Mr. Currie's refusal to sign the proposed retainer agreement and told him "[Y]ou people are all alike, you don't want to pay anybody, you want to get something for free all the time." FF 213-214.

35. On or after August 15, 2011, Mr. Currie submitted two letters to the Washington Field Office of the EEOC, requesting that the EEOC discontinue processing the January and August, 2011 EEOC Charges, so that he could pursue those charges in federal court, in addition to his original charge. FF 215.

36. On August 19, 2011 – believing that Respondent would never provide him a complaint to file – Mr. Currie filed his own discrimination complaint in the U.S. District Court for the Eastern District of Virginia. On August 25, 2011, after Mr. Currie had already filed a complaint, Respondent sent Mr. Currie a draft complaint by e-mail. FF 216-217.

37. Respondent's draft complaint was deficient in a number of ways, including that it (i) included claims he had never discussed with Mr. Currie and for which Mr. Currie was not seeking relief; (ii) referred to the defendants not as the Sheriff's Office and Sheriff Beth Arthur, but as the "United States Department of

Army"; and (iii) erroneously asserted that Mr. Currie was seeking class certification of African-Americans at the Sheriff's Office, as well as Mr. Currie's "appointment as class agent. . . ." FF 218.

38. Respondent never refunded any part of the fee Mr. Currie's had paid. FF 219.

39. On or around October 28, 2011, Mr. Currie filed a complaint with Disciplinary Counsel. By letter dated November 30, 2011, Disciplinary Counsel wrote Respondent enclosing a copy of the complaint package and a subpoena *duces tecum* directing Respondent to produce to Disciplinary Counsel a copy of his office file in the underlying representation. Disciplinary Counsel sent the inquiry by first-class and certified mail to Respondent at the address Respondent had listed with the D.C. Bar. The complaint package was not returned in the mail. Respondent failed to substantively respond to the disciplinary complaint or produce the subpoenaed documents, and instead alleged that Mr. Currie was "unstable." FF 220-227.

40. By order dated July 23, 2012, the District of Columbia Court of Appeals directed Respondent to comply with Disciplinary Counsel's outstanding subpoena within 10 days of the Court's order, but Respondent failed to comply. FF 230-231.

F. Count V (Khoury and Baker, 2012-D183)

41. By letter dated May 21, 2012, Disciplinary Counsel wrote Respondent to inform him that the Office of Disciplinary Counsel had initiated a formal investigation based on a disciplinary complaint filed by opposing counsel (Jane

Fisher Khoury, Esquire and Olivia Baker, Esquire) in a domestic relations matter. They asserted that Respondent had engaged in improper conduct as counsel for his client (Lori Saxon), and that he had violated the Rules in other matters in which they were not involved. Disciplinary Counsel requested that Respondent provide a written response to the allegations and included the complaint and its enclosures. FF 232.

42. Disciplinary Counsel mailed two separate inquiry letters covering the Fisher Khoury and Baker complaint package to Respondent at the address he most recently listed with the D.C. Bar. Respondent did not respond. FF 233-235.

43. On February 13, 2013, Disciplinary Counsel filed with the Board a motion to compel Respondent's response and served Respondent by mail. Respondent failed to respond. By order dated March 4, 2013, the Board directed Respondent to respond to Disciplinary Counsel's inquiry. Although the Board served Respondent by mail, he never substantively responded to Disciplinary Counsel's inquiry. FF 236-240.

G. Count VI (Saxon, 2012-D397)

44. By letter dated November 16, 2012, Disciplinary Counsel wrote Respondent to inform him that Disciplinary Counsel had initiated a formal investigation based on a disciplinary complaint filed by Lori Saxon, a former client in a domestic relations matter. She asserted that Respondent had filed at least one substantive document (a brief) on her behalf without her review or consent, and then

abandoned her case. Disciplinary Counsel mailed two inquiry letters covering the Saxon complaint package to Respondent at the address he most recently listed with the D.C. Bar, as well as to an address that Respondent had previously provided to Ms. Saxon. Disciplinary Counsel received no written response from Respondent by the due date. FF 241-248.

45. On February 13, 2013, Disciplinary Counsel filed with the Board a motion to compel Respondent's response and served Respondent by mail. Respondent failed to respond although Disciplinary Counsel received no returned mail. By order dated March 4, 2013, the Board directed Respondent to respond to Disciplinary Counsel's inquiry. Respondent had not provided a response to Disciplinary Counsel's inquiry or produced the client file in question even though none of the correspondence from Disciplinary Counsel was returned. FF 241-248.

H. (Criminal Convictions) (2012-D193)

46. As discussed below, in December 2010, Respondent was convicted in Virginia of three counts of failure to appear (Va. Code § 19.2-128(C)), following an arrest on May 13, 2009. FF 249.

47. On May 13, 2009, Respondent was arrested for driving on a suspended license, and agreed to appear at a June 23, 2009 hearing in the Arlington County District Court (Traffic). Respondent failed to appear, and the court issued a *capias* ordering Respondent's arrest for failure to appear. FF 250-251.

48. Respondent was arrested on August 5, 2009, but the Arlington District Court released him after he agreed to appear in court for a September 22, 2009 hearing. Respondent again failed to appear, and on September 23, 2009, the Arlington District Court issued a *capias* ordering his arrest for failure to appear. FF 252-253.

49. Respondent was arrested again on or around October 19, 2009, and was released from jail after posting a $2,500 surety bond on October 21, 2009. Respondent signed a statement asserting that he intended to hire counsel to defend against the charges. The court set a hearing for December 14, 2009. FF 254-255.

53. On December 14, 2009, Respondent appeared before the Arlington District Court and signed another statement that he intended to hire counsel. Respondent appeared at several later court hearings, and the matter was ultimately continued until July 29, 2010. FF 256-258.

50. On July 29, 2010, Respondent again failed to appear for the scheduled hearing. The district court issued a *capias* ordering Respondent's arrest and revoked his bond. FF 259.

51. Respondent was arrested on August 2, 2010. Following his arrest, Respondent completed a financial statement concerning his eligibility for indigent defense services. Respondent listed over two million dollars in assets and requested court-appointed counsel. The court denied his request. FF 260-261.

52. Respondent was released from custody on August 3, 2010, and placed in the Supervised Release Program. FF 262.

53. On August 26, 2010, Respondent appeared before the Arlington District Court for trial. The court found Respondent guilty of driving on a suspended license and three counts of failure to appear. FF 264.

54. On September 9, 2010, Respondent noted an Appeal of his convictions in the Circuit Court for Arlington County. Respondent signed a statement in the Notice promising to appear before the Circuit Court for trial on September 23, 2010. The Notice warned that "[f]ailure to appear for your trial shall be deemed a waiver of your right to trial by jury in this case. Failure to appear may also constitute a separate criminal offense." On September 23, 2010, the Circuit Court set a trial date of November 9, 2010. FF 265-266.

55. On November 9, 2010, Respondent failed to appear for trial. On November 22, 2010, the Circuit Court issued an arrest warrant. FF 267.

56. On November 24, 2010, while the arrest warrant was still outstanding, Respondent filed motions with the Arlington County Circuit Court, claiming that his arrest was improper and alleging various misconduct by Arlington County officials and requesting "a protective order regarding both the Arlington Sheriff and the Arlington Police." FF 270 – 271.

57. On or around November 30, 2010, the Sheriff's Office sent Respondent a letter directing him to report to the Sheriff's Office pursuant to the outstanding arrest warrant. On December 21, 2010, Respondent filed another motion with the

Arlington County Circuit Court, again alleging various misconduct by Arlington County officials. In this motion, Respondent stated that Mr. Currie witnessed four employees of the Sheriff's Office beat an inmate while Respondent was detained in October 2009. FF 272-276. Respondent knew that this statement was false when he made it. FF 276.[5]

58. On December 22, 2010, Respondent appeared before the Circuit Court and was appointed counsel. The Circuit Court continued the trial to December 29, 2010. FF 281.

59. On December 29, 2010, the Circuit Court held a hearing. The Assistant Commonwealth Attorney moved to amend the charge of driving on a suspended license to operating a vehicle without a valid operator's license. The motion was granted without objection. Respondent, through his court-appointed attorney, then moved to withdraw his Not Guilty plea as to all charges and entered a plea of No Contest to the amended charge and to the three counts of failure to appear. The court accepted Respondent's plea and found him guilty on all charges. FF 282-283.

60. On December 29, 2010, the Circuit Court sentenced Respondent to 30 days incarceration with 23 days suspended (with credit for time served awaiting trial) and a total of $1,841 in fines and costs. Respondent satisfied the judgment on or around July 14, 2011. FF 284-286.

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[5] After Mr. Currie filed the disciplinary complaint against Respondent, Respondent claimed that Mr. Currie had assaulted the inmate. FF 279.

III. CONCLUSIONS OF LAW

We have reviewed the Hearing Committee's conclusions of law and recommended sanction *de novo*. *See In re Bradley*, 70 A.3d 1189, 1194 (D.C. 2013) (per curiam).[6]

A. Motion to Dismiss

Respondent moved the Hearing Committee to dismiss the Specifications of Charges on the ground that he was denied substantive and procedural due process when he was suspended in December 2012 based on his conviction of a serious crime, as defined in D.C. Bar R. XI, § 10(c). The Hearing Committee recommends that the Board deny the motion to dismiss, because Respondent has identified no legal or factual support for his claims that his due process rights were violated. The Board agrees and denies Respondent's motion to dismiss.

B. Respondent violated Rules 1.1(a) and (b) in the Sagar and Currie matters.

The Board agrees with the Hearing Committee's determination that Respondent violated Rules 1.1(a) and (b). Rule 1.1(a) requires that an attorney shall provide competent representation to his client and Rule 1.1(b) requires than an attorney serve their client with the skill and care commensurate with that generally afforded to clients by other lawyers in similar matters.

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[6] Disciplinary Counsel originally charged a violation of Rule 7.1(a). In its post-hearing brief, it conceded that it had not adduced clear and convincing evidence to prove this violation. Having reviewed the Hearing Committee's determination to the same effect, we agree with the Hearing Committee that Disciplinary Counsel failed to produce clear and convincing evidence as to this violation.

In the Sagar matter, the clients hired Respondent to handle a breach of contract claim. Instead, Respondent "pursued baseless claims of unlawful discrimination" in what the Committee described as "garbled and incoherent" complaints. After filing the complaints in federal court, Respondent failed to pursue the actions further and the courts dismissed the actions. In the Currie matter, Respondent failed to timely provide Mr. Currie with the draft complaint, forcing Mr. Currie to draft and file his own *pro se* complaint. Even then, the complaint that he ultimately provided to his client was wrought with errors, mistakes, and baseless claims. Respondent failed woefully to provide the competent representation required by Rule 1.1(a) or to serve his clients with the requisite skill and care demanded by Rule 1.1(b).

C. Respondent violated Rule 1.2(a) in the Sagar and Currie matters.

Rule 1.2(a) obligates a lawyer to "abide by a client's decisions concerning the objectives of the representation and . . . consult with the client as to the means by which they are to be pursued." Comment [1] to Rule 1.2 states that "[t]he client has authority to determine the purposes to be served by legal representation . . . ." Respondent failed to consult with the Sagars and Mr. Currie concerning the complaints that he drafted and, in the case of the Sagars, filed.

We agree with the Hearing Committee's determination that Respondent violated Rule 1.2(a) when he (i) failed to consult with the Sagars concerning the contents of either of the complaints that he filed or the theories for entitlement to relief that asserted therein and (ii) prepared a complaint for Mr. Currie containing claims never discussed with Mr. Currie. Indeed, as the Hearing Committee points

out, identifying Mr. Currie as a "class agent" in a class action may have imposed on Mr. Currie the duties and obligation of a class representative under Rule 23 of the Federal Rules of Civil Procedure. HC Rpt. at 124. Respondent did not explain this to Mr. Currie.

D. Respondent violated Rules 1.3(a) and (c) in the Sagar and Currie matters.

Rule 1.3(a) states that an attorney "shall represent a client zealously and diligently within the bounds of the law." "Neglect has been defined as indifference and a consistent failure to carry out the obligations that the lawyer has assumed to the client or a conscious disregard of the responsibilities owed to the client." *In re Wright*, 702 A.2d 1251, 1255 (D.C. 1997) (quoting *In re Reback*, 487 A.2d 235, 238 (D.C. 1985), *adopted in relevant part*, 513 A.2d 226 (D.C. 1986) (en banc) ("*Reback II*")).

Rule 1.3(c) provides that an attorney "shall act with reasonable promptness in representing a client." "Perhaps no professional shortcoming is more widely resented by clients than procrastination," and "in extreme instances, as when a lawyer overlooks a statute of limitations, the client's legal position may be destroyed." Rule 1.3, cmt. [8]. The Court has held that failure to take action for a significant time to further a client's cause, whether or not prejudice to the client results, violates Rule 1.3(c). *In re Dietz*, Bar Docket No. 298-91 at 20 (BPR Oct. 19, 1992), *recommendation adopted*, 633 A.2d 850 (D.C. 1993).

Respondent initiated litigation on the Sagars' behalf in two court actions and then abandoned each case. His failure to prosecute the matters resulted in both court

actions being dismissed. In the Currie matter, Respondent violated these Rules when he failed to timely provide the draft complaint for which he had already been paid. His delay forced his client to draft the complaint *pro se*, despite having paid Respondent to do so. During that time, he ignored his client's attempts to obtain information about the status of the complaint. We agree with the Hearing Committee that this misconduct violated Rules 1.3(a) and (c).

E. Respondent Violated Rule 1.3(b)(1) in the Sagar and Currie matters.

Rule 1.3(b)(1) provides that a lawyer shall not intentionally "[f]ail to seek the lawful objectives of a client through reasonably available means permitted by law and the disciplinary rules." A violation of Rule 1.3(b)(1) requires proof of intentional neglect, which is established where the evidence shows that the respondent was (1) "demonstrably aware of [the] neglect," or (2) "the neglect was so pervasive that [the respondent] must have been aware of it." *Reback II*, 487 A.2d at 240; *see In re Ukwu*, 926 A.2d 1106, 1116 (D.C. 2007). The knowing abandonment of a client constitutes intentional neglect. *See In re Lewis*, 689 A.2d 561, 564 (D.C. 1997) (per curiam) (appended Board Report). The Court has explained that ordinary neglect of a client matter "can 'ripen into . . . intentional' neglect in violation of Rule 1.3(b) 'when the lawyer is aware of his neglect' but nonetheless continues to neglect the client's matter." *In re Vohra*, 68 A.3d 766, 781 (D.C. 2013) (appended Board Report) (quoting *In re Mance*, 869 A.2d 339, 341 n.2 (D.C. 2005) (per curiam)).

In the Sagar matter, Respondent violated this Rule by knowingly abandoning the claims that he had filed on the Sagars' behalf in federal court. In the Currie matter, Respondent intentionally failed to provide the promised complaint by the agreed-upon complaint by the agreed-upon date, ignoring numerous telephone messages and emails from his client. We agree with the Hearing Committee that Respondent's misconduct in each of these matters violated Rule 1.3(b)(1).[7]

F. Respondent Violated Rule 1.3(b)(2) in the Currie Matter.

Rule 1.3(b)(2) provides that a lawyer shall not intentionally "prejudice or damage a client during the course of the professional relationship." Disciplinary Counsel must establish that the attorney 'knowingly created a grave risk' that the client would be financially harmed and understood that financial damage was 'substantially certain to follow from his conduct.'" *In re Wright*, Bar Docket Nos. 377-99, *et al*. at 24-25 (BPR Apr. 14, 2004) (quoting *In re Robertson*, 612 A.2d 1236, 1250 (D.C. 1992) (appended Board Report)), *findings and recommendation adopted*, 885 A.2d 315, 316 (D.C. 2005) (per curiam). A violation of Rule 1.3(b)(2) cannot be sustained "unless there is actual prejudice or damage to the client." *In re Cohen*, 847 A.2d 1162, 1165 n.1 (D.C. 2004) (per curiam); *see, e.g.*, *In re Robertson*,

[7] Because we find that Respondent violated Rule 1.3(b)(1) in both matters, we need not reach Disciplinary Counsel's argument, which the Hearing Committee rejected, that Respondent also violated Rule 1.3(b)(1) by "repeated attempts to deprive his clients of their funds, knowing that he was not providing any services to earn those funds." *See* Disciplinary Counsel's Hearing Committee Brief at 38. This position was not fully developed before the Hearing Committee, and neither party has filed a brief before the Board, thus we leave resolution of this issue for another case.

612 A.2d at 1250 (finding intentional damage to a client where the respondent failed to file a client's tax returns before the deadline, thus forfeiting the client's requests for tax refunds).

The Hearing Committee found that Respondent violated this Rule in the Currie matter because his failure to provide his client with the promised complaint put him in the position of choosing to either spend additional money to hire another attorney to do so or to draft the complaint *pro se*. The Committee recognized that this kind of prejudice may not be as severe as the prejudice suffered in previous cases, but found that Respondent's inaction "knowingly created a grave risk that Mr. Currie would suffer actual prejudice" and that Respondent "necessarily understood that such prejudice was substantially certain to follow from his conduct." HC Rpt. at 139. We agree with both the Hearing Committee's rationale and conclusion and find that Respondent's inaction violated Rule 1.3(b)(2).

G. Respondent Violated Rule 1.4(a) in the Sagar and Currie matters and 1.4(b) in the Sagar matter.

Rule 1.4(a) provides that "[a] lawyer shall keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information." Under Rule 1.4(a), an attorney must not only respond to client inquiries, but must also initiate contact to provide information when needed. *See In re Hallmark*, 831 A.2d 366, 374 (D.C. 2003); *In re Bernstein*, 707 A.2d 371, 376 (D.C. 1998). The purpose of this Rule is to enable clients to "participate intelligently in decisions concerning the objectives of the representation and the means by which

they are to be pursued." Comment [1] to Rule 1.4(a). In determining whether Disciplinary Counsel has established a violation of Rules 1.4(a) and (b), the question is whether Respondent fulfilled his client's reasonable expectations for information. *See In re Schoeneman*, 777 A.2d 259, 264 (D.C. 2001).

Rule 1.4(b) states than an attorney "shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation." Under this Rule, the attorney "must be particularly careful to ensure that decisions of the client are made only after the client has been informed of all relevant considerations." Comment [2] to Rule 1.4(b).

Here again, we agree with the Hearing Committee that Respondent violated Rules 1.4(a) and (b) in the Sagar matter and Rule 1.4(a) only in the Currie matter. With respect to the Sagar matter, the Hearing Committee determined that he failed to inform his clients that the government had filed motions to dismiss or that the courts had dismissed their cases. Even knowing of that dismissal, Respondent responded to his client's inquiries about the status of their case by denying that anything had happened. In the Currie matter, Respondent violated Rule 1.4(a) when he failed to respond to his client's attempts to reach him concerning the status of the complaint draft.

The Hearing Committee also determined that his failure to explain to the Sagars that their claims were in jeopardy of being dismissed, or that they had been dismissed, denied his clients of the opportunity to take action to preserve their claims. This failure constituted a violation of Rule 1.4(b). We further agree with

the Hearing Committee's determination that Disciplinary Counsel did not establish a violation of Rule 1.4(b) in the Currie matter because there was no clear and convincing evidence that Respondent's misconduct deprived Mr. Currie of an ability to make informed decisions in his case.

H. Respondent Violated Rule 1.5(a) in the Currie Matter.

Rule 1.5(a) provides that:

> A lawyer's fee shall be reasonable. The factors to be considered in determining the reasonableness of a fee include the following:
>
> (1) The time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;
> (2) The likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer;
> (3) The fee customarily charged in the locality for similar legal services;
> (4) The amount involved and the results obtained;
> (5) The limitations imposed by the client or by the circumstances;
> (6) The nature and length of the professional relationship with the client;
> (7) The experience, reputation, and ability of the lawyer or lawyers performing the services; and
> (8) Whether the fee is fixed or contingent.

"The prototypical circumstance of charging an unreasonable fee is undoubtedly one in which an attorney did the work that he or she claimed to have done, but charged the client too much for doing it." *In re Cleaver-Bascombe*, 892

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

We agree with the Hearing Committee's determination that Respondent violated Rule 1.5(a) in the Currie matter because Mr. Currie paid Respondent to provide a file-ready complaint by a particular date. Respondent did not do so. Thus, his collection and retention of the fee for a service he did not provide was unreasonable.

The Board does not believe, however, that Disciplinary proved by clear and convincing evidence that Respondent charged an unreasonable fee in the Sagar matter. In the Hearing Committee's view, Respondent violated Rule 1.5(a) because he did not promote the Sagars' legal interests and, indeed, caused prejudice to them because their legal claims were lost. The Hearing Committee concluded that "[f]or Respondent to charge any fee at all for his wholesale destruction of the Sagars' claims would be unreasonable on its face and a violation of Rule 1.5(a)." HC Rpt. at 146. The Board recognizes the gravity of Respondent's misconduct. However, while the result ultimately obtained by the attorney is a factor considered in determining the reasonableness of the fee, the failure to obtain the desired results is not dispositive.

Moreover, Disciplinary Counsel's argument before the Hearing Committee was that, under *In re Mance*, Respondent's fee was unreasonable because he conferred no benefit onto his client since he could not have earned his fee by providing his client with subpar work. 980 A.2d at 1202 ("an attorney earns fees

only by conferring a benefit on or performing a legal service for the client."). But *Mance* acknowledges that the fee may also be earned by performing a legal service for the client. *Id*. While Respondent was ultimately ineffective, the Hearing Committee did not find that he performed no legal service for his client. Without more, the Board cannot find that his fee was unreasonable under the circumstance. Accordingly, Disciplinary Counsel did not meet its burden as to the Rule 1.5(a) violation in the Sagar matter.

I. Respondent Violated Rule 1.5(b) in the Currie Matter.

Rule 1.5(b) provides that "[w]hen the lawyer has not regularly represented the client, the basis or rate of the fee, the scope of the lawyer's representation, and the expenses for which the client will be responsible shall be communicated to the client, in writing, before or within a reasonable time after commencing the representation."

As the Hearing Committee found, Respondent plainly violated this Rule in that he had not regularly represented Mr. Currie and he failed to provide the requisite written communication before or within a reasonable time after commencing the representation. We agree that Respondent violated this Rule.

J. Respondent Violated Rule 1.15(b) in the Sagar Matter.

Rule 1.15(b)[8] provides, in relevant part, that upon request by a client, a lawyer "shall promptly render a full accounting regarding" property held on behalf of a

[8] 1.15(b) was recodified as Rule 1.15(c) on February 1, 2007. We refer herein to the Rule as charged by Disciplinary Counsel.

client. When the Sagars requested that Respondent provide a breakdown of all of the work he had done to justify the fees retained from their monthly advance fee payments and Respondent failed to do so, he violated this Rule.

K. The Hearing Committee Properly Declined to Find a Violation of Rule 1.15(e) in the Currie matter.

Rule 1.15(e) provides that "[a]dvances of unearned fees and unincurred costs shall be treated as property of the client . . . until earned or incurred unless the client gives informed consent to a different arrangement. Regardless of whether such consent is provided, Rule 1.16(d) applies to require the return to the client of any unearned portion of advanced legal fees and unincurred costs at the termination of the lawyer's services in accordance with Rule 1.16(d)." The Court has held that "when an attorney receives payment of a flat fee at the outset of a representation, the payment is an 'advance[ ] of unearned fees'" and must be held as property of the client pursuant to Rule 1.15(e), unless the client consents to a different arrangement. *Mance*, 980 A.2d at 1202.

The Hearing Committee determined that Disciplinary Counsel changed its theory of the case between the time it filed the Specification and its post-hearing brief. In the former, it charged that Respondent violated Rule 1.15(e) when he "failed to maintain in trust the unearned fee that Mr. Currie paid." Then, in its post-hearing brief, Disciplinary Counsel argued that Respondent violated the Rule by failing to refund to Mr. Currie's fees that Respondent had not earned. The Hearing Committee determined that it would violate Respondent's due process rights to find

that his failure to refund the fees violated the Rule because he received no prior notice that this misconduct was the basis for the charged Rule 1.15(e) violation. Thus, it declined to find the violation on these grounds. Further, the Hearing Committee found that Disciplinary Counsel failed to put forth clear and convincing evidence in support of its original allegations – that Respondent failed to maintain in trust the unearned fee that Mr. Currie paid. We agree with the Hearing Committee that Disciplinary Counsel failed to prove Respondent failed to keep the unearned fees in trust. We further agree that Respondent did not receive notice that the failure to refund the unearned portion of Mr. Currie's $900 payment violated Rule 1.15(e); however, our conclusion is somewhat narrower than the Hearing Committee's. Specifically, we find that Respondent did not receive notice of the Rule 1.15(e) charge based on a failure to refund because the Specification of Charges did not (1) charge a violation of Rule 1.15(e) on that ground; or (2) allege that Respondent failed to return any unearned portion of the $900 payment.[9]

L. Respondent Violated Rules 8.1(b) and 8.4(d) and D.C. Bar Rule XI, § 2(b)(3) When He Failed to Reasonably Respond to Disciplinary Counsel Inquiries and to Board Orders.

Rules 8.1(b) provides that "a lawyer . . . in connection with a disciplinary matter, shall not . . . knowingly fail to respond reasonably to a lawful demand for

[9] This case is distinguishable from cases such as *In re Slattery*, 767 A.2d 203 (D.C. 2001), where the Court determined that the respondent's due process rights had not been violated. There, Disciplinary Counsel changed its theory of the case from theft by trick to theft by conversion, but the respondent had been on notice that he was charged with a theft violation. Here, the Specification placed Respondent on no such notice as to the charged Rule violation.

information from . . . [a] disciplinary authority . . . ." Rule 8.4(d) provides that it is professional misconduct for a lawyer to "[e]ngage in conduct that seriously interferes with the administration of justice." With respect to Rule 8.4(d), Disciplinary Counsel "must prove by clear and convincing evidence that (1) the attorney took improper action or failed to take required action; (2) the conduct involved bears directly on the judicial process in an identifiable case or tribunal; and (3) the conduct 'taint[s] the judicial process in more than a *de minimis* way' – it must at least 'potentially impact' the process 'to a serious and adverse degree."' *In re Edwards*, 990 A.2d 501, 524 (D.C. 2010) (quoting *In re Hopkins*, 677 A.2d 55, 61 (D.C. 1996) (other citations omitted)). Failure to respond to Disciplinary Counsel's inquiries or subpoenas constitutes a violation of Rule 8.4(d). Rule 8.4, cmt. [2]. Finally, D.C. Bar R. XI, § 2(b)(3) provides that "[f]ailure to comply with any order of the Court or the Board pursuant to [R. XI]" shall be a ground for discipline.

The Hearing Committee found that Respondent failed to respond reasonably to numerous Disciplinary Counsel inquiries, as well as multiple Board orders. We agree with that this conduct violates Rules 8.1(b) and 8.4(d) and D.C. Bar Rule XI, § 2(b)(3).[10]

[10] As the Hearing Committee notes, Disciplinary Counsel inadvertently failed to charge Respondent with a Rule XI, § 2(b)(3) violation in Count VI. The Hearing Committee properly declined to find the violation as to that Count but considered Respondent's failure to comply with the Board's order in Count VI as an aggravating factor in determining the appropriate sanction. HC Rpt. at 168 n.15.

The Hearing Committee also found that Respondent's criminal failures to appear violated Rule 8.4(d). Rule 8.4(d) is violated if the attorney's misconduct causes the unnecessary expenditure of time and resources in a judicial proceeding. *See In re Cole*, 967 A.2d 1264, 1266 (D.C. 2009). The Hearing Committee found that this criminal conduct met the *Hopkins* test because his failures to appear (1) were illegal, and thus improper; (2) directly affected Respondent's criminal case; and (3) delayed the trial and resolution of the underlying traffic offense for more than a year, wasting substantial amounts of the Arlington County Court system's time. HC Rpt. at 188. The Hearing Committee declined to find that Respondent's false statements in his Circuit Court motion (that Mr. Currie had witnessed four sheriffs assaulting an inmate in the Arlington County Detention Center) violated Rule 8.4(d) because there was no clear and convincing evidence in support of the third *Hopkins* requirement – that the false statement had the potential to have a "serious and adverse" impact upon the judicial process. The Committee found this to be particularly so given that the false statement had "no relevance to any of the issues in the criminal case against Respondent." HC Rpt. at 189. Here too, we agree with the Hearing Committee's conclusion as to this Rule violation.[11]

[11] We recognize that Respondent's misconduct occurred in the context of his private life, rather than in the context of practicing law. However, this is not a point of first impression. *See, e.g.*, *In re Mayers*, 943 A.2d 1170, 1171 (D.C. 2008) (respondent violated Rule 8.4(d) in the context of a personal child support proceeding when he falsely claimed that he had made more payments than he actually had and submitted altered checks to the court); *In re Hutchinson*, 534 A.2d 919 (D.C. 1987) (respondent violated Rule 8.4(d)'s predecessor, DR 1-102(A)(5), by offering false testimony before the United States Securities and Exchange Commission concerning a personal investment).

M. Respondent Violated Rules 3.3(a)(1) and 8.4(c) By Making a False Statement in a Court Filing.

Rule 3.3(a)(1) provides that "[a] lawyer shall not knowingly . . . [m]ake a false statement of fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer . . . ." The Court has described the Rule 3.3 obligation to speak truthfully to a tribunal as one of a lawyer's "fundamental obligations." *Ukwu*, 926 A.2d at 1140. Unlike Rule 8.4(c), which can be violated based on reckless conduct, Rule 3.3 requires the respondent to "knowingly" make a false statement. As the Board noted in *Ukwu*, it is important to determine (1) whether Respondent's statements or evidence were false, and (2) whether Respondent knew that they were false. *Id.* at 1140 (appended Board Report). The term "knowingly" "denotes actual knowledge of the fact in question" and this knowledge may be inferred from the circumstances. *See* D.C. Rule of Prof. Conduct, 1.0(f).

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

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

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

The Hearing Committee found that Respondent violated Rules 3.3(a)(1) and 8.4(c) when he filed the Circuit Court motion falsely alleging that Mr. Currie had witnessed four sheriffs assaulting an inmate in the Arlington County Detention Center. The record evidence supports the Hearing Committee's determination that Respondent violated these Rules. The Hearing Committee also determined that Disciplinary Counsel did not prove, by clear and convincing evidence, that Respondent engaged in dishonest conduct in the Currie matter. Disciplinary Counsel alleged that Respondent promised Mr. Currie that he could pick up a complaint Respondent had not yet drafted and that Respondent tried retroactively to change the agreed-upon timeframe. The Hearing Committee rightly points out that, without more, this is "insufficient evidence of dishonesty." HC Rpt. at 165. The Board agrees. [12]

[12] The Hearing Committee found that Respondent engaged in dishonesty in violation of Rule 8.4(c) when he accepted his $3,600 retainer each month without doing work or communicating with the Sagars about their case. HC Rpt. at 162. However, putting aside the poor quality of his work, it is unclear that there is any evidence that Respondent, at any point, received the retainer and did no work in any of the various litigation matters pursued on behalf of the Sagars. Thus, we decline to

N. Respondent Did Not Commit a Crime of Moral Turpitude but Committed a Serious Crime in Violation of Rule 8.4(b) and D.C. Bar R. XI, § 10(b).

Following the Board's referral, the Hearing Committee determined that Respondent's three convictions for misdemeanor failure to appear for trial in Arlington County District Court were not crimes involving moral turpitude. Disciplinary Counsel does not contend otherwise. We agree with the Hearing Committee's determination that Respondent's crimes were not crimes of moral turpitude because they were not acts of "baseness, vileness or depravity" and did not offend "the generally accepted moral code." *See In re Colson*, 412 A.2d 1160, 1168 (D.C. 1979) (moral turpitude is demonstrated by acts involving "baseness, vileness or depravity in the private and social duties which a man owes to his fellow men or to society in general, contrary to the accepted and customary rule of right and duty between man and man" or an act "contrary to justice, honesty, modesty, or good morals).

Further, we agree with the Hearing Committee's finding that Respondent's convictions for misdemeanor "failure to appear" were "serious crime[s]" under D.C. Bar R. XI § 10(b). As the Hearing Committee properly analyzed, the issue is whether, based on the statutory or common law definition of the offense of misdemeanor failure to appear under Va. Code§ 19.2-128(C), a "necessary element" of that offense "involves improper conduct as an attorney, interference with the

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adopt its recommendation in this regard.

administration of justice, false swearing, misrepresentation, fraud, willful failure to file income tax returns, deceit, bribery, extortion, misappropriation, theft, or an attempt or a conspiracy or solicitation of another to commit a 'serious crime."' D.C. Bar R. XI, § l0(b). HC Rpt. at 179. When Respondent failed to appear as required, "the administration of justice was delayed by the necessity to put his criminal matter over to a future date." *Id.* at 180.

Finally, we agree with the Hearing Committee's conclusion that Respondent's four failures to appear were criminal acts that reflected adversely on Respondent's "fitness as a lawyer" in violation of Rule 8.4(b). As the Hearing Committee found, Respondent's misconduct required the District Court to issue three *writs of capias* to authorize his arrest and to hold multiple proceedings after the three arrests. He made repeated written promises to appear for trial and then dishonored those promises. His misconduct "wasted the time of two busy courts with repeated and unnecessary proceedings, and delayed the resolution of his initial traffic charge for over a year [and] caused substantial additional and unnecessary work for judges, the clerk's office, the sheriff's office, and the Commonwealth Attorney's office." HC Rpt. at 187. Thus, the Hearing Committee's conclusion that Respondent violated Rule 8.4(b) is well supported.

IV. SANCTION RECOMMENDATION

The appropriate sanction is what is necessary to protect the public and the courts, maintain the integrity of the profession, and "deter other attorneys from

engaging in similar misconduct." *In re Evans*, 902 A.2d 56, 74 (D.C. 2006) (per curiam) (quoting *In re Uchendu*, 812 A.2d 933, 941 (D.C. 2002)). The determination of an appropriate disciplinary sanction is based on consideration of the following factors: 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 Martin*, 67 A.3d 1032, 1053 (D.C. 2013) (citing *In re Elgin*, 918 A.2d 362, 376 (D.C. 2007)); *In re Hutchinson*, 534 A.2d 919, 924 (D.C. 1987) (en banc). Under D.C. Bar R. XI, § 9(h)(1), the sanction imposed also must be consistent with cases involving comparable misconduct.

Here, the Hearing Committee has recommended the sanction of a three-year suspension, with the requirements for reinstatement that Respondent (1) demonstrate his fitness to practice law; (2) pay restitution to the Sagars and Mr. Currie; and (3) fully cooperate with all outstanding Disciplinary Counsel subpoenas and all related Court and Board orders. HC Rpt. at 191. The Hearing Committee considered that Respondent engaged in a wide multitude of Rule violations in numerous matters; that he caused prejudice to his clients; that his conduct involved dishonesty; and that he did not participate in this case. No party has filed an exception to the Hearing Committee's recommendation.

Although we do not agree with all of the Hearing Committee's conclusions regarding all of the alleged Rule violations, these disagreements are minimal considering the scope of Respondent's misconduct and not sufficient to warrant a lesser sanction. Thus, despite these minimal differences, we adopt the Hearing

Committee's recommended sanction with one exception. Because we find that Disciplinary Counsel has not proven, by clear and convincing evidence, that the Sagars paid Respondent an unreasonable fee, there is no basis upon which to order that restitution be paid to the Sagars. Thus, Respondent should only be ordered to pay restitution to Mr. Currie as a condition of reinstatement.

V. CONCLUSION

For the foregoing reasons, the Board finds that Respondent violated 19 disciplinary rules and should receive the sanction of a three-year suspension, with the requirements for reinstatement that Respondent (1) demonstrate his fitness to practice law; (2) pay restitution to Mr. Currie in amount to be determined in the event Respondent seeks reinstatement; and (3) comply with all outstanding Disciplinary Counsel subpoenas and all related Court and Board orders. We direct Respondent's attention 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: 

Thomas R. Bundy, III

All members of the Board concur in this Report and Recommendation, except Mr. Carter, who is recused.