THIS REPORT IS NOT A FINAL ORDER OF DISCIPLINE*

DISTRICT OF COLUMBIA COURT OF APPEALS
BOARD ON PROFESSIONAL RESPONSIBILITY

Issued
October 24, 2018

In the Matter of:	:	
	:	
EDWARD GONZALEZ,	:	
	:	
Respondent.	:	Board Docket No. 17-BD-071
	:	Disc. Docket No. 2016-D141
A Member of the Bar of the	:	
District of Columbia Court of Appeals	:	
(Bar Registration No. 426584)	:	

REPORT AND RECOMMENDATION OF THE
BOARD ON PROFESSIONAL RESPONSIBILITY

Disciplinary Counsel charged Respondent, Edward Gonzalez, with violating D.C. Rules of Professional Conduct 1.4(b), 1.8(a), 1.16(d), and 8.4(d), arising out of his representation of two clients, a married couple, in their Chapter 11 filing before the U.S. Bankruptcy Court for the District of Columbia.

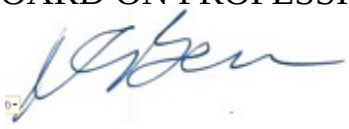
The Ad Hoc Hearing Committee found that Respondent violated Rules 1.4(b), 1.16(d), and 8.4(d), but that Disciplinary Counsel had not met its burden of proving a Rule 1.8(a) violation by clear and convincing evidence. The Hearing Committee recommended that Respondent be suspended for one year, with the requirement that he establish his fitness to practice law upon any application for reinstatement.

* 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.

Neither party filed an exception to the Hearing Committee Report and Recommendation.[1]

The Board, having reviewed the record, concurs with the Hearing Committee's factual findings as supported by substantial evidence in the record, with its conclusions of law, and with the recommended sanction. For the reasons set forth in the attached Hearing Committee Report (which is incorporated by reference herein), the Board recommends that the Court determine that Respondent violated Rules 1.4(b), 1.16(d), and 8.4(d). The Board further recommends that Respondent be suspended for one year and be required to prove his fitness to practice law as a condition of reinstatement. Finally, the Board recommends that the Court direct Respondent's attention to the requirements of D.C. Bar R. XI, § 14, and its effect on his eligibility for reinstatement. *See* D.C. Bar R. XI, § 16(c).

BOARD ON PROFESSIONAL RESPONSIBILITY

By: 

Robert C. Bernius, Chair

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

[1] In a September 26, 2018 letter to the Executive Attorney, Disciplinary Counsel preserved its objection to the Hearing Committee's failure to find a Rule 1.8(a) violation, but only "in the event that Respondent files objections" to the Hearing Committee's Report and Recommendation. As Respondent has not filed an exception, there is no need for the Board to consider Disciplinary Counsel's conditional exception. *See* Board Rule 13.5.

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

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District of Columbia Court of Appeals	:	
(Bar Registration No. 426584)	:	

REPORT AND RECOMMENDATION OF THE AD HOC HEARING COMMITTEE

Respondent, Edward Gonzalez, is charged with violating Rules 1.4(b), 1.8(a), 1.16(d), and 8.4(d) of the District of Columbia Rules of Professional Conduct (the "Rules"), arising from Respondent's advice and representation of Mario and Teresa Alvarado ("the Alvarados") in their Chapter 11 bankruptcy filing and in a tenants' action. Disciplinary Counsel contends that Respondent committed all of the charged violations, and should be suspended for at least one year, with a fitness requirement, as a sanction for his misconduct. Respondent contends he did not commit any rule violation and, in the alternative, a suspension for one year with a fitness requirement is unduly severe.

As set forth below, the Hearing Committee finds that Disciplinary Counsel has proven a violation of Rules 1.4(b), 1.16(d), and 8.4(d) by clear and convincing

evidence. The Committee finds that Disciplinary Counsel, however, has not proven that Respondent violated Rule 1.8(a). Based on the proven rule violations and Respondent's intentionally false testimony at the hearing, Respondent should be sanctioned with a one-year suspension with a fitness requirement upon any application for reinstatement.

I. PROCEDURAL HISTORY

On September 5, 2017, Disciplinary Counsel served Respondent with a Specification of Charges ("Specification"). The Specification alleges that Respondent, in connection with his representation of the Alvarados, violated the following rules:

- Rule 1.4(b), by failing to explain matters to the extent reasonably necessary to permit his clients to make informed decisions regarding the representation;

- Rule 1.8(a), by knowingly acquiring an ownership, possessory, security, or other pecuniary interest adverse to his clients, and (i) the transaction and terms on which Respondent acquired the interest were not fair and reasonable to the clients and were not fully disclosed and transmitted in writing to the clients in a manner which they could reasonably understand; (ii) the clients were not given a reasonable opportunity to seek the advice of independent counsel in the transaction; and/or (iii) the clients did not give informed consent in writing;

- Rule 1.16(d), by failing to take timely steps to the extent reasonably practicable to protect his clients' interests in connection with the termination of representation; and

- Rule 8.4(d), by engaging in conduct seriously interfering with the administration of justice.

Specification ¶¶ 67(a) - (d).

Respondent filed an answer on September 22, 2017. A hearing was held on February 8, 9, 27, and March 1, 9 of 2018, before the Ad Hoc Hearing Committee composed of Julie Abbate, Esquire, Chair; Joel Kavet, public member; and William Corcoran, Esquire, attorney member. Disciplinary Counsel was represented at the hearing by Senior Assistant Disciplinary Counsel Julia L. Porter, Esquire,[1] and Assistant Disciplinary Counsel Caroll Donayre Somoza, Esquire. Respondent was represented at the hearing by Santiago R. Narvaiz, Esquire.

Prior to the hearing, Disciplinary Counsel submitted DX[2] 1 through DX 60, and Disciplinary Counsel also submitted additional exhibits, DX 61 through DX 85, during the hearing. All of Disciplinary Counsel's exhibits were received into evidence without objection.[3] During the hearing, Disciplinary Counsel called as witnesses Mario Alvarado; Teresa Alvarado; Bradley Jones, Esquire (previously counsel for the U.S. Trustee); and Office of Disciplinary Counsel Senior Law Clerk Melissa Rolffot, Esquire.

[1] Ms. Porter currently holds the title of Deputy Disciplinary Counsel.

[2] "DX" refers to Disciplinary Counsel's exhibits. "RX" refers to Respondent's exhibits. "Tr." refers to the transcript of the hearing. "ODC Br." refers to Disciplinary Counsel's Proposed Findings of Fact, Conclusions of Law, and Recommendation as to Sanction; "R. Br." refers to Respondent's Response. "ODC Reply Br." refers to Disciplinary Counsel's Reply Brief.

[3] As noted in Disciplinary Counsel's Amended List of Exhibits, and explained during the hearing, there is no document associated with DX 77 because it was erroneously tabbed.

Respondent submitted RX 1 through RX 35. All of Respondent's exhibits were received into evidence without objection. Respondent testified on his own behalf and called Robert Lopez and Judith Ramos as witnesses.

Upon conclusion of the hearing, the Hearing Committee made a preliminary non-binding determination that Disciplinary Counsel had proven at least one of the ethical violations set forth in the Specification of Charges. *See* Board Rule 11.11. In the sanctions phase of the hearing, Disciplinary Counsel submitted evidence of prior discipline. DX 85 (*In re Gonzalez*, 773 A.2d 1026 (D.C. 2001)).[4]

II. FINDINGS OF FACT

The following findings of fact are based on the testimony and documentary evidence admitted at the hearing, and these findings of fact are established by clear and convincing evidence.[5] *See* Board Rule 11.6.

A. Background

1. Respondent is a member of the Bar of the District of Columbia Court of Appeals, having been admitted by motion on January 16, 1991, and assigned Bar number 426584. DX 1.

[4] DX 85 was received into evidence without objection, but not formally moved into evidence. The Hearing Committee hereby admits it.

[5] Clear and convincing evidence is more than a preponderance of the evidence; it is "evidence that will produce in the mind of the trier of fact a firm belief or conviction as to the facts sought to be established." *In re Cater*, 887 A.2d 1, 24 (D.C. 2005) (citation and internal quotation marks omitted). We note that the clear and convincing evidence standard does not require Disciplinary Counsel to "'negate every possible inference of innocence.'" *In re Nave*, 180 A.3d 86, 95 n.18 (D.C. 2018) (per curiam) (Thompson, J., concurring in part) (quoting *Long v. United States*, 156 A.3d 698, 712 (D.C. 2017)).

2. Respondent practiced as a sole practitioner since 1996, primarily in bankruptcy matters. Tr. 615, 844 (Respondent). Administrative staff assisted him in his practice, including (a) Johanna Olin (a paralegal who worked at his firm until approximately 2012) and (b) Judith Ramos, (a receptionist and paralegal in Chapter 7 cases, who worked full-time until February 2012, and later part-time until July 2017). Tr. 546-47, 552, 574-75, 580, 601 (Ramos). Ms. Ramos spoke Spanish; Ms. Olin did not. Tr. 39 (M. Alvarado); Tr. 983-94 (Respondent). Respondent is a native Spanish speaker and is fluent in Spanish. Tr. 620-26 (Respondent). Respondent spoke in Spanish with the Alvarados at all times during his representation of them from 2010 to 2015. Tr. 626-27, 690-94 (Respondent).

B. The Alvarados' Economic Situation

3. Mario Alvarado completed high school in El Salvador and moved to the U.S. in 1980. He has limited ability to read and speak English. Tr. 24-25 (M. Alvarado). Teresa Alvarado also was educated in El Salvador; she finished high school and took some college courses but did not graduate. She moved to the U.S. in 2000 or 2001 and could understand some English, but was not fluent. Tr. 148-50 (T. Alvarado). The Alvarados have two children. DX 5 at 1.

4. Eventually, the Alvarados bought a property that they sold to buy an apartment building on 49th Street, SE in Washington, D.C. in 2003. They lived in one of the units with their children and rented out the other units. Tr. 26 (M. Alvarado); Tr. 151 (T. Alvarado); DX 5 at 1. Some of the tenants carried over as renters after the Alvarados bought the building. DX 68-70.

5. By 2010, the Alvarados owned four properties: (a) the 15-unit apartment building at 10 49th Street, SE in Washington, D.C.; (b) a building on Good Hope Road, SE in Washington, D.C., that housed a pizzeria; (c) a residential property on Blaine Street in Washington, D.C., where the tenant was not paying rent and the mortgages exceeded its value; and (d) a residential property on Parkland Drive in Maryland that was rented but also had mortgages exceeding its value. Tr. 24, 30-32 (M. Alvarado); Tr. 153 (T. Alvarado); *see also* DX 11 at 8-9.

6. Besides managing these properties, the Alvarados worked as cleaners from 2010 through the time of the hearing. Tr. 23 (M. Alvarado); Tr. 148 (T. Alvarado). In 2010, their combined salaries from cleaning were approximately $21,500. DX 11 at 20; *see also* DX 63 (T. Alvarado's paystub for January 2011, reflecting pay rate of $12.45/hour).

7. Beginning in 2004, three of the carry-over tenants in the apartment building litigated against every rent-increase, and continued litigating into 2012. Tr. 152-53 (T. Alvarado); DX 26.

8. Eagle Bank held one of the mortgages on the Good Hope Road property that housed the pizzeria. In 2009, the Bank required Mr. Alvarado to sign a forbearance agreement giving it a secured interest in the apartment building to prevent foreclosure on the Good Hope Road property. Tr. 152, 467 (T. Alvarado).

9. Respondent learned during his representation of the Alvarados that the forbearance agreement and associated deed of trust were "procured by the lender under questionable circumstances that m[ight] undermine [their] validity." DX 66

at 7. Respondent knew that Mr. Alvarado was "apparently . . . under duress and apparently misled" when he signed the forbearance agreement and was advised to sign it by Eagle Bank's counsel who "apparently did not disclose to him his conflict of interest." *Id*.

10. By 2010, the Alvarados' mortgages on the Good Hope Road property exceeded its value, and the tenant for the pizzeria had stopped paying rent. Tr. 27 (M. Alvarado); Tr. 859 (Respondent); DX 11 at 3.

11. In 2010, the Alvarados' rental income and wages as cleaners could not cover their mortgages, the utility bills for the apartment building, and their other obligations. They wanted to file for bankruptcy to refinance their mortgages and reduce their payments so that they could save their properties. Tr. 49-50 (M. Alvarado); Tr. 153-54 (T. Alvarado).

12. The Alvarados had never filed for bankruptcy and knew nothing about the process. Tr. 32-33, 38 (M. Alvarado); Tr. 154, 448 (T. Alvarado). They had gone to court only when litigating against tenants – where they always had help from interpreters and sometimes had counsel, but often acted *pro se*. Tr. 25-26, 133-34 (M. Alvarado); Tr. 150-51 (T. Alvarado); Tr. 881-82 (Respondent) (represented by counsel in eviction proceeding); RX 28-29; DX 25; DX 82.

C. Respondent's Fee Arrangement with the Alvarados

13. Santos Remus, a friend of the Alvarados, referred them to Respondent for representation in the bankruptcy case. Respondent had represented Mr. Remus for $2,000. Tr. 32 (M. Alvarado); Tr. 155, 157 (T. Alvarado); *see also* Tr. 590 (Judy

Ramos) (Respondent's employee testifying that Respondent charged flat fees of $1,600 to $1,800 in Chapter 7 cases).

14. Based on their initial discussions with Respondent, the Alvarados understood that he would charge them $15,000 to represent them in a Chapter 11 case, and that he would refund any unused portion of the fee. Tr. 39 (M. Alvarado); Tr. 155, 157, 162, 450, 454-55, 483 (T. Alvarado). Respondent acknowledges that he told the Alvarados he would refund any amounts of the $15,000 that he had not earned. *See* DX 4 at 2 (¶ 5) (Respondent's Answer (filed Sept. 21, 2017)). Respondent testified, however, that he (1) did not ever promise to perform legal services for the Alvarados for a "flat fee [of] $15,000" and (2) instead, told the Alavarados it would have been "impossible" to undertake a Chapter 11 case for only $15,000. Tr. 640 (Respondent). Respondent further testified that he told the Alvarados "that [$]15,000 was unlikely to be able to cover the entire cost of the case but . . . it could run [$]50,000, it could run [$]100,000, I don't know." Tr. 646 (Respondent).

The Committee finds that Respondent's testimony that he advised the Alvarados that the fees would necessarily exceed $15,000 and be as high as $50,000 to $100,000 was not only inconsistent and incredible, but deliberately false. *See* FF 139 (noting Respondent's lack of credibility, his false testimony that he was unaware they had to borrow the $15,000, and his false testimony that he translated and explained the retainer agreement). If he had so advised the Alvarados, the Alvarados would not have retained him. DX 54 at 50.

It is clear that the Alvarados continued to believe, at least through April 2013, that Respondent had represented that the cost of Respondent's fees for the Chapter 11 case would be capped at $15,000. *See* DX 35 (Respondent's letter to the Alavarados addressing this belief). At the same time, however, the Committee is not convinced that Respondent described the $15,000 as a "flat fee." *See infra* at page 61 (misleading statements by Respondent but "unlikely that Respondent told the Alvarados that he could represent them specifically for a 'flat fee' of $15,000.").

15. On September 14, 2010, the Alvarados met with Respondent and completed the Spanish-language intake form he provided for their bankruptcy case. DX 5. They gave Respondent a check for $7,500 – half the fee that Respondent represented that he would charge them for handling their bankruptcy case. RX 33 at 1; Tr. 39-40 (M. Alvarado); Tr. 155 (T. Alvarado).

16. The Alvarados described their situation to Respondent, including the properties then owned, the rents they were receiving or not receiving in the case of some of the properties, and the mortgages on the properties. The Alvarados also described the problems they had with three of the tenants in the apartment building and told Respondent they had been litigating against these tenants since 2004 and continued to do so. Tr. 27, 29-30, 34, 72-73, 112-13 (M. Alvarado: "I told him that they had been suing me since 2004 and refusing to pay rent."); Tr. 156, 158-59, 443-47, 486 (T. Alvarado). Respondent made notes about the three tenants in English on the intake form. DX 5 at 3; Tr. 126-27, 134-35 (M. Alvarado); Tr. 158-59, 486 (T. Alvarado).

17. The Alvarados told Respondent at their first meeting that they did not have much money and had to borrow $7,500 from Mr. Alvarado's brother-in-law to make the initial payment to Respondent. Tr. 40-41, 66 (M. Alvarado); Tr. 162-63 (T. Alvarado); *see also* Tr. 729, 752, 1222 (Respondent knew that Alvarados did not have enough money to pay his fees). Respondent told him that they would need to obtain additional funds and pay the entire $15,000 before he would represent them in a Chapter 11 case. Tr. 39 (M. Alvarado); Tr. 155, 157, 162, 450, 454-55, 483 (T. Alvarado).

18. On September 21, 2010, Respondent gave Mr. Alvarado a retainer agreement written in English, saying he would provide "advice and legal representation in client's Chapter 11 bankruptcy filing" for an hourly fee of $310. DX 6. Respondent did not provide the retainer agreement in Spanish to the Alvarados. Tr. 642-43 (Respondent). The Alvarados did not understand they would be paying an hourly fee; they believed Respondent had calculated his $15,000 fee based on his hourly rate. Tr. 120, 131-32 (M. Alvarado); Tr. 155-62, 450, 454-55, 483 (T. Alvarado). Respondent never translated the agreement in writing, or adequately explained its terms in Spanish to the Alvarados. Tr. 37, 65-66, 131-32 (M. Alvarado); Tr. 157-58, 161 (T. Alvarado). Respondent testified that he spent "about 45 minutes" explaining the retainer agreement with the Alvarados (Tr. 645 (Respondent)), although his billing records indicate that he spent half that time – 0.4 hours – during his meeting with the Alvarados to sign the retainer and answer questions about the bankruptcy. RX 32 at 0001.

19. Mr. Alvarado signed Respondent's September 21, 2010 fee agreement, and he or someone included his wife's initials on the other signature line. DX 6; Tr. 65-66 (M. Alvarado). Ms. Alvarado never signed the agreement (Tr. 160-61 (T. Alvarado)), but Respondent always considered it a valid and enforceable agreement. Tr. 888-89 (Respondent).

20. Between October 1 and November 8, 2010, the Alvarados made cash payments to Respondent, totaling an additional $8,500. RX 33 at 1-6 (by November 2010, Alvarados paid total of $16,000); Tr. 881-82 (Respondent).

D. The Alvarados' Pre-Bankruptcy Matters

21. At some point, Respondent learned that the Good Hope Road property was held in the name of an LLC owned by the Alvarados. DX 11 at 5; Tr. 682, 684-85 (Respondent). In October 2010, the government brought a tax foreclosure proceeding against that property. Respondent billed time for attending a hearing in the Superior Court relating to that proceeding. RX 32 at 0001; *but see* Tr. 633 (Respondent incorrectly testifying about a foreclosure related to the apartment building on 104 49th Street, SE).

22. Nevertheless, Respondent referred the Alvarados to another lawyer, David George, to file a Chapter 11 case, in order to surrender the Good Hope Road property. Tr. 684-85, 863-65, 1196 (Respondent). The Alvarados thus had to pay Mr. George, in addition to Respondent. Tr. 47-48 (M. Alvarado); Tr. 466 (T. Alvarado); Tr. 865 (Respondent).

23. The property on Good Hope Road was sold at what Mr. Alvarado described as a "very low price." Tr. 48-51, 130 (M. Alvarado); Tr. 172 (T. Alvarado). The Alvarados not only lost the property, but also had to transfer the unpaid balance of Eagle Bank's mortgage on the Good Hope Road property to their apartment building, resulting in an increase in the mortgages on the apartment building by approximately $250,000. Tr. 48-51, 127, 129 (M. Alvarado); Tr. 465 (T. Alvarado); Tr. 866 (Respondent).

24. During title searches on the Alvarados' apartment building, Respondent also learned that Loewinger & Brand, a D.C. law firm, had a lien on the building. Tr. 637-38 (Respondent). The firm filed the lien based on a default judgment against Mr. Alvarado of $35,159.30, with interest at 18%. RX 25. Mr. Alvarado disputed owing that fee for what Respondent described as "a simple eviction," and he told Respondent that he had never received service of the complaint. RX 5 at 49; Tr. 123, 132-33, 136 (M. Alvarado); Tr. 468-69, 491-92, 499-500 (T. Alvarado); Tr. 1027 (Respondent). Indeed, they had not evicted the tenant (Diane Diamond), and the Alvarados had to retain another lawyer, Bernard Gray, who succeeded in evicting the tenant in only a few months, at minimal cost. Tr. 133-34 (M. Alvarado); Tr. 492-93 (T. Alvarado).

25. Respondent prepared his first invoice in the Alvarados' bankruptcy case, for $2,005, on October 30, 2010, and paid himself with their funds on November 1. RX 32 at 1; Tr. 881-82 (Respondent).

E. The Bankruptcy Petition

26. On December 9, 2010, Respondent filed the Alvarados' voluntary bankruptcy petition under Chapter 11. *In re Mario and Teresa Alvarados*, Case No. 10-01208 (Bankr. D.D.C.). DX 9. Respondent did not go over or review the petition with the Alvarados or translate the petition, although he had them sign it. Tr. 41-42 (M. Alvarado); Tr. 164 (T. Alvarado); DX 9 at 3. Although Respondent testified that he discussed the bankruptcy case with the Alvarados on the day their bankruptcy petition was filed, December 9, 2010, *see* Tr. 705-06 (Respondent), Respondent's own records show that he spent only 0.4 hours with the Alvarados on that date, when he "[d]iscuss[ed the] case with clients and staff. Prep[ped] emergency filing[, and] [s]ign[ed] with clients." RX 32 at 0007. The last time prior to December 9, 2010 that Respondent had met with the Alvarados was on November 10, 2010. *See* RX 32 at 0006. Accordingly, the Hearing Committee credits the Alvarados' testimony that Respondent did not review with them or verbally translate the 17-page bankruptcy petition, *see* RX 2, prior to its filing, and we find Respondent's testimony deliberately false.

27. The Alvarados hoped to avoid Chapter 7 proceedings that would require them to sell their apartment building, as they told Respondent several times. Tr. 42, 49-50, 75, 82 (M. Alvarado); Tr. 185 (T. Alvarado); Tr. 1096-97, 1153-54 (Respondent); *see also* DX 25 (Respondent's January 2013 letter to the Alvarados' landlord-tenant lawyer, saying they filed for bankruptcy "principally to save the apartment building").

28. Petitions for Chapter 11 reorganizations include schedules to provide the bankruptcy court with comprehensive information about the debtors' financial situation and identify interested parties for notice to participate in restructuring the debts and payments. The filing of a Chapter 11 petition triggers an automatic stay for all litigation. Respondent did not file many of the schedules for the Alvarados' petition – including the Schedule G listing contracts and leases – until December 23, 2010. DX 11; Tr. 852-53 (Respondent).

29. To ensure transparency in the comprehensive plan, filing the bankruptcy petition also obligates a lawyer to disclose any fees received from the debtors and any agreements with them concerning fees. *See* 11 U.S.C. § 329. Under Bankruptcy Rule 2016, a lawyer also must disclose to the court any agreement relating to fees in favor of the lawyer within 14 days, to ensure that there is no overreaching. Tr. 250-51, 306, 317-19, 342-44 (Jones).

30. Although he did not file his § 329 statement until later, Respondent represented to the court on December 23, 2010 that he held $15,000 for the Alvarados in his escrow account. DX 11 at 23; *see also* DX 13 at 3. In fact, however, he already had taken $2,005 for himself, and had received a total of $16,000, not $15,000, from the Alvarados. RX 33.

31. Respondent did not file the required § 329 statement with the court until February 15, 2011 (DX 12), slightly more than two months after he had filed the petition (*see* FF 26), and two months *after* the court reminded him of his obligation to disclose fees. DX 10. He never disclosed his October 30, 2010 invoice and his

$2,005 fee. Tr. 881 (Respondent). In his verified statement to the court, Respondent again incorrectly said he had received $15,000 (not $16,000) from the Alvarados, but told the court he "underst[ood] that there [was] a continuing duty to disclose any adverse interest that may arise or be discovered during the course of this case." DX 12 at 1 (¶ 3), 5 (¶ 6). In his testimony before the Hearing Committee, Respondent justified his failure to disclose the October 30, 2010 invoice and his $2,005 fee by characterizing the legal services provided through October 30, 2010 as pre-bankruptcy services to the Alvarados. Tr. 809, 811-12, 881-82, 969 (Respondent).

We do not credit his explanation and find that his testimony that the taking of $2,005 was a "pre-bankruptcy" fee was deliberately false. When asked about his failure to report to the court the $2,005 he paid himself with the Alvarados' funds on November 1, 2010, Respondent acknowledged that he was required to disclose the payment (Tr. 1290-91), after previously saying that he did not know if it was required (Tr. 883, 954), then saying his failure to disclose it was an "oversight" (Tr. 1291), and finally claiming he had no duty to disclose because there allegedly was some uncertainty as to whether the Alvarados would file for bankruptcy when the payment was made (Tr. 1321-23). On these points, he lacks credibility and was both evasive and self-serving in his testimony.

32. Filing the bankruptcy petition also triggered an obligation to file monthly reports of the Alvarados' financial activities, until a reorganization plan is approved. From December 2010 through January 2012, Respondent's firm assisted

in these electronic filings. The Alvarados provided their documents and information to Respondent's paralegal Johanna Olin, who did most of the preparation for the reports. Tr. 89-90 (M. Alvarado); Tr. 161-62, 480, 490-91 (T. Alvarado); Tr. 713, 993 (Respondent); *see also* DX 13, 15, 22 (Respondent's invoices submitted to court).

Respondent's Decision Not to Include the Tenants in the Bankruptcy Case

33. The Alvarados had told Respondent about all the tenants in their apartment building and their ongoing litigation with the three carry-over tenants. Tr. 34 (M. Alvarado); Tr. 445 (T. Alvarado). They gave him a list of all the tenants in the building, and the amounts of their rental payments. DX 67; Tr. 70, 72, 126, 138 (M. Alvarado). They also provided copies of the leases, including the leases for the problem tenants dating back to 1999 and 2001. DX 68-70; Tr. 999-1002 (Respondent). The Alvarados relied on Respondent to include the tenants in their bankruptcy case. Tr. 67-68 (M. Alvarado); Tr. 165-66, 182 (T. Alvarado).

34. In the initial Schedule G filed in late December 2010, however, Respondent listed only the tenant for the Good Hope Road property and none of the others. DX 11 at 14. He did not amend the Schedule G until September 2011, more than nine months later, and even then, included only six tenants in the apartment building. DX 83-84. Respondent did not include the three tenants litigating against the Alvarados, and several other tenants. As a result, those tenants did not receive notice of the bankruptcy, the proposed plan of reorganization, or the plan the court approved. *See* DX 23 (Respondent's certificate of service for approved plan).

35. The omitted tenants, who received no notice of the bankruptcy, were not bound by the plan of reorganization, were not subject to the automatic stay, and could pursue claims arising pre-petition and during the bankruptcy case. Tr. 316 (Jones); *see also* DX 76 at 3, 8-9, 11, 28-32 (judge's statements during March 14, 2013 hearing). Respondent falsely testified about the information the Alvarados had provided to him about their three problem tenants and their ongoing litigation with them. Respondent falsely claimed that he did not initially know about the tenants and the ongoing litigation, and first learned about the litigation in connection with the tenants' lift stay motion. *See* Tr. 767, 769, 874, 936-37, 946-47, 1034. The Committee, instead, credits the Alvarados' testimony that they told Respondent about the tenants during their first meeting, and the Committee notes that Respondent made a notation about the three tenants on his own intake form. *See* DX 5 at 3; Tr. 126-27, 134-35 (M. Alvarado); Tr. 158-59, 486 (T. Alvarado). Respondent was deliberately false in his testimony, explaining away the notation by falsely claiming it referred to three vacancies. *See* Tr. 873, 875, 934. The Committee credits that Alvarados' testimony that they never had three vacancies and never told Respondent they did. Tr. 32, 134-35 (M. Alvarado); Tr. 158-59, 444-47, 486 (T. Alvarado).

36. Respondent admitted he never told the Alvarados of his "judgment call," intentionally omitting tenants (including the three litigants). Tr. 1142-46 (Respondent). He also did not tell them about the implications of failing to notify these tenants of the bankruptcy: without an opportunity to participate and resolve

their claims, the tenants would not be bound by the plan and would not be subject to the automatic stay for litigation. *Id*.; *see also* Tr. 70, 72-73 (M. Alvarado: they relied on Respondent to notify tenants), Tr. 182 (T. Alvarado).

At the hearing, Respondent attempted to justify his "judgment call" not to provide notice to the three tenants as follows:

> Let me tell you what happened — and I know this from personal experience from renting property to — in the Latino community, here's what happens. When people — a lot of people are undocumented and my guess was there's probably a lot of undocumented persons in the Alvarados' building. What happens is once they start getting mailings from the court or attorneys, they leave the building because they don't want to be found, they don't want to be deported. So what I did was — and this was in the interest of trying to help them and I just made — my decision was a judgment call at the time.

Tr. 1142-43 (Respondent). However, the three tenants Respondent "guessed" were undocumented were James Daniels, Janie Jones, and Elsa Turcios. DX 26. Based on their names, nothing would indicate that these three tenants might be undocumented immigrants. The tenants to whom he did provide notice were Juana Bonilla, Jose Quintero, Filso Menjivar, Jeremias Menjivar, Noemi Martinez, and Pedro Gutierrez. DX 23. The six tenants who did receive notice have last names that would seem more likely, or as likely, to raise Respondent's stated concerns about immigration status. The Hearing Committee notes that no evidence was ever provided, from any source, concerning any tenant's citizenship or immigration status, and certainly no evidence that any tenant may have been "undocumented."

Furthermore, whether a creditor is entitled to notice of bankruptcy or not, does not depend, in any way, on citizenship or immigration status.

Respondent's testimony regarding his "judgment call" is not supported by the record, is not credible, and has no legal justification as well. The Hearing Committee does not substantively credit this testimony.

Respondent's Fee Application

37. On April 5, 2011, Respondent filed his first application for interim compensation, seeking court approval for $24,385.00 in fees between November 10, 2010 and March 31, 2011, and expenses of $2,065, for a total of $26,450 – almost double the fee he quoted to the Alvarados. DX 13; Tr. 969 (Respondent). Respondent's certificate of service reflected that he served the Alvarados with a copy. DX 13 at 4. However, he did not discuss it with them, or provide any Spanish explanation about the fees, their obligations, or the bankruptcy court's process – including their right to object to the court. Tr. 44-45 (M. Alvarado); Tr. 166-69, 488 (T. Alvarado).

Although Respondent testified that he told the Alvarados that he filed his first fee application, (Tr. 662 (Respondent)), that he spoke with the Alvarados about his fee and cost petitions, (Tr. 973-74 (Respondent)), and that he translated the documents for the Alvarados and explained the documents in a "very functional manner" in Spanish so they could understand, (Tr. 662, 664, 666, 972-73, 1280 (Respondent)), this testimony is not credible.

Respondent mailed his fee and cost applications to the Alvarados (Tr. 661, 663, 665-66 (Respondent)), but he did not include any cover letters or explanations of what he was filing or of their right to object. Tr. 971 (Respondent). Respondent justified this decision by claiming that the Alvarados had limited educations, and therefore "[g]iv[ing] them a writing from English and translated into Spanish doesn't really do them a service." Tr. 972 (Respondent). Instead, Respondent explained, the Alvarados needed to have actual interactions with him to have the fee petition explained to them. *Id.* (Respondent). However, despite testifying that he met with the Alvarados about the fee petition, his billing records show no meetings with the Alvarados between February 24, 2011 and April 5, 2011 – the date he filed the first fee petition. RX 32 at 0016-26.

The Committee finds that Respondent testified falsely about his communications with the Alvarados relating to his fee petitions. Contrary to his testimony, Respondent did not discuss his fee petitions with the Alvarados, or explain that he was asking for more fees and that the court had to review and approve them. *See* Tr. 974 (Respondent). At best, he mailed the Alvarados copies of the petitions, with no cover letter or explanation, when he filed them with the court. Tr. 660-61, 663; FF 43, 62.

38. Respondent had not provided any written accounting for the Alvarados' initial $16,000 payment or explained he would charge them much more than that. Respondent filed an invoice with the court that did not reflect any credit for the

$16,000 and made inconsistent statements about whether the Alvarados had paid the filing fee. DX 13 at 1, 18; *see also* Tr. 962-63 (Respondent).

However, Respondent gave the Alvarados written receipts for all of the payments they made toward their initial payments to him for $7,500 dated September 14, 2010; $3,500 dated October 1, 2010; $2,500 dated October 5, 2010; and $2,500.00 dated November 2, 2010, which total $16,000. RX 33 at 2, 4, 5, 6.

39. On May 16, 2011, the bankruptcy court approved $24,385 for fees and costs. DX 14. Respondent claimed that the court mistakenly failed to award him his costs, but never took steps to change the award. *See* DX 8; Tr. 982 (Respondent).

Additional Fee Demands and Routine Case Activity

40. In February 2011, Eagle Bank moved the bankruptcy court for relief from the stay, to collect payments pursuant to its forbearance agreement with the Alvarados. DX 66 at 1-4. Respondent opposed the motion, explaining the "questionable circumstances" of the forbearance agreement (*Id*. at 7)[6], but agreeing that the Alvarados would pay Eagle Bank pursuant to that agreement – which the Alvarados did. *Id*. at 24-25. Eagle Bank's first motion was resolved with the parties entering a consent decree in less than a month. *Id*. at 21-26.

41. By June 2011 Respondent was demanding additional fees from the Alvarados. When they questioned whether they had to pay, Respondent told the Alvarados the court had ordered the payment. Tr. 43 (M. Alvarado); Tr. 166-67

[6] The questionable circumstances were that Mr. Alvarado "was under duress and apparently misled when he signed the 'Forbearance Agreement.'" *See* DX 66 at 7 (Opposition to Eagle Bank's Motion for Relief from the Automatic Stay, filed Feb. 21, 2011).

(T. Alvarado). Respondent then raised the warning he repeatedly invoked at critical junctures as the case progressed: He told the Alvarados if they did not pay him additional fees, he would withdraw, their case would be converted to a Chapter 7 case, they would lose all their properties, and they would be "out [o]n the street." Tr. 45, 53, 78, 81-82, 88, 96 (M. Alvarado); Tr. 169-70, 453, 483-84, 487, 497-98 (T. Alvarado). The Alvarados paid Respondent an additional $12,000 in June 2011, because they thought they did not have a choice. RX 33 at 7-8 (first check for $8,000, and second for $4,000 with notation "balance legal fee").

42. In the same month, Eagle Bank filed another motion to convert or dismiss, after learning that the Alvarados were paying more to another lender with an inferior security interest in the apartment building. DX 71 at 1-4. Eagle Bank's June 2011 motion also was quickly resolved. Respondent filed a three-page opposition (*Id.* at 5-7) and the court denied the motion after a hearing. *Id.* at 8.

Respondent's Second Fee Application

43. On September 9, 2011, Respondent filed a second application for interim compensation seeking court approval for $36,451 in fees and expenses between April 1, 2011 through September 1, 2011. DX 15. Respondent had not provided the Alvarados any interim bills and had not discussed with them these additional fees. *See* RX 32 (Respondent's six invoices, two sets of which were filed with court on same day). As with his first application, Respondent did not translate the application or provide the Alvarados any Spanish explanation for the fees or the

process, including their right to object to the court. Tr. 46 (M. Alvarado); Tr. 170-71, 488 (T. Alvarado).

Respondent's testimony that he explained his second application with the Alvarados is not credible for the same reasons that his testimony that he explained the first application to the Alvarados is not credible. *See* FF 37. Additionally, Respondent's billing records show no meetings with the Alvarados concerning the second application. RX 32.

44. On October 21, 2011, the court granted Respondent's second application for compensation of $36,451. DX 16.

45. Respondent knew the Alvarados did not have money to pay the requested fees. Tr. 455 (T. Alvarado); Tr. 729, 752, 1222 (Respondent). The Alvarados also did not believe they owed Respondent additional fees because he had told them he would charge $15,000 to handle their bankruptcy. Tr. 45 (M. Alvarado); Tr. 169-70 (T. Alvarado). When the Alvarados questioned the payments that exceeded $15,000, Respondent would reply that the court had ordered the increased fees and, if they did not make payment, he would withdraw from the representation which would cause their case to convert to a Chapter 7 case. *See* FF 41.

Final Proceedings Before Plan Approval

46. On December 23, 2011, Respondent filed a "Second Amended Disclosure Statement" on behalf of the Alvarados, incorporating changes to their bankruptcy plan (changes approved by the court during a hearing on December 19,

2011). DX 17; DX 18 at 1. This document published the reorganization plan to all properly notified interested parties, describing the payments for different classes of creditors and explaining how the Alvarados could feasibly pay them.

47. The disclosure statement revealed that the Alvarados would remain fully responsible for obligations to Loewinger & Brand and Eagle Bank, that could have been challenged when Respondent discovered them, but were not. Respondent represented that the Alvarados would move to vacate the default judgment that led to Loewinger & Brand's $48,543 lien ($35,159.30 and accrued interest at 18%). RX 5 at 0049; Tr. 1028-30 (Respondent). The Alvarados had asked Respondent to remove the firm's lien (Tr. 501 (T. Alvarado)), but Respondent decided it was not worthwhile to do so. Tr. 1030-32 (Respondent). Under his plan, later approved by the court, the Alvarados were required to pay Loewinger & Brand's fully secured claim of $48,543 in full over a 10-year period, with 6% interest. RX 5 at 0053.

48. Similarly, Respondent did nothing to assist the Alvarados in challenging the Eagle Bank forbearance agreement, despite knowing the suspect circumstances of its signing. Tr. 998 (Respondent). Under the plan, Eagle Bank's interests in the Alvarados' properties were fully secured and the Alvarados were required to pay Eagle Bank all it claimed, with 6% interest. RX 5 at 0052-53.

After reviewing the Eagle Bank forbearance agreement and the circumstances regarding how it was obtained, and from talking to Mr. Alvarado, Respondent concluded that Mr. Alvarado did not have a real defense and could not win a challenge to it. Tr. 999 (Respondent).

49. By the time Respondent filed the Amended Statement, the Alvarados had lost both the Good Hope Road property through the Chapter 11 proceeding handled by Mr. George, and the Blaine Street property they had surrendered (also for a very low price) at Respondent's direction because the mortgages greatly exceeded the value of the property. Tr. 48, 51 (M. Alvarado); Tr. 171 (T. Alvarado). The unpaid mortgage loan for Good Hope Road property, however, was transferred to their apartment building. Tr. 47-48 (M. Alvarado); Tr. 171-72, 465-66 (T. Alvarado).

Before ever meeting Respondent, Mr. Alvarado signed a forbearance and cross-collateralization agreement (the "Cross-Collateralization Agreement"), in which Mr. Alvarado gave a security interest to Eagle Bank in the 15-unit apartment building located at 10 49th Street SE, Washington, D.C. (the "Apartment Building"), which the Alvarados owned. Tr. 630-33, 682-86 (Respondent). Eagle Bank did not have as large a secured debt secured by the Apartment Building, until Mr. Alvarado gave Eagle Bank the Cross-Collateralization Agreement. *Id*.

By giving the Cross-Collateralization Agreement to Eagle Bank, Mr. Alvarado increased the amount of debt for which Eagle Bank had a security interest against the Apartment Building. Tr. 630-33; 864-68; 682-86 (Respondent).

The Alvarados' Blaine Street property had to be allowed to go into foreclosure because it could not produce enough income. Tr. 868-870 (Respondent). However, Respondent was successful in reducing the amount of the mortgage loan debt against the Alvarados' Parkland Drive property by about $220,000, from around $300,000

to $86,000. Tr. 679, 870 (Respondent). The Alvarados kept the Parkland Drive property. Tr. 679 (Respondent).

50. On January 3, 2012, the court approved the Alvarados' disclosure statement, as amended, and scheduled a plan confirmation hearing for February 1, 2012. DX 18.

51. On January 20, 2012, shortly before the confirmation hearing, the Alvarados paid Respondent $2,000. The Alvarados did not believe they owed Respondent additional fees, but based on his threats to convert their case to Chapter 7, they paid him more because they did not want to lose their other properties. Tr. 45, 53, 78, 81-82, 88, 96 (M. Alvarado); Tr. 169-70, 453, 483-84, 487, 497-98 (T. Alvarado).

Respondent's First Loan Security Arrangement with the Alvarados

52. On about February 1, 2012, the day of the confirmation hearing, Respondent gave the Alvarados an Agreement Regarding Attorney's Fees. DX 19 at 1. Written in English, it said the Alvarados were "agree[ing] to enter into a promissory agreement, and security agreement (if approved by the court), for any outstanding and future attorney[']s fees, owed" to Respondent within 10 days of the issuance of an order approving the fees. *Id.* It said if the Alvarados failed to comply with its terms, Respondent could "withdraw from [the] representation, and proceed to enforce the debt, subject to court permission, if necessary." *Id.*

53. Respondent had prepared the agreement on January 31, 2012, the day before the hearing. He also prepared a promissory note for $36,451 (the court-award

three months earlier, DX 16) and a security agreement for this amount, although it was unclear if he presented these documents to the Alvarados to sign on February 1, 2012. DX 19 at 2-4; Tr. 57-58 (M. Alvarado: they may have received note and security agreement, but they did not owe Respondent $36,451).

54. Respondent did not explain the terms of the February 1, 2012 agreement to the Alvarados or translate it to Spanish. Nor did he give them time to consider it, have it translated by someone else, or tell them that they could consult with another lawyer before signing it. Tr. 52, 54 (M. Alvarado); Tr. 173-75 (T. Alvarado). Respondent testified that the February 1, 2012 agreement was neither valid nor enforceable. Tr. 784-85, 779 (Respondent).

55. The Alvarados signed the agreement on February 1, 2012 – the date of the confirmation hearing – because Respondent again threatened to withdraw and put them in Chapter 7, if they did not. Tr. 53-54 (M. Alvarado); Tr. 173-75 (T. Alvarado).

56. After the Alvarados signed the agreement (DX 19 at 1), Respondent added a handwritten note in English saying: "fee can be negotiated" (*Id.*) – a notation the Alvarados did not understand. Tr. 56 (M. Alvarado); Tr. 173-76 (T. Alvarado). The Alvarados believed the February 1, 2012 agreement was enforceable and – based on what Respondent told them – he could use it to sell their property if they did not pay him additional fees. Tr. 54-56 (M. Alvarado); Tr. 175-76 (T. Alvarado); *see* Tr. 299, 347 (Jones: Alvarados believed agreements they signed were enforceable).

The Confirmation Hearing and Respondent's Third Fee Application

57. Respondent did not tell the court about the February 1, 2012 agreement with his clients, at the confirmation hearing or any time thereafter while he represented the Alvarados. Tr. 308 (Jones).

58. During the confirmation hearing, the court asked about Respondent's fees. When the Alvarados expressed concern, Respondent took them in the hallway and told them that it was not a problem and that they should just say "yes" when the court asked them questions. Based on his statement, the Alvarados believed if they did as Respondent instructed, they would not have to pay him any additional fees, so they followed his directions. Tr. 58-59 (M. Alvarado); Tr. 169-73, 488 (T. Alvarado).

59. On February 9, 2012, the court entered an order confirming the Alvarados' Chapter 11 plan. DX 20. The next day, the court issued an order directing the Alvarados to comply with the "Chapter 11 Closing Procedures" including by submitting quarterly reports and, within six months, filing a report and motion for final decree and a final account. DX 20 at 3-4; DX 21; Tr. 253 (Jones).

60. Respondent knew that the bankruptcy rules required all fees and costs to be paid on the effective date of the plan (*i.e.* the date it was approved) unless other arrangements were made. Tr. 1055, 1057 (Respondent). He did not explain this to the Alvarados, and he later presented them with further agreements relating to his fees.

61. On February 9, 2012 (the same day the court confirmed the Alvarados' Chapter 11 plan), Respondent filed a "Third (Final) Application for Allowance of Interim Compensation" for additional fees and some expenses totaling $31,688 for the period September 2011 through February 1, 2012. DX 22. Respondent did not disclose the existence of the February 1, 2012 agreement. DX 22; Tr. 308 (Jones).

62. Respondent signed a certificate of service for this third compensation request, showing he sent a copy to the Alvarados. He never discussed the application with the Alvarados. Nor did he give them anything in Spanish to explain the application, the additional fees he was seeking, or their right to object to his fee- application. Tr. 61-64 (M. Alvarado); Tr. 180-81, 488 (T. Alvarado).

Respondent's testimony that he explained his third application with the Alvarados is not credible for the same reasons that his testimony that he explained the first application to the Alvarados is not credible. FF 37. Additionally, Respondent's billing records show no meetings with the Alvarados concerning the third application. RX 32.

63. On March 8, 2012, the court entered an order approving Respondent's third application for compensation. DX 24.[7]

Post-Plan Bankruptcy Filings

64. After the court approved the plan, the Alvarados were required to file quarterly reports which were much simpler than the monthly reports – they required

[7] The court document incorrectly states that the order was an approval of Respondent's second, rather than third, application for compensation. *See* DX 22, 24.

only that the debtors include a summary of their disbursements, including the total paid to secured creditors and any administrative expenses. Tr. 255-56 (Jones); Tr. 1063 (Respondent); DX 58. While the bankruptcy case remained opened, the Alvarados also were required to pay the U.S. Trustee a quarterly fee of $650. DX 58; Tr. 253-54, 316 (Jones).

65. The Alvarados relied on Respondent and his firm to file the quarterly reports. Tr. 88-89 (M. Alvarado); Tr. 179 (T. Alvarado). As they had before the plan approval, the Alvarados gave information and documents about their finances to Respondent and his firm, along with any information he requested. Among other documents, Respondent's files included the portion of the Alvarados' 2012 tax return reflecting their rental income and expenses, a listing of payments from tenants, checks receipts showing payments on their mortgages, and proof they had paid the insurance on the apartment building. DX 75; DX 80-81; Tr. 60-61 (M. Alvarado); Tr. 179 (T. Alvarado); Tr. 1337 (Rolffot).

66. Ms. Olin, who had assisted the Alvarados with the monthly statements before the plan approval, left Respondent's firm thereafter. Respondent had no one else to help the Alvarados prepare quarterly reports and did not do so himself, but he never told the Alvarados they could not depend on his firm. He never said he needed more information or that or that they were responsible for filing the reports with the court. Tr. 88-89 (M. Alvarado); Tr. 195-96 (T. Alvarado).

67. Respondent also did not file the motion for final decree within six months, as the court instructed. The Alvarados did not know what else needed to be

done and depended on Respondent to take whatever steps were necessary to close their bankruptcy case. Tr. 178 (T. Alvarado); Tr. 105-06 (M. Alvarado). Without the final decree, they continued to be responsible for the U.S. Trustee's fee. Tr. 316 (Jones).

68. The Alvarados paid Respondent fees after the plan was confirmed, as he continued to threaten that their case would be converted to Chapter 7. Tr. 45, 53, 78, 81-82, 88, 96 (M. Alvarado); Tr. 169-70, 189-91, 453, 483-84, 487, 497-98 (T. Alvarado). The Alvarados paid Respondent $2,000 in April 2012, and $1,600 at the end of August 2012, based on their understanding he was filing the necessary paperwork with the court. RX 33 at 11-13.

The Tenants' Litigation and Respondent's Further Loan Security and Fee Arrangements

69. Respondent did not notify the Alvarados' three litigating tenants of the bankruptcy until he filed a suggestion of bankruptcy in August 2012 in the ongoing litigation before the Rental Accommodation Division in which the Alvarados were represented by a different lawyer. DX 26 at 3 n.1, 11-12.

70. Six months later, on February 25, 2013, the three litigating tenants moved the bankruptcy court for relief from the bankruptcy stay so that they could continue to litigate their claims for rent overpayments and housing violations. DX 26. Through their counsel, they claimed that they were not notified of the bankruptcy case until August 2012. DX 26 at 3, 11-12.

71. The bankruptcy court immediately scheduled a hearing on the tenants' motion for March 14, 2013 and directed the Alvarados – through Respondent – to file their response to the motion by March 11, 2013. DX 27.

72. Respondent did not tell the Alvarados that he had failed to list the tenants in the schedules or provide the tenants notice of the bankruptcy, and that the tenants were seeking relief from the stay because they first received notice of the bankruptcy in August 2012. Respondent also did not explain how he would defend against the tenants' claims. Tr. 181, 183-84, 192-94 (T. Alvarado); *see also* Tr. 67, 70, 83 (M. Alvarado: Respondent said tenants wanted to sue). Respondent also did not tell the Alvarados about the hearing on March 14, 2013, or ask either one of them to attend. Tr. 83 (M. Alvarado); Tr. 181-82 (T. Alvarado).

73. Instead, Respondent wrote the Alvarados a letter dated February 28, 2013, saying he would withdraw as their counsel if they did not pay him more fees by March 5, 2013. DX 28; Tr. 81-82 (M. Alvarado). He closed by wishing them luck in defending against the tenants and warning that failing to stop the tenants would cause them "to convert to Chapter 7 and surrender the building. Everyone will be left without a roof over their heads." DX 28 at 1. The Hearing Committee finds that Respondent falsely denied ever threatening the Alvarados with converting their case to a Chapter 7 liquidation. *See* Tr. 726-28, 783.

74. Ms. Alvarado reacted by visiting Respondent's office on March 11, 2013 with a check so he would help them. Tr. 74 (M. Alvarado); Tr. 184 (T. Alvarado). The $2,000 check was drawn on the account of her husband's

brother-in-law Efrain Bonilla, who had helped the Alvarados with their initial $7,500 payment. DX 7 at 12.

75. When Ms. Alvarado visited, Respondent produced a retainer agreement apparently prepared earlier (dated March 7, 2013) in which he said he would "provid[e] advice and legal representation in client's defense of lift stay and investigate possible refinancing and sale of building." DX 29 at 2. The agreement purported to "supersede[any] prior agreement for representation during bankruptcy." *Id*. Respondent did not provide a Spanish version of this new retainer agreement or translate it for Ms. Alvarados on March 11, 2013. Tr. 74, 77-78 (M. Alvarado); Tr. 185-86, 189-90 (T. Alvarado).

76. The Alvarados had never asked Respondent to help them refinance the building (Tr. 78, 86 (M. Alvarado)) – Respondent wanted them to refinance to get funds to pay his fees. *See* Tr. 1090, 1128, 1132 (Respondent).

77. Respondent also gave Ms. Alvarado two other documents that he directed her to sign along with the new fee agreement – a "Secured Promissory Note" and "Security Agreement Accompanying Secured Promissory Note." DX 30. The note required the Alvarados to pay Respondent, as "Lender," $62,994 by March 7, 2014. Any balance owed after one year, would also include interest "equal to the greater of (i) fifteen percent (15%) or (ii) the maximum rate then permitted by law (the 'Default Rate')" which was 24%. DX 30 at 1-2; *see* D.C. Code § 28-3301(a) (setting forth maximum interest rate of 24%). The security agreement that accompanied the promissory note purported to give Respondent a "security interest"

in the Alvarados' apartment building in the amount of the note. DX 30 at 2. The security agreement was signed by the Alvarados, but the notarization section was left blank. DX 30 at 3.

78. Respondent did not explain the terms of the note or security agreement to Ms. Alvarado, nor translate the documents into Spanish for her. He gave her no time to consider the documents or have them translated by someone else, and did not tell her that she could consult with another lawyer or someone else before signing the documents. Tr. 190-91 (T. Alvarado: Respondent never explained or went over terms); *see also* Tr. 80-81 (M. Alvarado); Tr. 1104-05, 1115-16 (Respondent conceded he never "explicitly" told Alvarados to consult with a lawyer, and he apparently did not know the "Default Rate" for the interest charged).

79. Ms. Alvarado told Respondent that she and her husband could not pay the fees he was charging, and if they had known how much he charged, they would not have retained him to file the bankruptcy petition. Tr. 190-91, 454-55, 487-88 (T. Alvarado). Respondent insisted that the court already had approved the amount of the note and she had to sign the documents. Once again, he warned that if she did not sign the promissory note and accompanying security agreement he would convert their bankruptcy case to one under Chapter 7. Tr. 190-91, 453, 483-84, 487, 497-98 (T. Alvarado); *see also* Tr. 81-82 (M. Alvarado).

80. As Respondent directed, Ms. Alvarado signed the new fee agreement on behalf of herself and her husband on March 11, 2013, after giving Respondent the $2,000 check. Tr. 186 (T. Alvarado); *see also* Tr. 78-79 (M. Alvarado). When

she signed it, Ms. Alvarado included a handwritten note concerning her understanding of the fees that Respondent was charging – *i.e.*, that he would "charge $5,000, or a little more, that is $1,000." She said she hoped he would "keep" those amounts and that the Alvarados did not want to sell their apartment, but would let him know when they did. DX 29 at 3; Tr. 185 (T. Alvarado); *but see* Tr. 1095 (Respondent claimed he told the Alvarados he would charge $2,000, not $5,000).

81. At Respondent's direction, Ms. Alvarado also signed the promissory note and security agreement in her and her husband's name at the same time. Tr. 190 (T. Alvarado). The Alvarados believed these agreements were enforceable, and Respondent never told them otherwise. Tr. 191, 474 (T. Alvarado); Tr. 276-77 (Jones). Respondent testified that the March 11, 2013 promissory note and security agreement were neither valid nor enforceable. Tr. 779, 784-85 (Respondent).

82. Respondent's file also contained a "Supplementary Agreement to Secured Promissory Note of March 7, 2013," also in English and apparently drafted after he met with Ms. Alvarado on March 11. DX 31. It provided he would make a good faith effort to satisfy the promissory note from the proceeds of the re-financing or sale of the apartment building, but that the Alvarados would not be released from the note if the proceeds did not cover the fees owed. *Id*. Respondent also handwrote a note saying that if the Alvarados "cooperated in good faith" but had not obtained re-financing, he would give them a six-month extension. *Id.* Respondent never gave the "Supplementary Agreement" to the Alvarados. Tr. 82-83 (M. Alvarado).

The Tenants' Hearing in Bankruptcy Court

83. On March 11, 2013, Respondent filed a Response to the tenants' motion for relief from the automatic stay. DX 32. He acknowledged that the tenants had been litigating with the Alvarados in "a specialized rent control forum" for three and one-half years but claimed that he "ha[d] not had the time, or brought himself up to speed in this area of the law, to be able to make sense of it all." DX 32 at 1 (¶ 2); *see also* DX 26 at 2-3 (describing litigation between the Alvarados and tenants from May 2009 through August 2012).

84. The Response did not deny the tenants' claim that they were not notified of the bankruptcy case until August 2012. Instead, Respondent claimed if the tenants were allowed to go forward it would "almost certainly result in this case failing and going into Chapter 7" and the Alvarados "may well end up out on the street." DX 32 at 2 (¶¶ 8, 10).

85. Respondent did not disclose to the court, or seek its approval, of his new retainer agreement with the Alvarados or their $2,000 payment pursuant to his new agreement. Tr. 320 (Jones); Tr. 1135, 1296-97 (Respondent). Respondent also did not disclose to the court, or seek approval, of the Promissory Note and Security Agreement that Ms. Alvarado signed on behalf of herself and husband on March 11, 2013. Tr. 320 (Jones); Tr. 1135-36 (Respondent).

86. At the March 14, 2013 hearing, Respondent appeared as the Alvarados' counsel without his clients, who had not been informed of the proceeding. Respondent initially told the court that he did not include some of the tenants in the

schedules – including the three who had filed the motion to lift the stay – because they were month-to-month tenants. DX 76 at 4. To explain their omission, he added that they had to "make some decisions in this case" and "[t]he service list was getting pretty long." *Id*. Respondent tried to deflect some of the court's questions by claiming he thought Ms. Alvarado would be at the hearing (DX 76 at 4, 9, 12) although he had not told her about it. Respondent conceded that the three tenants had not received notice of the plan, and therefore were not bound by it. Then, contrary to his initial representations he told the court that it "was an oversight" not to include them. DX 76 at 7. Respondent said he knew that the three tenants had been giving the Alvarados "a hard time" but claimed he did not know they had matters pending before a court or rent control administrative forum. DX 76 at 11; *but see* DX 25 (Respondent's letter to Alvarados' landlord-tenant lawyer of January 8, 2013, asking for status of the rent control matter).

87. The court granted the tenants' motion for relief from stay, finding that because the tenants did not receive notice of the bankruptcy case, they were not bound by the plan and were entitled to enforce their claims, including those that pre-dated the bankruptcy. DX 33 (court's order issued next day); DX 76 at 30-31; Tr. 332-33, 336 (Jones); *but see* Tr. 1072 (Respondent claimed the court granted motion for other reasons, but failed to identify any).

88. Respondent did not tell the Alvarados about the ruling and the court's reason for granting a lift of the stay. Tr. 84-85 (M. Alvarado); Tr. 193-94 (T. Alvarado). The tenants continued to pursue their claims, requiring the Alvarados

to hire and pay additional lawyers to defend against them. *See* Tr. 336-38, 340 (Jones: if tenants listed and had notice, they would have been bound by the plan which would have served as injunction and prevented them from continuing to litigate claims). By the time of the disciplinary hearing, the Alvarados were facing tenant claims of more than $200,000, including treble damages and attorney's fees. Tr. 68, 73 (M. Alvarado); Tr. 182 (T. Alvarado); *see also* Tr. 1224-25 (Respondent).

Respondent's Delays in Concluding the Bankruptcy and Continuing Fee Demands

89. After March 2013, there was no substantive activity in the Alvarados' bankruptcy case for the next 19 months. DX 8 at 33-34.

90. In early April 2013, Ms. Alvarado sent Respondent a letter complaining that he was trying to take their apartment building, he had reneged on his promise to charge them $15,000 for the bankruptcy case, and she had signed the papers in March 2013 because he had threatened to convert their case to Chapter 7. Tr. 1151-52 (Respondent); DX 35 (Respondent's response).

91. Respondent did not include Ms. Alvarado's letter when he responded to subpoenas for his files. DX 60; Tr. 1330-31 (Rolffot). He did, however, produce his answer to her – denying her statements, complaining that she was not "more appreciative of [his] efforts," and again offering to help the Alvarados refinance the apartment building so that he could get additional fees. DX 35. He did not suggest to her that the promissory note and security agreement she signed were nullities or unenforceable. Indeed, he told Ms. Alvarado that no one had forced her to sign the papers "documenting the fees owed" and that his staff could attest to that. *Id.*

92. In August 2013, Respondent wrote the Alvarados again, enclosing a copy of an email from Eagle Bank, and asking for their tax return and financial statement – which he said were needed to investigate refinancing. DX 36. Respondent also falsely claimed that the U.S. Trustee was threatening to file a motion to dismiss or convert to Chapter 7 (*id*.) – although *nothing* in Respondent's file or case notes substantiated this claim. *See* DX 34, DX 36, DX 65; Tr. 1166 (Respondent said threats were to get the Alvarados "off their duff").[8] Respondent told the Alvarados that he still needed to file a final report and motion for final decree and needed an accounting of what they had done to implement the plan. DX 36.

93. The Alvarados had provided Respondent the relevant portion of their 2012 tax return, and continued to bring their financial documents and information to Respondent's firm, including check receipts and other documents to demonstrate their compliance with the plan. Tr. 88-89 (M. Alvarado).

94. Respondent did not assist the Alvarados in completing the quarterly reports or filing the final report. His only other written communications with the Alvarados between August 2013 and March 2014, were letters in September and October 2013, in which he attached letters from Equity Lending, a company that had taken over one of the Alvarados' loans. Tr. 1332, 1334 (Rolffot).

[8] Respondent clearly understands what a threat is, and what it means to issue a threat. Initially he claimed, after several clear questions about whether Respondent actually received a "threat" from the US Trustee's office, that: "Yes, we got a threat from the U.S. Trustee's Office." Tr. 1167-68 (Respondent). When pressed to identify who exactly had transmitted the threat, Respondent backpedaled and testified, "Now, listen, don't say 'threat.'" Tr. 1168-69. Despite showing that he understands the severity of someone from the U.S. Trustee's office issuing a "threat," he nonetheless repeatedly told the Alvarados – falsely – that the U.S. Trustee was specifically "threatening" to convert their case to Chapter 7. DX 34; DX 36.

95. On March 25, 2014, Respondent sent the Alvarados a letter attaching a form quarterly report with directions to complete it so that he could file it with the court. DX 34. Respondent repeated his claim that the U.S. Trustee was threatening to dismiss their case or convert their case to Chapter 7 if they did not file the reports (DX 34 at 1) – still without any details or any documentary support, but consistent with his previous threats. Tr. 88 (M. Alvarado).

96. In mid-April 2014, Ms. Alvarado came to Respondent's office with additional financial records to complete the post-confirmation forms. DX 53 at 21; Tr. 1172 (Respondent). Respondent did not help her, but instead sent her to Robert Lopez, an accountant in Manassas. Tr. 61, 89-90 (M. Alvarado); Tr. 196-97 (T. Alvarado); Tr. 1172 (Respondent). Respondent realized no benefit from referring the Alvarados to Mr. Lopez. Tr. 749.

97. Respondent asked Mr. Lopez to help the Alvarados complete the quarterly reports, for which Respondent stated they had all the needed information and documents – although he (and Mr. Lopez) did not approve of their bookkeeping. Respondent asked Mr. Lopez to reformat their financial records and train Ms. Alvarado in QuickBooks, an accounting program. DX 53 at 21.

98. The Alvarados met with Mr. Lopez in May 2014. They recreated the records they had given Respondent and provided them along with their tax returns and bank statements to Mr. Lopez. The Alvarados then called, sent text messages and e-mailed Mr. Lopez and met with him on at least one other occasion – they also had traveled to Mr. Lopez's office another time and waited two hours to meet with

him, only to be told that he was busy and could not see them. Tr. 92-93 (M. Alvarado); Tr. 197-98 (T. Alvarado).

99. Mr. Lopez did not help the Alvarados prepare any quarterly reports – he claimed he could not do so without first reconstructing their books. Over a one- year period, Mr. Lopez collected $9,800 from the Alvarados for "accounting services" and work on quarterly reports. However, he only did an incomplete reconciliation on QuickBooks of the information reflected in their bank statements. Tr. 407, 409, 415-17, 424-26, 430 (Lopez); *see also* Tr. 748 (Respondent: Lopez wanted "more precision than the Alvarados were capable of providing").

100. Mr. Lopez kept all the Alvarados' money, notwithstanding his admission that he did nothing to earn the $5,300 in fees and had not finished the accounting services for which he charged an additional $4,500 fee. He blamed the Alvarados for his taking and spending the unearned fees, stating that they had to meet with him before he would give them their money back. Tr. 426-28, 430, 433-34 (Lopez).

101. Ms. Alvarado complained to Respondent about Mr. Lopez, but Respondent told her she needed to deal with Mr. Lopez. Tr. 198-99 (T. Alvarado); *see also* Tr. 93 (M. Alvarado). The Alvarados eventually stopped paying Mr. Lopez because he did not help them. Tr. 197-98 (T. Alvarado); Tr. 386 (Lopez).

102. Respondent knew that Mr. Lopez had not prepared any quarterly reports, as Respondent would have been the one to file them with the court. There is nothing in writing or in his case notes to reflect that Respondent ever followed-up

with Mr. Lopez. DX 65. Respondent also did not follow-up with the Alvarados to assist them with the quarterly reports even though he continued to be their counsel in the bankruptcy case. Tr. 93-94 (M. Alvarado); Tr. 199 (T. Alvarado).

Respondent's Presentation of Another Note and Security Agreement and Withdrawal

103. On October 4, 2015, the bankruptcy court entered an Order to Show Cause, requiring the Alvarados to file a final report and a motion for a final decree by Monday, November 2, 2015, or file a written response setting forth why additional time should be granted. DX 37. The bankruptcy court set a hearing date of November 18, 2015. *Id.*

104. On October 27, 2015, a few business days before the Alvarados had to respond to the show cause order, Respondent's part-time employee Judy Ramos sent the Alvarados an e-mail apparently attaching a promissory note and security agreement and – as Respondent directed – demanding $1,350 or he would withdraw. Tr. 200-01 (T. Alvarado); Tr. 788-89, 1180 (Respondent); DX 38-39; *see also* DX 78. The Committee finds that Respondent told the Alvarados that if he withdrew from the representation, the case would be converted to Chapter 7 and they would lose everything. The few letters Respondent wrote to the Alvarados confirmed and corroborated the Alvarados' testimony about his threats.

105. The Alvarados met with Respondent either that day or the next – October 27 or 28. Respondent told them they had to sign the promissory note and related security agreement, which obligated the Alvarados to pay Respondent $58,989 over the course of an eight-year period ending on November 1, 2023, with

interest at 9%, and thereafter at 20% or "the maximum rate then permitted by law" (24%), whichever was greater. The security agreement attached to the note encumbered not only the Alvarados' apartment building on 49th Street, SE, but also their property on Parkland Drive. DX 41 at 1-3. This proposal apparently was meant to replace or supersede the previous notes, and cover fees respondent claimed as of that date – although the math was not clearly revealed by the documents Respondent produced at the hearing. Respondent did not explain or review the terms or translate them into Spanish. Tr. 95-98 (M. Alvarado); Tr. 205, 496-98 (T. Alvarado).

106. As he presented the proposal, Respondent acted angry; he banged the table and told the Alvarados that he would withdraw if they did not sign the agreements, and they would not be able to find another lawyer to help them. Tr. 205, 496-98 (T. Alvarado); *see also* Tr. 263 (Jones: Alvarados reported that Respondent slammed his hands on the table and said he would withdraw if they did not sign).

The Hearing Committee credits the Alvarados' description of Respondent's demeanor over Respondent's denial.[9]

107. The Alvarados were afraid of Respondent – they could not pay the amount he requested in the promissory note ($58,989) and they thought he would use the documents to sell their properties. Tr. 202-03, 474 (T. Alvarado). When Ms. Alvarado said she wanted to take the agreements to someone who could translate

[9] We note that the Alvarados' description of Respondent's anger is consistent with his demeanor during the hearing on cross-examination. Respondent did not slap any tables, but his pleasant tone from his direct examination disappeared once cross-examination started. He appeared angry, and his voice grew louder – at one point, he was asked to lean back from the microphone. Tr. 872. Respondent was also argumentative with Senior Assistant Disciplinary Counsel; as one example, he at one point accused her – incorrectly – of asking "misleading questions." Tr. 868-71.

them, Respondent became upset and said he would modify them and the Alvarados should come back. Tr. 54 (M. Alvarado); Tr. 204-05 (T. Alvarado).

108. On October 29, 2015, Mr. Alvarado returned to Respondent's office alone. Ms. Alvarado, who waited in the car, told her husband not to sign any agreement, but to give Respondent the $1,350 check to finish their case. Tr. 203-04, 206 (T. Alvarado). Mr. Alvarado gave Respondent the check and his financial records so that Respondent could prepare the final documents, but Respondent demanded that he sign the promissory note and security agreement, still not explained or translated into Spanish. Tr. 95-96, 98 (M. Alvarado).

109. Mr. Alvarado thought that by signing the documents he would transfer his and his wife's property to Respondent for the fees he claimed were owed; he told Respondent he would not sign. Tr. 97-98 (M. Alvarado). Judy Ramos had warned him not to sign without having the documents translated. Tr. 495-96, 565, 567, 583, 586-87, 610 (Ramos); *see also* Tr. 568 (Ramos: she did not know how much Respondent charged the Alvarados, but recalled that the Alvarados had complained about the fees).

110. When Mr. Alvarado said he would not sign the agreements, Respondent said he was withdrawing from the case. Tr. 98-99 (M. Alvarado). Ms. Ramos called Mr. Alvarado to come back to the office and retrieve his check because Respondent would not help him and his wife. Tr. 98 (M. Alvarado); Tr. 206-07 (T. Alvarado). Respondent never negotiated the check for $1,350.00, nor did he review the financial

records that Mr. Alvarado brought with him to their meeting on October 29, 2015. Tr. 798 (Respondent).

111. Respondent did nothing to assist the Alvarados on or after October 29, 2015. The Alvarados did not know what to do, and Respondent did not tell them what else was needed to close their case or respond to the court. Tr. 104-05 (M. Alvarado); Tr. 479 (T. Alvarado); Tr. 1189-91 (Respondent).

112. On October 29, 2015, Respondent sent certified letters to the Alvarados saying he was withdrawing as their counsel. DX 43 at 6-12. Respondent later represented to the court that he had prepared an acknowledgment of withdrawal for Mr. Alvarado, but never provided it to the court or produced it in response to Disciplinary Counsel's subpoenas. DX 43 at 2; DX 53 at 3; DX 50; Tr. 1337-38 (Rolffot); *see also* Tr. 797, 823-24 (Respondent).

113. With English language assistance from their 14-year-old daughter, the Alvarados prepared and submitted a statement to the court on October 30, 2015, explaining that they had received notice of the court's show cause order approximately two weeks earlier, but their lawyer had told them the day before that he would not represent them. The Alvarados asked for more time so that they could look for another lawyer and present a final report. DX 42; Tr. 102-03 (M. Alvarado); Tr. 207-10 (T. Alvarado).

114. On November 3, 2015, one day after the Alvarados' response to the show cause order was due, Respondent moved to withdraw as counsel. To the court, he stated that the Alvarados "[we]re not cooperating with counsel with respect to the

obligations they undertook to him when they hired him to represent them" and that it was difficult to get ahold of them after the plan was confirmed. DX 43. This was not true as they had cooperated and provided documents and information, as well as paid Respondent additional fees. Tr. 103-04 (M. Alvarado); Tr. 196, 209 (T. Alvarado); *see* FF 65, 93-94. Respondent had not told the court about any of his post-confirmation fee agreements and did not disclose that he had withdrawn because the Alvarados would not sign another promissory note and security agreement. DX 43. Respondent did not ask the court to give his clients more time to respond or hire counsel, or make any other request to protect their interests. DX 43; Tr. 104-05 (M. Alvarado).

115. On November 20, 2015, the court granted Respondent's motion to withdraw. DX 46. In the interim, on November 12, 2015, the court discharged its motion for the Alvarados to show cause and gave them until November 30, 2015 to comply with the Chapter 11 closing procedures. DX 45.

The Alvarados' Motion for a Final Decree

116. The Alvarados went to the U.S. Trustee's office for help and met briefly with Bradley Jones, counsel for the U.S. Trustee. Tr. 258-59 (Jones). When Mr. Jones asked them why their counsel was not helping them, the Alvarados told him about the agreements Respondent asked them to sign, and showed him the February 1, 2012 agreement and October 29, 2015 agreements. Tr. 108-10 (M. Alvarado); Tr. 210-11 (T. Alvarado); Tr. 262, 264-65, 291 (Jones). Mr. Jones referred the Alvarados to the Bankruptcy Assistance Center which helped them complete the

quarterly reports and other documents needed to close their bankruptcy case. Tr. 105-06 (M. Alvarado); Tr. 212 (T. Alvarado); Tr. 259, 270 (Jones). On December 4, 2015, the Alvarados filed a final account and motion for a final decree. DX 47.

117. Mr. Jones filed a response for the U.S. Trustee on December 15, 2015, stating that the Alvarados' disbursements were consistent with the amounts required to be paid under the plan, except for counsel fees, which appeared to be in dispute. DX 48; Tr. 270 (Jones). The U.S. Trustee further stated that once the Alvarados filed the required quarterly reports for the first quarter of 2013 through the fourth quarter of 2015, the U.S. Trustee would endorse the order for the entry of a final decree. DX 48; Tr. 270 (Jones).

118. The court held a hearing on December 16, 2015, which it continued to January 27, 2016, and then to February 10, 2016. *See* Tr. 270 (Jones); DX 49; DX 51 at 7.

119. In the interim, Mr. Jones had scheduled a meeting with the Alvarados at the end of November 2015, with an interpreter, to ask them about the February 1, 2012 Agreement (DX 19 at 1), and the promissory note and security agreement dated October 29, 2015 (DX 41), that they had shown him at their initial meeting. Tr. 259- 61, 291, 347-49. Mr. Jones was concerned about the agreements, including their timing as they were presented at critical junctures in the case. Tr. 263-65, 269 (Jones); *see also* Tr. 473-74 (T. Alvarado).

Counsel for the U.S. Trustee's Show Cause Motion to Respondent

120. On November 30, 2015, after meeting with the Alvarados, Mr. Jones sent Respondent an e-mail asking him about the reasons for his withdrawal. DX 61; Tr. 266 (Jones); *see* DX 43 (in motion to withdraw, Respondent had not mentioned the agreements). Mr. Jones also asked Respondent the amount of fees he had received during the representation. DX 61.

121. In his answer to Mr. Jones, Respondent asserted that the Alvarados owed him money, criticized them for not appreciating the result he had obtained, disparaged them by claiming they took advantage of professionals, and told Mr. Jones that the Alvarados had "stiffed" Mr. Lopez and not paid his bills, which was not true. DX 79 at 1, 3. Respondent told Mr. Jones that the Alvarados were not non- English speaking immigrants protecting their home but "commercial landlords holding over $1 million in real estate." *Id*. at 3.

122. At some point Respondent disclosed and provided Mr. Jones copies of the March 11, 2013 note and security agreement. Respondent never contended these agreements, and the earlier February 1, 2012 agreement, were unenforceable. To the contrary, he referred to these agreements as evidence of the fees the Alvarados allegedly owed him, indicated to Mr. Jones they were binding agreements, and claimed he offered to negotiate the terms, but the Alvarados never counter-offered. DX 79 at 3; Tr. 277, 324, 343 (Jones). The Alvarados also told Mr. Jones that they thought the agreements were enforceable. Tr. 262-64, 265 (Jones).

123. On January 20, 2016, Respondent filed an opposition to the Alvarados' motion for a final decree, due to outstanding legal fees. DX 50. Only Respondent opposed the issuance of a final decree. Tr. 325 (Jones). He represented that the Alvarados had paid him $25,542 in fees, $5,658 in expenses, and an additional fee of $2,000 for "a separate lift stay defense action after the plan was confirmed." DX 50; *but see* RX 33 (Alvarados had paid $35,600, not $33,200 as Respondent claimed in opposition).

124. Respondent told the court that "[t]he Debtors had promised counsel to enter into an agreement to pay his fees and costs and even signed an agreement (attached), but have not made any payments on the agreement." DX 50 at 1 (¶ 9). The agreements Respondent attached were the February 1, 2012 agreement and the March 11, 2013 secured promissory note and security agreement. DX 50 at 3-6; Tr. 272, 324 (Jones: understood Respondent contending enforceable); *but see* Tr. 1197- 98 (Respondent did not tell court or Alvarados that agreements were unenforceable because that was "irrelevant"); Tr. 1301 (Respondent claimed he "wrote [DX 50] on the fly, quickly"). Respondent asked the court to withhold the granting of the final decree until the Alvarados had paid him or made "formal arrangements" to do so. DX 50 at 2.

125. On February 4, 2016, Mr. Jones, as counsel for the U.S. Trustee, moved for an order to show cause why Respondent should not be sanctioned or, alternatively, for review of his fees and related agreements with the Alvarados. DX 51. The U.S. Trustee was concerned because (i) Respondent had presented the

agreements to secure his fees at critical times during the representation and threatened to withdraw if they were not signed, (ii) Respondent had failed to disclose them to the court, even though they changed the terms of compensation by providing interest payments and security interests, and (iii) the terms were not disclosed and were unfair, in part due to their timing. Tr. 274-75, 321-23 (Jones).

126. On February 19, 2016, the court directed Respondent to file a response by March 1, 2016 and scheduled a hearing for March 16, 2016. DX 52; Tr. 275-76 (Jones).

127. Respondent responded by denying that he had engaged in any misconduct. Respondent conceded that, until his January 20, 2016 opposition, he had not previously disclosed the promissory notes or security agreements to the court. DX 53. Respondent also did not dispute that he presented the promissory notes and security agreements to his clients within days of, if not the same day, as the hearing date or deadline for a court filing. But, Respondent contended for the first time that the agreements he prepared and directed the Alvarados to sign were not real "agreements." DX 53; Tr. 276-77 (Jones: not claimed previously).

128. In his response, Respondent made a number of inaccurate statements to the court about his interactions with the Alvarados to portray them in a bad light, including saying that: the Alvarados had "repudiated" the March 2013 promissory note and security agreement; they did not cooperate but diligently avoided him during the representation; they were not consumers but real estate investors seeking to increase their portfolio of properties; they had moved from the apartment on 49th

Street, SE, and gone into hiding to avoid him and refused to respond to his letters and return his calls; and he had told Mr. Alvarado to discuss the promissory note with his wife and his own attorney if he desired. DX 53; Tr. 1226-27 (Respondent).

129. On or about March 14, 2016, before the hearing, Respondent provided the U.S. Trustee's Office with a $2,000 check payable to the Alvarados as a refund of the fee they paid in March 2013 in connection with the tenants' motion to lift the stay. DX 64; Tr. 280, 326 (Jones).

130. At the show cause hearing on March 16, 2016, Ms. Alvarado testified, and the hearing was continued until the following week. DX 55; DX 56; Tr. 276-78 (Jones).

131. On March 17, 2016, Respondent, through his counsel, threatened Mr. Jones with Rule 11 sanctions, and copied Mr. Jones's supervisor in the U.S. Trustee's Office with the threat. RX 21; Tr. 278-79 (Jones). Respondent and his counsel contended that Respondent's agreements signed by the Alvarados were not real agreements. RX 21. Mr. Jones responded to the email, which included Respondent's offer to continue representing the Alvarados. The U.S. Trustee was concerned about Respondent's continued failure to recognize the impropriety of his actions. Tr. 281-82 (Jones).

132. At the resumed hearing on March 24, 2016, the U.S. Trustee advised the court that it had reached an agreement with Respondent to resolve the issues addressed in its show cause motion. The parties' agreement was set out in a consent

order to be entered by the court. DX 55; Tr. 283 (Jones); *see also* DX 56 (transcript of hearing regarding consent order).

133. On March 25, 2016, the Bankruptcy Judge signed the consent order, and it was filed on March 28, 2016. DX 57. The consent order provided, among other things, that: (1) in all future bankruptcy cases, Respondent would not file a motion to withdraw when his client was facing a pending court deadline without taking timely steps to the extent reasonably practicable to protect his client's interest; (2) Respondent would not present agreements regarding his compensation, or agreements to enter into such agreements, to his clients within two weeks, or lesser period of time as may be reasonable under exigent circumstances, of a pending court deadline impacting confirmation or dismissal of his client's bankruptcy case; (3) Respondent would disclose all security agreements obtained in connection with a bankruptcy case, or anticipated to be obtained in connection with a bankruptcy case, by timely filing a 2016(b) statement or a supplemental 2016(b) statement; (4) prior to obtaining a security interest in any property owned by a bankruptcy client, Respondent would obtain his client's informed written consent, and comply with the other requirements of Rule [of Professional Conduct]1.8(a); (5) Respondent agreed that the February 1, 2012 agreement (DX 19 at 1) the March 11, 2013 Promissory Note and Security Agreement (DX 30) and the October 29, 2015 Promissory Note and Security Agreement (DX 41) were unenforceable, and he would not make any attempt to enforce them or seek payment of any fees from the Alvarados based on them; (6) Respondent would refund the $2,000 fee he charged the Alvarados for

defending against the tenants' motion to lift the automatic stay; and (7) Respondent would withdraw his opposition to the Alvarados' motion for a final decree. DX 57; Tr. 286 (Jones).

Near the end of the hearing in this disciplinary case, Respondent represented that, after reflecting on the matter, he has begun translating his retainer agreements into Spanish, so that his Spanish-speaking clients can take it with them and have them reviewed by the third party of their choice whom they trust, including another attorney. Tr. 1280-81 (Respondent). Respondent also stated that in the future, he would not use the form of "secured promissory note" as indicated in RX 14, RX 15 and RX 16, but that he would use a document that was more straightforward, simple, and translated into Spanish. Tr. 1286-87 (Respondent).

134. Mr. Jones transmitted to the Alvarados the $2,000 refund check Respondent had provided. Tr. 110 (M. Alvarado); Tr. 213 (T. Alvarado); Tr. 326 (Jones).

The Alvarados' Final Decree

135. On March 25, 2016, the Alvarados filed the required quarterly statements, which the Center had assisted them in completing. DX 58; Tr. 108-09 (M. Alvarado); Tr. 214 (T. Alvarado).

136. On March 30, 2016, after a holding a hearing on the Alvarados' motion for a final decree, following the filing of all the required quarterly reports (DX 58), the court granted the motion and entered a final decree. DX 59.

137. The Alvarados later filed a complaint against Respondent with Disciplinary Counsel. They believed Respondent had mishandled their case because: they lost two properties and the mortgages on their apartment building had almost doubled; he had treated them badly; and he had taken advantage of them. They complained because they wanted to make sure that Respondent did not do the same thing to other clients. Tr. 111-13 (M. Alvarado); Tr. 216-17 (T. Alvarado); RX 30 (translation of complaint).

In response to the complaint the Alvarados filed with Disciplinary Counsel, Respondent filed his "Response to Complaint of Mario and Teresa Alvarado." RX 31.

F. Respondent's Testimony

138. In general, Respondent's demeanor on direct examination differed greatly from his demeanor on cross examination, which adversely affects his credibility. On direct examination, Respondent's answers tended to be clear and succinct; his tone was pleasant. However, on cross examination, his answers often veered into areas unrelated to the questions, his voice grew louder, and he often appeared angry or frustrated. *See* FF 106. In addition, he resisted giving answers to even the most basic questions. For example, his response to the question, "The Blaine Street property, that was another one that was lost in the bankruptcy, is that correct?" spanned 56 lines of transcript and five attempts by Senior Assistant Disciplinary Counsel to interrupt the answer; when she was successful, he then he accused counsel of asking "misleading questions." Tr. 868-71.

Other times, Committee Members had to interrupt Respondent in an attempt to curtail long, non-responsive answers to basic questions. From the Committee Chair:

> Excuse me - excuse me - Mr. Gonzalez, in all fairness, if Counsel asks you a direct question like: Did they give you the cell phone numbers? if you could just answer that question . . . if there [are] other things that need to be cleared up, I'm sure your counsel will have adequate opportunity to do on re-direct. But I think that this is already day 4 of the hearing . . . so it would be helpful if there's a direct question, just answer it; if it's not clear, that's fine too. But I think that, "Did they give you the cell phone numbers" is a pretty fair question.

Tr. 950-51.

Committee Member Corcoran made similar attempts to get Respondent to answer the Committee Member's own questions, in addition to those of Disciplinary Counsel: "I don't understand what you're responding to." (Tr. 1042); "[P]lease respond to the question. Please respond to the question." (Tr. 1043); "You know, your response . . . would be a response, had my question been different." (Tr. 1054).

139. Respondent's testimony differed substantially from that of the Alvarados. His testimony also often contradicted his prior statements and the letters and pleadings he prepared. On a number of matters, *see, e.g.*, FF 14, 35, 37, and 73, the Committee finds that Respondent gave testimony that was not just inconsistent and incredible, but knowingly false. He testified falsely about his initial communications with the Alvarados, including by claiming he was unaware they had to borrow money to pay his $15,000 fee. *See* Tr. 878-79. He also testified falsely that he translated and explained in detail the provisions of his retainer

agreement. *See* Tr. 637, 642-45, 886-87. He could have not translated or explained the terms to Ms. Alvarado because she was not present when Respondent directed Mr. Alvarado to sign it. He also did not translate or explain the terms to Mr. Alvarado. Nor did he tell the Alvarados that his fees could run from $50,000 to $100,000; we do not credit his testimony on this point, *see* Tr. 646, but instead find that it was intentionally false.

140. Respondent testified somewhat incomprehensibly that the February 1, 2012 agreement and the March 11, 2013 promissory note and security agreement were not actual agreements. Tr. 753, 757, 764-65, 819-20, 1274-78. However, he called them agreements in their captions and that is what he told the Alvarados they were; he never told the Alvarados that they were nullities or unenforceable. Tr. 1054, 1199. Despite his testimony that neither the February 1, 2012 agreement (page 1 of DX 19) or the March 11, 2013 promissory note and security agreement (DX 30) were valid or enforceable (Tr. 784-85; 779 (Respondent)), he continued to use and rely on them, including in his April 2013 letter to Ms. Alvarado telling her that no one had "forced" her to sign the promissory note and security agreement, and he could prove it. DX 35. Respondent's later statements to the U.S. Trustee and court also contradicted his testimony that the agreements were nullities, or that he regarded them as such. *See, e.g.*, DX 50, DX 79. Instead, he continued to argue their validity. His representations to the Alvarados, the U.S. Trustee, and the court about these agreements also contradicted his testimony that the Alvarados had "repudiated" the March 2013 promissory note and security agreement. Tr. 778,

1120-21, 1155, 1203. He would have had no reason to create a "Supplementary Agreement" (DX 31) if the underlying agreement had been a nullity. Although the record is not clear as to whether the agreements were ultimately enforceable, we note the evidence is clear that Respondent used the agreements to put additional pressure on the Alvarados for the payment of fees, and it is clear that the Alvarados believed that they were enforceable.

141. Respondent also testified falsely about his last encounters with the Alvarados. Tr. 726-27. As the Alvarados testified, Respondent was angry and banged or slapped the table when they would not immediately accede to his demand to sign another promissory note and security agreement. Their description of the encounter to Mr. Jones, a month later, further corroborated their testimony. FF 106; *but see* 726-27 (Respondent falsely denied). We also find that Respondent had not translated or explained the documents, as he falsely claimed he had done. Tr. 812, 1184-85. And, he lied about the reasons for withdrawing on October 29, 2015. DX 43; Tr. 1183-84 (Respondent); Tr. 103-04 (M. Alvarado); Tr. 196, 209 (T. Alvarado); FF 65, 93-94. We discredit his testimony that Mr. Alvarado was "adamant" that he would not discuss Respondent's legal fees. Tr. 796, 822, 1183- 84. In fact, Mr. Alvarado had brought a check for $1,350 to pay the fee Respondent demanded. Rather, Respondent refused to assist the Alvarados and withdrew because they would not sign another promissory note and security agreement that pledged not only their apartment building, but their other property.

142. Respondent's other false testimony included his claims that: (1) the Alvarados failed to cooperate after the plan was confirmed by not providing information and documents (Tr. 1059-60, 1062) – a claim belied by documents in his own file, as well as the testimony of the Alvarados (Tr. 103-04 (M. Alvarado); Tr. 196, 209 (T. Alvarado)); (2) the Alvarados wanted to refinance their apartment building so that they could pay him additional fees (Tr. 1128-29, 1132, 1158) – in fact, the Alvarados did not believe they owed Respondent additional fees and did not want to sell or refinance their apartment building; (3) he told the Alvarados about the March 2013 hearing concerning the tenants' lift stay motion and asked Ms. Alvarado to attend (Tr. 1139-40) – a claim belied by the fact that he did not arrange for an interpreter for the Alvarados, as would be expected (Tr. 1141) and the Alvarados' testimony; (4) he explained to the Alvarados what occurred at the March 2013 hearing and the basis for the court's ruling to grant the tenants' request (Tr. 1149-50) – which could have been true only if he told the Alvarados the court granted the motion because Respondent had excluded the tenants from the bankruptcy, which he admitted he never explained to them (Tr. 1144-45); and (5) his attempt to justify why he made the judgment call to exclude the three litigating tenants from receiving notice of bankruptcy. FF 36.

III. CONCLUSIONS OF LAW

Disciplinary Counsel contends that Respondent violated each of the charged Rule violations by clear and convincing evidence; Respondent argues that he did not violate any of the Rules. Their arguments are summarized under the discussion of

each Rule. The Hearing Committee concludes that Disciplinary Counsel has proven, by clear and convincing evidence, the following Rule violations: 1.4(b), 1.16(d), and 8.4(d). The Hearing Committee concludes that Disciplinary Counsel has not proven by clear and convincing evidence a violation of Rule 1.8(a).

Choice of Law

Disciplinary Counsel charged violations of the D.C. Rules of Professional Conduct. The Rule 1.16(d) and 8.4(d) charges are related to Respondent's conduct before the U.S. Bankruptcy Court for the District of Columbia. Rule 8.5(b)(1) governs choice of law and provides that: "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 . . . . " The local rules of the U.S. Bankruptcy Court for the District of Columbia provide that an attorney's conduct is governed by the U.S. District Court local rules, and those rules apply the D.C. Rules of Professional Conduct. *See* Local Rules of the U.S. Bankruptcy Court for the District of Columbia, Rule 2090-1(b); Local Rules of the U.S. District Court for the District of Columbia, Rule 83.15(a). Thus, Disciplinary Counsel's charges seem to reflect a proper application of Rule 8.5. Respondent agrees. Tr. 1429-30.

A. Respondent Violated Rule 1.4(b).

Rule 1.4(b) requires than an attorney "shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation." Lawyers must provide clients "sufficient information to participate

intelligently in decisions concerning the objectives of the representation and the means by which they are to be pursued . . . ." Rule 1.4, cmt. [1]. Further, the Rule provides that 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." Rule 1.4, cmt. [2]. The Rule places the burden on the attorney to "initiate and maintain the consultative and decision-making process if the client does not do so and [to] ensure that the ongoing process is thorough and complete." *Id*. In addition, "[a] lawyer may not withhold information to serve the lawyer's own interest or convenience." Rule 1.4, cmt. [5].

Disciplinary Counsel contends that Respondent violated Rule 1.4(b) by repeatedly failing to communicate adequately to the Alvarados about his fees, the progress of the bankruptcy case, and their legal options (during the bankruptcy proceedings and after the reorganization plan was approved). Respondent argues that he did adequately explain the legal fees when speaking to them in Spanish and that he had no obligation to provide a fee agreement or fee petitions that had been translated into Spanish. *See, e.g.*, R. Br. at 40-41 ("There is no requirement under any bankruptcy law or regulation that a bankruptcy attorney provide those documents in the debtors' native language or in Spanish."). Respondent also challenges the credibility of the Alvarados' testimony on the basis that they had a "clear and compelling incentive" to claim that they did not understand him because they sought to avoid being responsible for the $59,000 owed in legal fees. *Id*. at 40. Respondent also disputes that he did not adequately communicate legal options, and

insists that any omission on his part was due to lack of information from the Alvarados themselves. *See* R. Br. at 43, 45, 47 (Alvarados not informing him about "specific" litigation involving tenants; Alvarados' inadequate and incomplete information caused him to decide not to file a motion to vacate the default judgment in the Loewinger & Brand PLLC matter and not to challenge the Eagle Bank forbearance agreement).

The Hearing Committee finds that Respondent failed to adequately explain his fees and the cost of the bankruptcy to the Alvarados; failed to communicate with the Alvarados regarding bankruptcy disclosures and other case-related decisions; and failed to adequately communicate the continuing obligations after approval of the reorganization plan.

Fees

Respondent's communication failures began at the inception of his representation of the Alvarados, when he failed to explain how much the bankruptcy proceeding would cost and the extent of his fees. Although it is unlikely that Respondent told the Alvarados that he could represent them specifically for a "flat fee" of $15,000, his failure to adequately explain his fees led the Alvarados to conclude that their case could, in fact, be handled for $15,000. Respondent acknowledges that he told the Alvarados that he would refund any unused portion of the $15,000 fee. FF 14. It is certainly true that Respondent would be required to refund any unused fees. However, discussing this potential refund (without explaining that it would be "impossible" to represent them for $15,000) misled the

Alvarados into believing, incorrectly, that Respondent's fees would not exceed $15,000.

Respondent never explained that not only would they not recover any of the $15,000 fee, but they would likely pay $50,000 or even $100,000 for his representation. Respondent's testimony to the contrary, that he told the Alvarados that "it could run [$]50,000, it could run [$]100,000, I don't know," *see* FF 14, is not credible. It is inconceivable that the Alvarados, in their financial state at the time, would fail to question Respondent about his inability to project his fees with any specificity, or to explain what could cause his fees to exceed $15,000, to reach $50,000, or to reach double that amount at $100,000. If he had done so, the Alvarados would not have retained him. FF 79. The Alvarados testified credibly that they understood that Respondent told them the case would be handled for $15,000. FF 14.

Although the retainer agreement between Respondent and the Alvarados sets out hourly fees, that is not inconsistent with the Alvarados' understanding that their legal fees would not exceed $15,000. FF 18. Further, the agreement was written in English, and Respondent did not provide a written translation in Spanish. Without adequate explanation of Respondent's billing practices, it is quite reasonable that the Alvarados would have understood that his representation would not exceed $15,000. Respondent testified that he spent "about 45 minutes" explaining the retainer agreement with the Alvarados, although his billing records indicate that he spent half

that time – 0.4 hours – during his meeting with the Alvarados to sign the retainer and answer questions about the bankruptcy. FF 18.

Respondent's communications about fees did not improve as the case progressed. When Respondent filed his fee petitions with the court, he never translated or explained them to the Alvarados. The Alvarados did not understand the process, including that Respondent was asking the court for additional fees and they could object to them. FF 37, 43, 62.

On April 5, 2011, Respondent filed his first application for interim compensation, seeking court approval for $24,385.00 in fees for the period of November 10, 2010 to March 31, 2011, and expenses of $2,065, for a total of $26,450 – almost double the fee he quoted to the Alvarados. FF 37.

Respondent did not either explain the first fee application or translate the application. *See* FF 37, 43, 62.

When Respondent demanded payment from the Alvarados after his fee petitions were approved, they questioned why they owed fees in excess of the initial $15,000. FF 41, 45, 51. At least once, Respondent told the Alvarados that the court had ordered the payment. FF 41. And at each demand, the Alvarados paid additional fees – not because they agreed that they owed the fees, but because Respondent threatened to withdraw his representation if they did not pay, and their case would then be converted to a Chapter 7 case. FF 41, 45, 51. Respondent explained that if their case were converted to Chapter 7, the Alvarados would lose their properties

and they would be "out on the street," *see* FF 41, and "without a roof over their heads," *see* FF 73.

Respondent also requested the Alvarados to enter into promissory notes and security agreements purporting to give Respondent current or future security interests in the Alvarados' properties. Respondent never explained the agreements in a manner that would allow the Alvarados to make an informed decision about whether to sign the agreements. Respondent did not explain the terms of these agreements to the Alvarados, and never provided written Spanish translations; nor did he tell the Alvarados that they could consult with another lawyer before signing them. FF 52, 54, 77, 78. Further, the timing of Respondent's presentation of the agreements did not allow the Alvarados time to do anything other than sign the agreements, or thereby risk adverse consequences in their bankruptcy case.

February 1, 2012 Agreement. Respondent presented the Alvarados with an Agreement Regarding Attorney's Fees on February 1, 2012 – the day of the Alvarados' confirmation. *See* FF 52 (provisions in the agreement).

The Alvarados signed the first agreement that same day – the date of the confirmation hearing – because Respondent again threatened to withdraw and put them in Chapter 7 if they did not. FF 55. The Alvarados believed the February 1, 2012 agreement was enforceable and – based on what Respondent told them – he could use it to sell their property if they did not pay him additional fees. FF 56.

March 11, 2013 Agreement. Respondent presented Ms. Alvarado with another secured promissory note and security agreement on March 11, 2013 – the

same day the Alvarados' response to their tenants' motion to lift the bankruptcy stay was due, and just three days before a hearing on the motion. The agreements required the Alvarados to pay Respondent (as "Lender") the amount of $62,994 by March 7, 2014 and gave Respondent a "Security Interest" in the Alvarados apartment building. FF 77. Respondent represented to Ms. Alvarado that the court had approved the amount of the note and warned that if Ms. Alvarado didn't sign, their case would be converted to Chapter 7. FF 79. Ms. Alvarado signed her name and, at Respondent's direction, signed in her husband's name as well. FF 81. She believed the agreements were enforceable. *Id*.

October 27, 2015 Agreement. On October 27, Respondent provided the Alvarados with another promissory note and security agreement – just a few business days before the November 2, 2015 deadline to file either a final report and motion for a final decree or a response setting forth why more time should be granted. FF 103-104. The agreement obligated the Alvarados to pay Respondent $58,989 over eight years, and encumbered both the Alvarados' apartment building on 49th Street, SE and their property on Parkland Drive. FF 105.

Respondent did not explain his fees or the security agreements in a manner that allowed the Alvarados to make decisions about whether to retain Respondent in their bankruptcy case or whether to sign the security agreements. In addition, Respondent led the Alvarados to believe that if they did not sign the security agreements, their case would be converted to Chapter 7. He again timed his requests to be within days of important filings or hearings, and told the Alvarados that he

would withdraw from their case if they did not sign the agreements. These circumstances left the Alvarados with little if any choice about whether to sign the agreements.

Bankruptcy Decisions

Respondent's failure to provide meaningful information in a timely way was not limited to his failure to explain his fees or the security agreements that he pressured the Alvarados to sign. Respondent also failed to explain substantive aspects of their bankruptcy case with the Alvarados, or to consult them about some of his decisions.

The most significant decision that Respondent failed to discuss with the Alvarados was whether to provide notice of bankruptcy to the tenants who were litigating against the Alvarados. The Alvarados depended on Respondent to make the required disclosures and protect their interests in the bankruptcy. FF 33. At their first meeting with Respondent, they told him about their tenants and complained specifically about the three tenants with whom they had been litigating against since 2004. FF 16, 33. Respondent knew about the Alvarados' tenants, including, in particular, the three who had caused problems and continued to do so. Nonetheless, Respondent decided on his own *not* to include them and several other tenants in the schedules he filed, and he did not provide them notice of the bankruptcy. FF 34, 36. Respondent admittedly never explained to the Alvarados his decision to exclude the three problem tenants and other tenants, or the prejudicial consequences for his

doing so – namely, that the excluded tenants would not be covered or bound by the plan and the court could (and would) relieve the tenants from the automatic stay, permitting them to pursue their pre-petition and pre-confirmation claims. FF 36.

Respondent presented a different reason for excluding the litigating tenants. When questioned by Judge Teel at the March 14, 2013 bankruptcy hearing, Respondent conceded that the three tenants were never listed on any of the schedules and never received written notice of the bankruptcy. FF 86. Respondent claims he made a judgment call not to include the three tenants in the schedule, *see* FF 36, yet even if the Committee believed the omission was a considered decision, it was a decision that warranted discussion with the Alvarados given their stated concerns about the three tenants.

Respondent claims that he did not provide notice to the three tenants because he thought they could be "undocumented," and thus become frightened by legal mail and vacate the building to avoid deportation. However, he knew the three tenants had, in fact, been litigating against the Alvarados since 2004. FF 16. During that time period, the three tenants undoubtedly received numerous "mailings from the court or attorneys." FF 36. As noted earlier, the three tenants Respondent "guessed" to be undocumented were James Daniels, Janie Jones, and Elsa Turcios. *Id*. Even if the basis for his judgment call is true, it is inconceivable that his "concern" would not have extended equally to the tenants to whom he did provide notice: Juana

Bonilla, Jose Quintero, Filso Menjivar, Jeremias Menjivar, Noemi Martinez, and Pedro Gutierrez. *Id*.

After the three tenants asked the court to lift the stay in 2013 so that they could continue to litigate their claims, Respondent did not explain the situation to the Alvarados. He did not tell them the tenants were complaining about the lack of notice, that he was responsible for excluding them from the case, or how he would defend against their claims. FF 72. Respondent did not tell the Alvarados about the response he filed, the court hearing on the motion to lift the stay, or the Alvarados' right to attend the hearing. Respondent also failed to tell them what happened at the hearing or about the court's ruling and the basis for the ruling. FF 72, 88.

Finally, Respondent failed to explain to the Alvarados their options with respect to other creditors, including Loewinger & Brand and Eagle Bank. The Alvarados told Respondent that Loewinger & Brand had never served Mr. Alvarado with a complaint, and that they disputed the amount the firm claimed for work that had not been completed. FF 24. Respondent concluded that it was not worthwhile to challenge the judgment, but he did not explain his reasoning to the Alvarados, nor did he explain the consequences of not challenging the judgment during the bankruptcy case, particularly since the default judgment was entered in April 2009. FF 24, 47. Respondent also determined that it was not worth his while to challenge Eagle Bank's forbearance agreement – an agreement that Respondent knew was

suspect. FF 9, 48. The Alvarados were not consulted or told their options. They did not understand why they lost their property on Good Hope Road, but the full balance of the mortgage associated with that property was transferred to their apartment building, increasing the liens by approximately $250,000. FF 23, 49.

Continuing Obligations

Respondent's failure to explain matters to the Alvarados continued after the court approved the plan of reorganization and their bankruptcy case remained pending. The Alvarados continued to bring their financial records and information to Respondent and paid him additional fees. They relied on Respondent to file whatever additional reports the court required. FF 65. Respondent, however, failed to assist them in filing the quarterly reports and did not tell them what, if any, additional information he needed to complete them. Nor did he tell them to prepare the reports on their own. FF 66. By April 2014, more than two years after the court confirmed the plan, Respondent had decided not to help them. On or around April 14, 2014, Ms. Alvarado came to Respondent's office with additional information and documents, but Respondent sent her to Mr. Lopez and told her that Mr. Lopez would help prepare the reports. FF 96. Respondent then failed to do anything to assist the Alvarados, even though he knew that Mr. Lopez had not completed any of the quarterly reports. FF 101-102.

Respondent also did not explain to the Alvarados the need to file a motion for

a final decree, which the court said should be done within six months. Nor did he explain the consequences for failing to do so, including that they would continue to be liable for quarterly fees to the U.S. Trustee of $650. FF 64, 67. Respondent's first mention of the need to file the motion for a final decree was in August 2013 – more than a year and a half after the plan's confirmation. FF 61, 92. Even then, he did not tell the Alvarados what additional documents or information were needed, other than requesting "an accounting of what you have done to implement the plan." FF 92. The Alvarados had provided and continued to provide information and documents to Respondent, and depended on him to tell them what else was needed to make the filings. He never did, at least with any precision or clarity. He also did not tell them that he would not or could not assist them. FF 94. When Respondent advised the Alvarados he was withdrawing at the end of October 2015, he still had not provided them the information they needed so they could close their case. FF 111.

Accordingly, the Rule 1.4(b) violation has been proven by clear and convincing evidence.

B. Respondent Did Not Violate Rule 1.8(a).

Rule 1.8(a) provides that "A lawyer shall not enter into a business transaction with a client or knowingly acquire an ownership, possessory, security, or other pecuniary interest adverse to a client" unless:

> (1) The transaction and terms on which the lawyer acquires the interest are fair and reasonable to the client and are fully disclosed and transmitted in writing to the client in a manner which can be reasonably understood by the client;
>
> (2) The client is given a reasonable opportunity to seek the advice of independent counsel in the transaction; and
>
> (3) The client gives informed consent in writing thereto.

Rule 1.8(a). An attorney's requiring a client to sign a note confessing judgment to a specified amount for attorney fees falls within the meaning of a "pecuniary interest" which is adverse to the client. *In re Douglass*, 859 A.2d 1069, 1082 (D.C. 2004) (appended Board Report).

Disciplinary Counsel contends that Respondent knowingly "acquire[d] an ownership, possessory, security, or other pecuniary interest adverse" to the Alvarados in two separate transactions. First, Respondent acquired a security or pecuniary interest adverse to the Alvarados in the February 1, 2012 "Agreement Regarding Attorney's Fees" because it required the Alvarados to "enter into a promissory agreement, and security agreement (if approved by the court), for any outstanding and future attorney[']s fees" within ten days of the court order approving the fees and if they did not comply, the agreement provided that Respondent could "withdraw from [the] representation, and proceed to enforce the debt, subject to court permission, if necessary." FF 52; *see also* ODC Br. 49-50.[10] Second,

[10] Comment [1] to Rule 1.8 explains that subdivision (a) "does not apply to ordinary fee arrangements between client and lawyer, which are governed by Rule 1.5, although the requirements of this rule must be met when the lawyer accepts an interest in the client's business or other non-monetary property as payment of all or part of a fee."

Respondent acquired a security or pecuniary interest adverse to the Alvarados with the March 11, 2013 promissory note and security agreement for $62,994 (which was more than was owed) which provided that if it was not paid in full within one year, the interest on the balance would be 24% and Respondent would receive a security interest in one of the Alvarados' apartment buildings. *See* ODC Br. at 50-51. Finally, although Disciplinary Counsel concedes that no security or pecuniary interest was "acquired" when the Alvarados refused to sign the October 29, 2015 promissory note and security agreement, Disciplinary Counsel notes that the agreement was presented to them for signature days before a response to the court's order to show cause was due and in circumstances showing "threats and intimidation." *Id*. at 51-52.

Respondent contends that he did not violate Rule 1.8(a) because the three agreements were not enforceable. As discussed in III(A), above, the circumstances surrounding how Respondent presented the three agreements were coercive. However, because the Committee has concluded the agreements were not enforceable, Disciplinary Counsel has not proven that Respondent knowingly "acquire[d] an ownership, possessory, security, or other pecuniary interest adverse" in violation of Rule 1.8(a).

Respondent testified that neither the February 1, 2012 agreement nor the March 11, 2013 promissory note and security agreement were valid or enforceable, (FF 54, 81), and Disciplinary Counsel presented no evidence to the contrary. We note that regardless of whether or not the agreements could have been enforced,

Disciplinary Counsel has not proved by clear and convincing evidence that Respondent tried to enforce the agreements or used the agreements to actually acquire any adverse or pecuniary interest against the Alvarados. Respondent may or may not have intended to acquire an actual adverse security interest, and he may or may not have been able to do so, but Disciplinary Counsel introduced no evidence that shows that Respondent actually acquired such an interest. Nor has Disciplinary Counsel charged Respondent with attempting to violate Rule 1.8(a). *See, e.g.*, Rule 8.4(a) (attempt). Absent evidence of an acquired interest or enforceable agreement, we believe Disciplinary Counsel has not proven, by clear and convincing evidence, that Respondent knowingly acquired an ownership, possessory, security, or other pecuniary interest adverse to a client.

C. Respondent Violated Rule 1.16(d).

Rule 1.16(d) provides:

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

Disciplinary Counsel contends that Respondent violated Rule 1.16(d) when he moved to withdraw the day after the deadline the Bankruptcy Court had set for responding to an order to show cause, and without asking the court to extend time for the Alvarados' response. Disciplinary Counsel describes Respondent as taking

affirmative steps to harm his clients: "making disparaging and false statements about them to the U.S. Trustee; falsely stating the reason for why he was withdrawing in the motion filed with the court, in which he also disparaged his clients; and opposing the clients' subsequent motion for a final decree based on their failure to pay him all the fees allegedly owed since 2012." ODC Br. at 54.

Respondent does not address whether he took any steps to protect the Alvarados' interests when he withdrew from the case, such as giving the Alvarados reasonable notice, and allowing them time to retain other counsel. Instead, he appears to defend his withdrawal by claiming that the Alvarados did not suffer any adverse consequences from his withdrawal, because they secured an extension of time to file a response to the show cause motion.

The Hearing Committee finds that, in connection with Respondent's termination of his representation, he did not take any steps to protect their interests as required by Rule 1.16(d).

On October 4, 2015, the bankruptcy court issued an Order to Show Cause, requiring the Alvarados to either file a final report and motion for final decree by Monday, November 2, 2015, or file a written response requesting an extension of time. FF 103. The court set a hearing date of November 18, 2015. *Id.* On October 27, 2015, Respondent's office sent the Alvarados an email demanding that the Alvarados pay an additional $1,350 and sign a new promissory note and security agreement that would give him an interest not only in their apartment building but their other property. FF 104-110.

The Alvarados decided to pay Respondent the additional fee, but they did not want to sign the note and security agreement, which Respondent still had never explained to the Alvarados in a manner they could understand. FF 107-108. Mr. Alvarado went to Respondent's office on October 29, 2015 with a check for $1,350 and with the Alvarados' financial records. FF 108. When Mr. Alvarado refused to sign the note and security agreement, Respondent told the Alvarados he was withdrawing from the case, and the $1,350 check was returned to Mr. Alvarado the same day. FF 110.

Respondent had not explained what the Alvarados needed to do after October 29, 2015. FF 111. He did not tell them what they needed to do to respond to the court by November 2 – just two business days away. *Id*. He did not tell them how to close their bankruptcy case. *Id*. The Alvarados only had that day (Thursday, October 29) and Friday, October 30 to employ other counsel before the filing deadline that Monday, November 2. Obtaining counsel to replace Respondent in one business day approaches the impossible. Respondent in no way protected the Alvarados' interests in this regard.

Additionally, at the time he told them he was withdrawing, Respondent did not provide the Alvarados with their file, including the financial records they had provided previously, nor did he tell them about the information they would need to provide the court to complete their case. FF 111. Instead, he claimed he prepared an acknowledgment form for Mr. Alvarado to sign, yet was never able to produce one. FF 112. He sent the Alvarados certified letters confirming that he was

withdrawing, but did not provide any guidance on how they should proceed or how they could obtain their case file from him. FF 112.

In short, Respondent did not take any, much less "all reasonable steps to mitigate the consequences [of the withdrawal] to the client[s]." Rule 1.16, cmt. [9]. Whether the Alvarados suffered adverse consequences or not as a result is not relevant to this conclusion. Accordingly, Disciplinary Counsel has proven, by clear and convincing evidence, that Respondent violated Rule 1.16(d).

D. Respondent Violated Rule 8.4(d).

Like its predecessor, DR 1-102(A)(5), Rule 8.4(d) is "a general rule that [is] purposely broad to encompass derelictions of attorney conduct considered reprehensible to the practice of law." *In re Hopkins*, 677 A.2d 55, 59 (D.C. 1996) (citation omitted); *see also* Comment [2] to Rule 8.4 ("[Rule 8.4(d)] is to be interpreted flexibly"). To prove a violation of Rule 8.4(d), Disciplinary Counsel must show that: (i) Respondent's conduct was improper, *i.e.*, that Respondent either acted or failed to act when he should have; (ii) Respondent's conduct bore directly upon the judicial process with respect to an identifiable case or tribunal; and (iii) Respondent's conduct tainted the judicial process in more than a *de minimis* way, *i.e.*, it must at least "*potentially* impact upon the process to a serious and adverse degree." *Hopkins*, 677 A.2d at 60-61(emphasis added); *accord In re White*, 11 A.3d 1226, 1230 (D.C. 2011) (per curiam); *In re Uchendu*, 812 A.2d 933, 936 (D.C. 2002).

A Rule 8.4(d) violation does not require any actual interference with judicial decision-making but requires only that the conduct "potentially impact upon the process to a serious and adverse degree." *Hopkins*, 677 A.2d at 61. To violate the rule, the lawyer does not have to act knowingly or with scienter. *See In re L.R.*, 640 A.2d 697, 700-01 (D.C. 1994) (Court rejected lawyer's contention that scienter, or at least reckless disregard for a known obligation, must be shown before a rule violation could be found).

Rule 8.4(d) is violated if the attorney's conduct causes the unnecessary expenditure of time and resources in a judicial proceeding. *See In re Cole*, 967 A.2d 1264, 1266 (D.C. 2009). Failure to respond to orders of the court constitutes a violation of Rule 8.4(d). Rule 8.4, cmt. [2]; *see, e.g.*, *In re Askew*, Board Docket No. 12-BD-037 (BPR July 31, 2013), appended HC Rpt. at 22-23 (May 22, 2013) (finding a violation of 8.4(d) where the respondent failed to comply with court orders requiring her to file a brief and to turn over client files), *adopted in relevant part*, 96 A.3d 52 (D.C. 2014) (per curiam).

Disciplinary Counsel contends that Respondent violated Rule 8.4(d) when he failed to disclose to the bankruptcy court the agreements he presented to his clients changing their fee arrangements, did not include a number of the tenants in the bankruptcy, and filed a motion to withdraw after a filing deadline. Respondent's use of intimidation and unfair agreements to obtain additional fees from his clients also violated the Rule, according to Disciplinary Counsel.

Respondent claims, however, that his conduct as alleged by Disciplinary

Counsel was not "improper"; did not "[bear] directly upon the judicial process"; or taint the judicial process in more than a *de minimis* way," (per *Hopkins*, 677 A.2d 55) (internal quotation marks omitted)).

The Hearing Committee finds that Respondent violated Rule 8.4(d) in several ways. Respondent engaged in improper conduct when he failed to disclose to the Bankruptcy court fee agreements he presented to the Alvarados that changed their legal fee obligations. FF 57, 61, 85. Respondent presented the agreements at critical times during their case, telling them that if they did not sign them he would convert their case to Chapter 7, withdraw, or both. His failure to translate or explain the documents, the misleading statements he made in connection with the agreements, and the unfair terms aggravated his misconduct.

Regardless of whether the promissory notes and security agreements were enforceable, they were related to Respondent's fees, and the Alvarados' obligations concerning Respondent's fees, and should have been disclosed. The Bankruptcy Code and Rules require lawyers to disclose to the court all relevant information about fee transactions with their clients. *See* 11 U.S.C. § 329, and Bankr. Rule 2016. The disclosure requirements and court oversight protect the client-debtors and their creditors. *See Robbins v. Delafield, et al.*, Adv. Pro. 16-07024 (Bankr. W.D. Va. Feb. 12, 2018), at 34 ("'One of the cornerstones of the regulatory structure [concerning attorney's fees] is the necessity for attorneys to fully and honestly disclose their transactions with clients.'") (quoting *In re Levin*, Case No. 97-15574, 1998 WL 732878 (Bankr. E.D. Pa. Oct. 15, 1998)). Disclosures under Section 329

and Rule 2016 are central to the integrity of the bankruptcy process; a failure to disclose is sanctionable, even if the lawyer's proper disclosure would have shown that the attorney did not violate the Bankruptcy Code or any Bankruptcy Rule. *In re Woodcraft Studios, Inc.*, 464 B.R. 1, 8, 11 (N.D. Cal. 2011). The requirement that the lawyer make full disclosure applies not only to retainer agreements, but all fee arrangements (*Woodcraft*, 464 B.R. at 12), and it must be done within 14 days after the payment or agreement (Bankr. Rule 2016(b)).

As an experienced bankruptcy lawyer, Respondent clearly knew of his disclosure obligations, yet failed to comply with them, and his delay in doing resulted in additional proceedings before the court. Respondent did not disclose his September 21, 2010 fee agreement until months after filing the Alvarados' Chapter 11 petition and two months after receiving a court reminder. He never disclosed the $2,005 he paid himself with the Alvarados funds in November 2010. FF 31. Nor did he disclose his February 1, 2012 agreement and the March 11, 2013 promissory note and security agreement that the Alvarados had signed at his direction. FF 57, 61, 85. Respondent also concealed from the court the second fee agreement, also signed on March 11, 2013, and the $2,000 payment he received pursuant to it. FF 85. Respondent did not tell the court about the October 29, 2015 promissory note and security agreement or the fact that he withdrew because his clients refused to sign them. FF 114. The U.S. Trustee learned about many of the agreements and reasons for Respondent's withdrawal when the Alvarados sought help and Mr. Jones questioned them as to why they no longer were represented. The U.S. Trustee

thereafter alerted the court to the October 29, 2015 note and security agreement and Respondent's other misconduct. FF 114, 116, 120, 125.

Respondent engaged in other improper conduct that affected the bankruptcy case and his clients' rights. Respondent intentionally did not list a number of the Alvarados' tenants in the Schedule G, and he did not provide those tenants notice of the bankruptcy. FF 34-36. The Bankruptcy Code or Rules did not give Respondent discretion to decide which tenants to include or exclude. He was required to disclose all the tenants and provide them notice of the bankruptcy, and his clients depended on him to do so. The Alvarados did not learn that Respondent had failed to include the three problem tenants until years later when they alone were forced to suffer the consequences. Respondent's improper conduct prevented the Alvarados from including the tenants in their case and resolving their claims in their plan. Respondent's failure to include the tenants also led to additional motions to the court, an evidentiary hearing, and orders from the court to resolve the issues created by their omission.

Respondent's telling his clients that he was withdrawing on the eve of the deadline for their response to the court's show cause order, and his withdrawal a day after the deadline, also was improper – not only because of the timing, but because of the false and misleading statements he made in his motion to withdraw. FF 110-111, 114. Respondent's withdrawal, without first responding to the court's order to explain why the Alvarados had not complied with the court's order of February 10, 2016, also resulted in further delays and the expenditure of the court's and U.S.

Trustee's resources.

Accordingly, Respondent's improper conduct in failing to explain matters and abruptly withdrawing, had a direct bearing on the Alvarados' bankruptcy case and the bankruptcy court it was before. The U.S. Bankruptcy Court had to schedule additional proceedings and the U.S. Trustee had to investigate and intervene. *See, e.g.*, *In re Evans*, 187 A.3d 554, 557 (D.C. 2018) (per curiam) ("abrogation of a lawyer's duty to competently represent and zealously advocate . . . [which] adversely impacts the judicial process and the court's resources" constitutes sufficient evidence to prove a violation of Rule 8.4(d)).

Here, Respondent's conduct also tainted the process and did so in more than a *de minimis* way. His agreements to extract additional payments from the Alvarados and to impose penalties for their failure to pay, along with the threats that accompanied them, impacted the process to a serious and adverse degree. The U.S. Trustee's motion to show cause, the court's order in response, the evidentiary hearing where testimony was taken, and the consent order to resolve the U.S. Trustee's motion – are all evidence of the serious impact of Respondent's improper conduct on the administration of justice. The motions and further proceedings would not have been necessary but for Respondent's misconduct. *See Cole*, 967 A.2d at 1266 (conduct that causes the unnecessary expenditure of time and resources in a judicial proceeding violated Rule 8.4(d)).

Accordingly, Disciplinary Counsel has proven, by clear and convincing evidence, that Respondent violated Rule 8.4(d).

IV. RECOMMENDED SANCTION

In this case, Disciplinary Counsel has asked the Hearing Committee to recommend the sanction of a one-year suspension with a fitness requirement. Respondent has requested that the Hearing Committee recommend no sanction, and alternatively argues that a one-year suspension with a fitness requirement is too severe for Respondent's conduct. For the reasons described below, we recommend the sanction of a one-year suspension with a fitness requirement.

A. Standard of Review

The sanction imposed in an attorney disciplinary matter is one that is necessary to 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 also 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; *In re Berryman*, 764 A.2d 760, 766 (D.C.

2000). In determining the appropriate sanction, the Court of Appeals considers a number of factors, including: (1) the seriousness of the conduct at issue; (2) the prejudice, if any, to the client which resulted from the conduct; (3) whether the conduct involved dishonesty; (4) the presence or absence of violations of other provisions of the disciplinary rules; (5) whether the attorney has a previous disciplinary history; (6) whether the attorney has acknowledged his wrongful conduct; and (7) circumstances in mitigation or aggravation. *See, e.g.*, *Martin*, 67 A.3d at 1053 (citing *In re Elgin*, 918 A.2d 362, 376 (D.C. 2007)). The Court also considers "'the moral fitness of the attorney' and 'the need to protect the public, the courts, and the legal profession . . . .'" *In re Rodriguez-Quesada*, 122 A.3d 913, 921 (D.C. 2015) (per curiam) (quoting *In re Howes*, 52 A.3d 1, 15 (D.C. 2012)).

B. Application of the Sanction Factors

1. The Seriousness of the Misconduct

Respondent's misconduct was serious and prolonged, and spanned the entire course of his representations of the Alvarados. His inadequate communications began when the Alvarados initially retained him in September 2010 and he failed to clearly explain his fees. His misconduct regarding his fees increased throughout the representation when he presented the Alvarados with three separate promissory notes and security agreements without any explanation. His misconduct impacted the substance of the bankruptcy case and continued through his withdrawal in November 2015. Even after he withdrew, Respondent opposed the Alvarados' efforts to obtain the final decree.

A bankruptcy is stressful for even sophisticated business people. The Alvarados were not sophisticated business people or experienced litigants. They had high school educations and did not understand English well. They worked as cleaners and, before the housing bubble burst and the 2008 financial crisis, had invested in real estate. By 2010, they were in substantial economic trouble – they had mortgages they could not pay, the mortgages and liens greatly exceeded the value of their properties (except for those secured by their apartment building), some of their tenants had stopped paying, and other tenants who paid rent far below the market rate continued to litigate against them. They had never been involved in a bankruptcy and were wholly dependent on Respondent to take the necessary steps to protect their interests. Respondent failed to do so, and the Alvarados are still suffering the consequences.

2. Prejudice to the Client

Respondent's misconduct prejudiced the Alvarados. He charged them more than $100,000 over 14 months, causing the Alvarados significant stress and anxiety. The Alvarados received little benefit in exchange, as Respondent failed to contest claims of certain creditors and decided on his own not to comply with the bankruptcy requirements and include all their tenants in the case – decisions that harmed, and continues to harm, the Alvarados. He also sent them to another lawyer and to an accountant, increasing the fees they had to pay, again without receiving any benefit in exchange. The Alvarados were eventually able to obtain a final decree, but it was due to their own efforts and the assistance of the U.S. Trustee and the Bankruptcy

Clinic. Respondent did nothing to help them. To the contrary, he affirmatively opposed their efforts to obtain the decree.

3. Dishonesty

Respondent's conduct fits the definition of dishonesty. He misled the Alvarados about the fees he would charge and then failed to provide them the information they needed – and were entitled to receive – to make informed decisions going forward not only about his mounting fees, but other aspects of their bankruptcy case. Respondent made decisions without the Alvarados' input that were contrary to their interests. He also took advantage of his clients to serve his own financial interests. He used coercion and threats to get them to pay additional fees and to sign agreements to ensure he received everything he believed he was entitled. He never explained the agreements and presented them to the Alvarados to sign at critical stages of the case, leaving them with little or no choice but to accede to his demands.

4. Violations of Other Disciplinary Rules

We find violations of three Rules of Professional Conduct, and repeated instances of dishonesty and false testimony in the disciplinary proceedings.

5. Previous Disciplinary History

Respondent's prior discipline also substantially aggravated his misconduct. Respondent was previously sanctioned for disclosing client secrets in a motion to withdraw. *See* DX 85 (*Gonzalez*, 773 A.2d 1026). He engaged in similar

misconduct in this case when he disparaged and made false claims about the Alvarados to the U.S. Trustee and court when he withdrew.

6. Acknowledgement of Wrongful Conduct

Respondent showed no remorse or even recognition of his misconduct. He portrayed himself as the victim and repeatedly disparaged the Alvarados. He complained that the Alvarados were not sufficiently appreciative of his efforts. He contended they were experienced litigants and business people who stiffed Mr. Lopez and him and took advantage of professionals. He blamed the Alvarados for the delay in closing their case, claiming they failed to cooperate with him. In fact, it was the professionals, including Respondent and Mr. Lopez, who took advantage of the Alvarados – not the other way around.

7. Other Circumstances in Aggravation and Mitigation

During the hearing, Respondent engaged in dishonesty by testifying falsely, including about his communications with the Alvarados. FF 138-42. His false testimony substantially aggravated his misconduct. *See In re Cleaver-Bascombe*, 892 A.2d 396, 412-13 (D.C. 2006) ("*Cleaver-Bascombe I*") (lawyer who presents false testimony during disciplinary proceeding does not appreciate impropriety of her conduct; willful or material falsehoods told in disciplinary proceeding should be considered in determining sanction), *disbarment ordered following remand*, 986 A.2d 1191, 1198-1200 (D.C. 2010); *In re Bradley*, 70 A.3d 1189, 1195 (D.C. 2013) (per curiam) (false testimony before the Hearing Committee a '"significant aggravating factor"' that enhanced sanction from ninety-day suspension to two-year

suspension with fitness).

Respondent's false testimony about his communications with the Alvarados was intentional and not based on a faulty memory; the false statements were self-serving and had the purpose of minimizing or whitewashing the ethical misconduct. "[A]n attorney deliberately attempting to cover up misconduct is absolutely intolerable, regardless of whether it is under oath or during an investigation." *In re Chapman*, 962 A.2d 922, 925 (D.C. 2009) (per curiam).

The Hearing Committee believes that Respondent's intentionally false testimony is a significant aggravating factor.

C. Sanctions Imposed for Comparable Misconduct

Based on the seriousness of Respondent's misconduct, the numerous aggravating factors, and the absence of any mitigation, a suspension of at least one year with a fitness requirement is warranted. Respondent's self-dealing and the harm he caused his clients, coupled with his serious interference with the administration of justice, warrant a suspensory sanction. As the Court has explained, when multiple disciplinary rule violations are found, the appropriate sanction should be selected "in light of the respondent's behavior in the aggregate." *In re Wright*, 885 A.2d 315, 316 (D.C. 2005) (per curiam) (citations omitted).

Respondent's misconduct involves three types of rule violations and deliberately false testimony before the hearing committee. Sanctions for comparable violations of Rules 1.4(b), 1.16(d) and/or 8.4(d) range from a sixty-day to a three- year suspension. *See, e.g., In re Baron*, 808 A.2d 497 (D.C. 2002) (per

curiam) (thirty-day suspension, stayed in favor of one-year probation for violations of Rules 1.4(a), 1.4(b), and 1.16(d), where respondent failed to inform client of possibility of joining co-defendant's motion for new trial and failed to properly terminate representation); *Askew*, 96 A.3d 52 (six-month suspension with all but sixty days stayed for violation of Rules 1.4(b), 1.16(d), and 8.4(d), among other rule violations, where respondent did not keep client informed of the status of case and deprived client of opportunity of input in appellate brief); *In re Samad*, 51 A.3d 486 (D.C. 2012) (per curiam) (three-year suspension and a fitness requirement where respondent, among other rule violations, violated Rules 1.4(b), 1.16(d), and 8.4(d) in failing to explain matters to multiple clients and advising them that he would not continue the representation unless they paid additional fees).

We recommend a sanction of a one-year suspension because, in our view, Respondent's misconduct is more serious than what took place in *Barron* and *Askew*, but less serious than what occurred in *Samad*, where the misconduct involved multiple clients. We also note that Respondent's intentionally false testimony during the hearing is a significant aggravating factor which further supports a lengthy suspension period. *See Bradley*, 70 A.3d at 1195. "Deliberately dishonest testimony receives great weight in sanctioning determinations because a respondent's 'truthfulness or mendacity while testifying on his own behalf, almost without exception, [is] probative of his attitudes toward society and prospects of rehabilitation[.]'" *Chapman*, 962 A.2d at 925 (alterations in original) (quoting *Cleaver-Bascombe I*, 892 A.2d at 413).

D. Fitness

A fitness showing is a substantial undertaking. *Cater*, 887 A.2d at 20. Thus, 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) (alteration in original). It connotes '"real skepticism, not just a lack of certainty."' *Id.* (quoting *Cater*, 887 A.2d at 24).

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

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

Cater, 887 A.2d at 22.

In addition, the Court found that the five factors for reinstatement set forth in *In re Roundtree*, 503 A.2d 1215, 1217 (D.C. 1985), should be used in applying the *Cater* fitness standard. They include:

(a) the nature and circumstances of the misconduct for which the attorney was disciplined;

(b) whether the attorney recognizes the seriousness of the misconduct;

(c) the attorney's conduct since discipline was imposed, including the steps taken to remedy past wrongs and prevent future ones;

(d) the attorney's present character; and

(e) the attorney's present qualifications and competence to practice law.

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

We find that Respondent's failure to acknowledge any misconduct, his dismissive attitude during the hearing, and his false testimony raise serious concerns about whether he will act ethically in the future and constitute clear and convincing evidence that casts a serious doubt upon his fitness to practice law. *Cater*, 887 A.2d at 24. As discussed above, his misconduct during his representation of his clients and in his appearances before the U.S. Bankruptcy Court was very serious, yet Respondent has not shown that he recognizes this fact. In addition, despite the intervention of the U.S. Trustee and Respondent's signed Consent Order in response to the Order to Show Cause, Respondent has not taken full responsibility for his actions and, instead, focused his hearing testimony on blaming the Alvarados. Moreover, even after discipline was previously imposed for a similar disregard toward his clients' interests, *see Gonzalez*, 773 A.2d at 1032 (revealing his clients' secrets in motion to withdraw instead of taking steps to limit harm to them), Respondent has improperly portrayed the Alvarados negatively and inaccurately in his responses to the U.S. Trustee, *see, e.g.*, FF 121, and the U.S. Bankruptcy Court,

see, e.g., FF 128. Finally, his false testimony obviously raises concerns of his present character and present qualifications to practice law. All of the *Cater* factors weigh in favor of a fitness requirement.

We have a serious concern about Respondent's ability to act ethically in the future, even after a one-year suspension period, and the evidence is clear and convincing that a fitness requirement is warranted. *See Guberman*, 978 A.2d at 213.

V. CONCLUSION

For the foregoing reasons, the Committee finds that Respondent violated Rules 1.4(b), 1.16(d), and 8.4(d), but not Rule 1.8(a), and we recommend that Respondent receive the sanction of a one-year suspension with a fitness requirement.

The Committee recommends 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).

AD HOC HEARING COMMITTEE

Julie Abbate, Chair

Joel Kavet, Public Member

William Corcoran, Attorney Member