DISTRICT OF COLUMBIA COURT OF APPEALS
BOARD ON PROFESSIONAL RESPONSIBILITY

In the Matter of:	:	
	:	
ERNEST P. FRANCIS,	:	
	:	Board Docket No. 13-BD-089
Respondent.	:	Bar Docket No. 2011-D423
	:	
A Member of the Bar of the	:	
District of Columbia Court of Appeals	:	
(Bar Membership No. 439894)	:	

REPORT AND RECOMMENDATION OF THE BOARD ON PROFESSIONAL RESPONSIBILITY

Before the Board is the Report and Recommendation of an Ad Hoc Hearing Committee, filed on September 24, 2014, and argued before the Board on December 4, 2014. The Hearing Committee concluded that Respondent violated the following Rules of Professional Conduct: Rule 1.3(b)(1) (intentional failure to seek the lawful objectives of a client); Rule 1.3(b)(2) (intentional prejudice or damage to a client); Rule 1.4(a) (failure to keep client reasonably informed); and Rule 1.4(b) (failure to explain matters to permit client to make informed decisions). The Hearing Committee recommended a Board reprimand for the misconduct.

We adopt the Hearing Committee's findings of fact and conclusions of law, for the reasons set forth in the Hearing Committee's Report and Recommendation, which we incorporate by reference. The Board, however, recommends that the Court suspend Respondent for 30 days and that the suspension be stayed in favor of a six-month period of unsupervised probation, during which Respondent must complete three hours of Continuing Legal Education on legal ethics.

The Board denies Respondent's motion to dismiss in its entirety.

I. PROCEDURAL HISTORY

The procedural history of this matter is set forth in the Hearing Committee Report and is summarized below.

Bar Counsel filed a Specification of Charges and Petition Instituting Formal Disciplinary Proceedings on October 3, 2013. On October 28, 2013, Respondent filed an answer denying the allegations of misconduct. Respondent also moved to dismiss the Specification of Charges on November 4, 2013. The Hearing Committee deferred ruling on the motion to dismiss pursuant to Board Rule 7.16(a) (providing that a hearing committee shall include in its report to the Board a proposed disposition of certain motions, including a respondent's motion to dismiss). *See In re Ontell*, 593 A.2d 1038, 1040 (D.C. 1991) (A hearing committee cannot rule on a motion to dismiss, but must instead make a recommended disposition of the motion in its report to the Board.).

The hearing was held on February 25, 2014. Bar Counsel called two witnesses: Ms. Cenny Norris, Respondent's client and plaintiff in the district court litigation in which Respondent acted as her local counsel, and John Interrante, Esquire, an attorney for the defendant federal agency in that matter. Respondent testified on his own behalf.

At the conclusion of the hearing, the Hearing Committee made a preliminary, non-binding determination that Bar Counsel had proven a violation of the disciplinary rules. *See* Board Rule 11.11.[1] Bar Counsel did not offer evidence in aggravation of sanction, and Respondent did not offer evidence in mitigation. In post-hearing briefs, Bar Counsel recommended that Respondent

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[1] Board Rule 11.11 provides in pertinent part that "[a]t the conclusion of the evidentiary portion of the hearing and after hearing such final argument as the Hearing Committee Chair shall permit, the Hearing Committee shall go into executive session and decide preliminarily whether it finds a violation of any disciplinary rule has been proven by Bar Counsel. In all cases in which the Hearing Committee is able to reach such a preliminary, non-binding determination, the Hearing Committee shall immediately resume the hearing and permit Bar Counsel to present evidence of prior discipline, if any. Respondent shall be permitted to present any additional evidence in mitigation."

receive, “at a minimum,” a public censure, and Respondent argued that if any sanction is imposed, it should be an informal admonition.

In its Report and Recommendation, the Hearing Committee found that Respondent had violated Rules 1.3(b)(1), 1.3(b)(2), 1.4(a), and 1.4(b), and recommended that the Board issue a reprimand to Respondent, the sanction that falls between an informal admonition and public censure. The Hearing Committee further recommended that Respondent’s motion to dismiss be denied.

Respondent filed an exception to the Hearing Committee’s Report and Recommendation, asserting that he did not violate any disciplinary rule, that the recommended sanction of a Board reprimand was excessive, and that the Hearing Committee wrongly recommended that his motion to dismiss be denied. Bar Counsel did not file an exception to the Hearing Committee’s Report and Recommendation, but in its brief to the Board, argued for increasing the recommended sanction to a public censure “or [a] more serious sanction” such as “a stayed suspension, with the condition that [Respondent] attend continuing legal education classes on ethics.” *See* B.C. Brief at 14.

II. FINDINGS OF FACT

As noted above, the Board adopts the Hearing Committee’s findings of fact, as supported by substantial evidence in the record, and pursuant to Board Rule 13.7, makes additional findings which are supported by clear and convincing evidence.[2] The relevant facts are set forth below.

[2] Board Rule 13.7 provides, in pertinent part: “Upon conclusion of the oral argument or its waiver, the Board may affirm, modify, or expand the findings and recommendation of the Hearing Committee. . . . When making its own findings of fact, the Board shall employ a ‘clear and convincing evidence’ standard.” The Board’s additional findings are identified by direct citations to the record.

Respondent was admitted to the District of Columbia Bar on December 6, 1993. FF ¶ 1.[3] Beginning in or about March 2006, Cenny Norris retained Clifford Stewart, Esquire, an attorney admitted to practice in New Jersey, but not admitted in the District of Columbia, to represent her in an Equal Employment Opportunity Commission ("EEOC") action against her former employer, the Commission of Fine Arts, a federal agency. FF ¶¶ 2-3. In January 2007, an administrative law judge entered summary judgment against Ms. Norris, and in February 2009, Ms. Norris's administrative appeal was dismissed. *Id.*

In June 2009, using a complaint prepared by Mr. Stewart, Ms. Norris filed a *pro se* civil complaint in the United States District Court for the District of Columbia. FF ¶ 4. Shortly thereafter, in June 2009, Ms. Norris executed a retainer agreement with Mr. Stewart, providing that he would represent her in the federal case. FF ¶ 5. The retainer agreement provided that Mr. Stewart might associate with any other law firm or attorney at his discretion. BX 1, ¶ XI.[4]

In or about January 2010, Mr. Stewart hired Respondent to serve as local counsel in Ms. Norris's case. FF ¶ 6.

Respondent previously had served as local counsel for Mr. Stewart in other matters. Based on their prior course of dealing, Respondent understood that his role would be limited to reviewing documents that Mr. Stewart prepared to ensure that they complied with Federal Rule of Civil Procedure 11. However, Respondent and Mr. Stewart had no written agreement to this effect. FF ¶¶ 6-7.

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[3] "FF [¶ __]" refers to the Hearing Committee's Findings of Fact.

[4] "BX" refers to Bar Counsel's exhibits.

Mr. Stewart did not file an application for admission *pro hac vice* to the United States District Court for the District of Columbia. FF ¶ 11. As a result, Respondent was the only counsel of record, and the only person who received notice of filings and orders through the court's electronic case filing system. FF ¶ 8. Respondent was responsible for forwarding such filings to Mr. Stewart. *Id.*

On January 12, 2010, the defendant moved for partial dismissal of Ms. Norris's complaint. FF ¶ 9. On February 3, 2010, Respondent moved for an extension of time to oppose the motion to dismiss, on the grounds that he had been recently retained to serve as "counsel of record" and that he needed more time to become familiar with the matter and to prepare a response. FF ¶ 10. Respondent did not submit an affidavit in support of the February 3, 2010, extension motion. *See* BX 3.

On March 3, 2010, Respondent filed an opposition to the defendant's motion to dismiss and also moved to amend the complaint; it is not clear whether Respondent or Mr. Stewart prepared the motion. FF ¶ 12. On September 20, 2010, the court ruled in Ms. Norris's favor, denying the defendant's motion to dismiss and granting her motion to amend the complaint. FF ¶ 12.

In November 2010, the defendant's counsel asked Respondent to consent to an extension of time to file a renewed motion to dismiss. FF ¶ 13. Respondent agreed to the extension, but, because of the upcoming holidays, asked for the defendant's consent to an extension of the time to file plaintiff's opposition to the motion. *Id.* On December 8, 2010, the court extended defendant's time to answer or otherwise respond to the amended complaint until December 13, 2010, and gave plaintiff until January 14, 2011, to file an opposition to any renewed motion to dismiss. *Id.*; BX 2.

On December 13, 2010, the defendant filed a renewed motion to dismiss. As counsel of record, Respondent was the only one served with a copy of the motion. Respondent did not email Mr. Stewart a copy of the motion, because Mr. Stewart told Respondent that he would prefer to receive a hard copy when he next met in person with Respondent. FF ¶ 14; Tr. 181-82.[5]

Respondent and Mr. Stewart did not meet, and Respondent did not provide Mr. Stewart with a copy of the renewed motion to dismiss, prior to the January 14, 2011, deadline for opposing the motion. FF ¶ 18. Rather, on January 12, 2011, Respondent sent an email to Mr. Stewart, asking to discuss the opposition. FF ¶ 15. Mr. Stewart replied that because he did not yet have a copy of motion, he would be unable to prepare a response for at least 30 days. FF ¶ 16. Accordingly, on January 14, 2011, Respondent filed a consent motion for an extension of time to February 14, 2011, in which to file plaintiff's opposition to the renewed motion to dismiss. As grounds for the motion, Respondent asserted that he (i) was "replacing his computer system;" (ii) "other counsel" needed "some additional time to review and generate a response to the pending motion;" and (iii) "the period of time for [Ms. Norris] to respond to the pending motion included the end of year holidays." FF ¶ 17; BX 4. The court granted the motion for extension on January 19, 2011. FF ¶ 17. Respondent gave a copy of the renewed motion to dismiss to Mr. Stewart when they met in person on January 21, 2011. FF ¶ 18.

On February 10, 2011, four days before the opposition to the renewed motion to dismiss was due, Mr. Stewart emailed Respondent to ask him to seek an additional extension in which to respond. FF ¶ 19; BX 5. On February 11, 2011, Respondent emailed Mr. Stewart requesting that he explain the grounds for an additional extension. *Id.* Mr. Stewart did not respond to

[5] "Tr." refers to the transcript of the February 25, 2014 hearing.

Respondent's email, and Respondent neither filed an opposition to the renewed motion to dismiss, nor sought an extension of time in which to do so. FF ¶ 20.

On February 26, 2011, twelve days after the deadline had expired, Respondent informed Mr. Stewart by email that he had not sought an extension of time to file the opposition to the renewed motion to dismiss. BX 6; Tr. 193-94. By reply email, Mr. Stewart asked that Respondent file the motion for an extension based on Mr. Stewart's "overloaded calendar with matters in the U.S. District Court here in NJ" and other deadlines in administrative matters before the EEOC, and that the motion be filed *nunc pro tunc*. FF ¶ 21.

On March 31, 2011, Mr. Stewart emailed Respondent a draft opposition to the renewed motion to dismiss. FF ¶ 22. In the email, Mr. Stewart noted, "I know that this is woefully out of time but lets [sic] find a pretext to file it." RX 12.[6] By reply email of April 5, 2011, Respondent told Mr. Stewart that the draft opposition was unacceptable for filing, because it had "numerous omissions" in "cites to the record." FF ¶ 22. Mr. Stewart acknowledged that he had sent the wrong version of the opposition to Respondent (RX 13), and on April 11, 2011, provided a corrected opposition, but without the supporting exhibits, which had not yet been scanned for electronic filing purposes. FF ¶ 23; BX 9; Tr. 158. Respondent testified that he did not file the corrected opposition, even though he had a copy, because he was preparing for a trial scheduled that same week or the following week and had a federal court complaint that had to be filed in advance of the trial. Respondent explained that he was "unable to drop those matters to address" the opposition from Mr. Stewart. FF ¶ 23 (citing Tr. 157). Respondent admitted that he was aware that as a result of his failure to file the opposition, the court "could treat the motion as conceded." FF ¶ 27.

[6] "RX" refers to Respondent's exhibits.

On April 13, 2011, the court granted the defendant's renewed motion to dismiss as unopposed, and dismissed Ms. Norris' amended complaint. FF ¶ 24. Ten days later, on April 23, 2011, Respondent emailed a copy of the court's order of dismissal to Mr. Stewart, and informed him that a motion for reconsideration had to be filed within 30 days of entry of the order. *Id.* Respondent again emailed Mr. Stewart on May 7, 2011, stating that he was unavailable on May 10 or May 11, the deadline for filing the motion to reconsider, and that the due date could not be extended. FF ¶ 25.

On May 9, 2011, Mr. Stewart replied to Respondent's May 7 email, stating that, upon reviewing the court's order of dismissal, he had learned for the first time that Respondent had failed to file the draft opposition that Mr. Stewart had forwarded to Respondent on April 11, 2011. FF ¶ 25. Mr. Stewart said that he was "nonplussed" by Respondent's decision not to file the opposition. *Id.* Mr. Stewart reiterated his concern about the failure to file the opposition in an email dated May 10, 2011. *Id.* In an email response on May 11, Respondent blamed Mr. Stewart for missing the February 14, 2011, deadline for filing the opposition, and for providing the draft opposition late and without the scanned exhibits. *Id.*

Respondent did not communicate with Ms. Norris prior to the dismissal of her case on April 13, 2011. Ms. Norris's first conversation with Respondent was on July 5, 2011, when she contacted him. Respondent informed Ms. Norris that he was unable to prepare a motion for reconsideration of the court's order of dismissal, because of a possible conflict of interest. FF ¶¶ 28-29.

On July 18, 2011, Ms. Norris filed a motion for reconsideration *pro se*, with the assistance of new counsel. FF ¶¶ 25, 30.

On August 16, 2011, Respondent responded to Ms. Norris's motion for reconsideration. Respondent took no position on the requested relief, although he noted that he remained Ms. Norris's attorney of record. Respondent also explained that as local counsel, he relied on Mr. Stewart to complete court filings. FF ¶ 31. In his response to the motion for reconsideration, Respondent also "[took] exception to [Ms. Norris's] statement that [Respondent] behaved unethically in some manner" and explained that "what happened in this case is not at all typical of the way that the undersigned practices law. . . ." BX 9.

On October 18, 2011, the court granted Ms. Norris's motion for reconsideration. FF ¶ 32. On November 10, 2011, Respondent moved to withdraw as Ms. Norris's counsel. FF ¶ 33.

In 2012, the district court dismissed Ms. Norris's case for failure to name a proper party. *Norris v. Salazar*, 885 F. Supp. 2d 402, 412-13 (D.D.C. 2012). The dismissal was affirmed by the United States Court of Appeals for the District of Columbia Circuit. *Norris v. Salazar*, 2013 U.S. App. LEXIS 8443 (D.C. Cir. April 10, 2013).

III. CONCLUSIONS OF LAW

A. Respondent's Motion to Dismiss

Respondent moved the Hearing Committee to dismiss the Specification of Charges on the grounds that it (i) was not executed under oath, as required by D.C. Bar R. XI, § 8(c) and D.C. Code § 11-2503(b); and (ii) failed to provide adequate notice of the alleged conduct underlying the charges. In its Report and Recommendation, the Hearing Committee recommended that the Board deny the motion to dismiss. H.C. Rpt. at 4-7.[7] The Board agrees. First, the Hearing Committee correctly concluded that Bar Counsel's verification in the Specification of Charges met the requirement of an oath under D.C. Bar R. XI, § 8(c). *See In re Morrell*, 684 A.2d 361, 367

[7] "H.C. Rpt." refers to the Report and Recommendation of the Ad Hoc Hearing Committee.

(D.C. 1996) (holding that an oath identical to the one used by Bar Counsel in this case "satisfies the need at the charging stage to assure that Bar Counsel, an officer of the court, has investigated the complaint and has sound reason to believe the charges are well founded.")

Second, we agree with the Hearing Committee that the Specification of Charges was sufficiently clear and specific as to provide Respondent with notice of the alleged misconduct. As the Hearing Committee found, the Specification of Charges was "straightforward" and clearly notified Respondent of the allegations against him. *See* H.C. Rpt. at 6. It fully set forth the facts and identified the specific disciplinary rules alleged to have been violated. *See In re Slattery*, 767 A.2d 203, 208 (D.C. 2001) (Specification of Charges fairly put the respondent on notice of the charges against him where it "relate[d] the factual basis on which the charges rest and then identifie[d] the specific rules Bar Counsel alleges to have been violated."); *see also In re Austin*, 858 A.2d 969, 976 (D.C. 2004) (Specification of Charges was sufficient to place the respondent on notice of the charges where Bar Counsel alleged facts that specifically supported the claim, and respondent did not ask for a bill of particulars on the charges).

B. <u>Violations of the Rules of Professional Conduct</u>

As set forth below, the Board agrees with the Hearing Committee's conclusions that Bar Counsel established violations of Rules 1.3(b)(1) and (2), and Rules 1.4(a) and (b).

1. <u>Respondent Violated Rules 1.3(b)(1) and (2)</u>.

Rule 1.3(b) provides that:

> A lawyer shall not intentionally:
>
> (1) Fail to seek the lawful objectives of a client through reasonably available means permitted by law and the disciplinary rules; or
>
> (2) Prejudice or damage a client during the course of the professional relationship.

A violation of Rule 1.3(b) requires proof of intentional neglect. Intentional neglect is established where the evidence shows that the respondent was (1) "demonstrably aware of [the] neglect," or (2) "the neglect was so pervasive that [the respondent] must have been aware of it." *In re Reback*, 487 A.2d 235, 240 (D.C. 1985) (per curiam), *vacated but adopted and incorporated in relevant part,* 513 A.2d 226 (D.C.1986) (en banc); *see In re Ukwu*, 926 A.2d 1106, 1116 (D.C. 2007). The knowing abandonment of a client constitutes intentional neglect. *See In re Lewis*, 689 A.2d 561, 564 (D.C. 1997) (per curiam) (appended Board Report).

Respondent's neglect of Ms. Norris's case was clearly knowing and intentional. Respondent – the only attorney of record – admittedly was aware of his obligation to respond to the renewed motion to dismiss, of the deadline for filing, and of the likelihood that the motion would be treated as conceded if he failed to act. FF ¶ 27. But Respondent did nothing, even after Mr. Stewart sent him the opposition for filing. Respondent's other work commitments were no basis to abandon Ms. Norris.

Respondent's attempted justifications for the failure to protect his client's interests are unavailing. First, Respondent asserts that in disciplinary proceedings brought against Mr. Stewart in New Jersey, Mr. Stewart maintained that his decision to late-file the opposition to the renewed motion to dismiss was strategic and intended to provide additional time to develop his arguments. Respondent thus explains that he simply "defer[red] to Stewart's decision not to file an opposition," when he allowed the filing deadline to pass. Resp. Br. at 19-20; RX 17 (*District V-A Ethics Comm. v. Stewart*, Supreme Court of New Jersey Disciplinary Review Board, Docket No. V-A11-32-E, Hearing Report Recommending Reprimand at 12). Regardless of whether Mr. Stewart's decision to late-file was strategic, the evidence in this case plainly establishes that before

the February 14 deadline, Mr. Stewart instructed Respondent to seek an extension in which to oppose the renewed motion to dismiss, and Respondent ignored that instruction.

Second, Respondent asserts that an additional extension was not permissible under the Federal Rules of Civil Procedure or the Rules of Professional Conduct. Specifically, Respondent invokes Federal Rule of Civil Procedure 6(b)(1), which requires a showing of good cause to support a request for an extension. Respondent maintains that he could not demonstrate good cause for an extension because Mr. Stewart failed to provide a legitimate basis for the request, an affidavit in support of the requested extension, or the time needed to prepare the opposition. In short, Respondent asserts that a further extension was unjustified, particularly in light of the previous extensions granted by the district court. In addition, Respondent contends that even if he was wrong, and his failure to respond to the renewed motion to dismiss was improper, he cannot be sanctioned for committing a good faith error in judgment.

We agree with the Hearing Committee that Respondent mischaracterizes the record and fails to acknowledge his role in creating the need for an additional extension to oppose the renewed motion to dismiss. Respondent did not deliver the renewed motion to dismiss to Mr. Stewart until January 21, 2011. When Mr. Stewart requested that Respondent seek an additional extension beyond February 14, Respondent failed to act. Mr. Stewart may not have provided a basis for this additional extension request, but Respondent well knew he needed additional time, and that his client's case depended on it. Even after Mr. Stewart explicitly explained to Respondent that he needed the extension because of his "overloaded calendar" and conflicting administrative deadlines, Respondent did nothing to protect his client. Based on the foregoing, we agree with the Hearing Committee that Respondent's failure to seek an extension did not result from a good faith error in judgment.

Additionally, we agree with the Hearing Committee that Respondent could not reasonably have believed that an extension request would have been improper. On January 14, 2011, Respondent moved for an extension of the time to file an opposition to February 14, on the grounds that "other counsel" needed more time to respond, and because of the holidays and a new computer system in Respondent's office. The reasons underlying the January 14 extension motion are similar to those asserted by Mr. Stewart as the justification for a further extension of time. Further, as the Hearing Committee observed, notwithstanding Respondent's present position that a further extension beyond February 14, 2011, required an affidavit in support, neither his January 14 motion nor his earlier February 3, 2010, motion for an extension were supported by affidavit.

Respondent's assertion that seeking an extension would have violated disciplinary rules aimed at prohibiting frivolous filings and delay is equally lacking in merit, for the reasons stated above. There was no basis for Respondent to conclude that Mr. Stewart's request for an extension beyond February 14, 2011, was for anything other than the simple need for more time to prepare a court filing.

Finally, there is no evidence that Respondent told Mr. Stewart that he believed that filing an extension request would violate either the Federal Rules of Civil Procedure or the Rules of Professional Conduct, nor did he otherwise document such concerns. If Respondent in fact believed that lead counsel's instructions required him to act in contravention of those provisions, it was his obligation to notify Mr. Stewart that he would be forced to withdraw from the representation. *See In re Lawrence*, 526 A.2d 931, 932-33 (D.C. 1986) (per curiam) (when an attorney believes that he cannot proceed with a matter, he should withdraw and not simply let his client's case lapse). Instead, Respondent neither informed Mr. Stewart nor did he file the motion

for an extension. He simply allowed the deadline for filing an opposition to pass without making any effort to protect his client. As a result, Respondent violated Rule 1.3(b)(1).

Respondent also violated Rule 1.3(b)(2), which prohibits intentional conduct that would cause "actual prejudice or damage to the client" in the course of the professional relationship. *See In re Cohen*, 847 A.2d 1162, 1165 n.1 (D.C. 2004). Delay in a client's case may constitute actual prejudice, because it "can cause a client needless anxiety and undermine confidence in the lawyer's trustworthiness." Rule 1.3, cmt. [8]; *see also In re Vohra*, 68 A.3d 766, 781 (D.C. 2013) (appended Board Report) (finding prejudice to clients where attorney neglected immigration matters and missed relevant deadlines, forcing clients to hire new counsel to reopen the case and obtain relief). Here, Respondent's complete lack of zeal – his failure to seek his client's lawful objectives in the face of a clear obligation to act – delayed her case and undoubtedly caused her needless anxiety when her case was dismissed on procedural grounds. As a result, Ms. Norris's confidence in Respondent was undermined and she was forced to identify new counsel to assist in having her case reinstated and considered on the merits. The fact that her case was reinstated and eventually dismissed is not material to our finding that she suffered "actual prejudice." *See Vohra*, 68 A.3d at 777 (the respondent violated Rule 1.3(b)(2), and caused actual prejudice to clients in immigration matter, even where clients obtained relief through successor counsel). Respondent thus violated Rule 1.3(b)(2).

2. <u>Respondent Violated Rules 1.4(a) and (b)</u>.

The Board agrees with the Hearing Committee that Respondent violated Rules 1.4(a) and (b), when he failed to inform Ms. Norris of developments in her case. Rule 1.4 provides, in pertinent part:

> (a) A lawyer shall keep a client reasonably informed about the status of a matter

> (b) A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

In determining whether Bar Counsel has established a violation of Rules 1.4(a) and (b), the question is whether Respondent fulfilled his client's reasonable expectations for information. *See In re Schoeneman*, 777 A.2d 259, 264 (D.C. 2001). In addition to responding to client inquiries, a lawyer must initiate communications when necessary. *See In re Hallmark*, 831 A.2d 366, 374 (D.C. 2003).

Respondent's complete failure to communicate with Ms. Norris before her case was dismissed violated Rules 1.4(a) and (b). Respondent was her only attorney of record and the only one who knew that neither the opposition to the renewed motion to dismiss, nor a motion for an extension of time in which to do so, had been filed. Nor did Respondent inform his client (or Mr. Stewart) of his intention to disregard Mr. Stewart's instruction to file a motion for an extension of time to oppose the renewed motion to dismiss. Subsequently, Respondent failed to inform Ms. Norris that the court had dismissed her complaint or of the deadline for filing a motion for reconsideration of the order of dismissal.

Respondent maintains that, as local counsel, he was not responsible for communicating with Ms. Norris, but that such communication was the responsibility of her lead counsel, Mr. Stewart. Respondent further asserts that a finding that he violated Rule 1.4 would "lead[] to nonsensical results," because it would require duplicative communications, as every attorney on a case would be obligated to personally communicate all information to a client. *See* Resp. Br. at 24-25. Respondent fails to recognize that he was the only attorney of record and the only person who knew that the opposition had not been filed, that the case had been dismissed, and that Ms.

Norris needed to seek reconsideration of the court's order of dismissal. No one else could communicate these facts to Ms. Norris because no one else knew them.

In addition, an attorney's ethical responsibilities are not limited when acting as local counsel, as Respondent contends. Respondent entered into an attorney-client relationship with Ms. Norris, and thus was obligated to comply fully with the Rules of Professional Conduct. *See In re Fay*, Bar Docket No. 2002-D139 (BPR Nov. 27, 2013), *appeal pending*, D.C. App. No. 14-BG-0007 ("Regardless of how limited local counsel's level of involvement may be, ethical responsibility for the conduct of the case cannot be abdicated."); *see also In re Washington*, 489 A.2d 452, 456 (D.C. 1985) ("[W]here an attorney agrees to act for another person in a legal matter, the attorney undertakes the full burdens of the legal relationship no matter how informal or how unremunerative that relationship may be."). It was Respondent's obligation to ensure that Ms. Norris was kept informed of relevant information to the extent necessary to permit her to make informed decisions about the representation, particularly because he was in exclusive possession of that information.

The Board thus finds that Bar Counsel established violations of Rules 1.4(a) and (b).

IV. RECOMMENDED SANCTION

The Hearing Committee recommended that the Board reprimand Respondent for his misconduct. Respondent asserts that the recommended sanction is excessive, and that consistent with *Fay*, Bar Docket No. 2002-D139, an informal admonition is the appropriate discipline. Bar Counsel did not file an exception to the Hearing Committee's Report and Recommendation, but, in its brief to the Board, argues that "at a minimum" a public censure should be imposed, or alternatively, a stayed suspension, based on Respondent's lack of remorse and failure to take

responsibility for his actions.[8] As explained below, the Board recommends that the Court suspend Respondent for 30 days stayed in favor of a six-month period of unsupervised probation, during which Respondent must attend three credit hours of Continuing Legal Education on legal ethics.

The discipline imposed in a matter, although not intended to punish the lawyer, should serve to maintain the integrity of the legal profession, protect the public and courts, and deter future or similar misconduct by the respondent-lawyer and other lawyers. *In re Hutchinson*, 534 A.2d 919, 924 (D.C. 1987) (en banc); *Reback*, 513 A.2d at 231. Further, the sanction imposed 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.*, *In re Elgin*, 918 A.2d 362, 383 (D.C. 2007); *In re Berryman*, 764 A.2d 760, 766 (D.C. 2000); *Hutchinson*, 534 A.2d at 923-24. In determining the appropriate sanction, the Board relies on seven 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 and/or misappropriation; (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 of the misconduct. *See, e.g., Hutchinson*, 534 A.2d at 924; *In re Martin*, 67 A.3d 1032, 1053 (D.C. 2013) (citing *Elgin*, 918 A.2d at 376). "The purpose of imposing discipline is to serve the public and professional interests identified and to deter future

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[8] Bar Counsel did not file an exception to the Hearing Committee's Report and Recommendation, and thus waived any argument that a greater sanction should be imposed. *See In re Yelverton*, 105 A.3d 413, 421 n.8 (D.C. 2014) (citing *In re Ray,* 675 A.2d 1381, 1387 n.5 (D.C. 1996) ("failing to raise an issue before the Hearing Committee constitutes waiver of the point")). However, the Board has an independent obligation to evaluate the appropriate sanction, to ensure that it conforms to the consistency requirement of D.C. Bar R. XI, § 9(h)(1) or is not otherwise unwarranted.

and similar conduct rather than to punish the attorney." *In re Goffe*, 641 A.2d 458, 464 (D.C. 1994) (per curiam).

A period of suspension is typically imposed for a single instance of intentional neglect. *See In re Mance*, 869 A.2d 340, 340-44 (D.C. 2005) (per curiam) (30-day suspension, stayed, for intentional neglect by failing to protect client's appeal rights even after receiving notice that appeal had been noted); *Lewis*, 689 A.2d at 564 (30-day suspension for intentional neglect of single criminal matter); *In re Askew*, 96 A.3d 52, 61-62 (D.C. 2014) (per curiam) (six-month suspension, with all but 60 days stayed, for intentional neglect of a CJA appeal).

Respondent's intentional neglect and failure to communicate with Ms. Norris are sufficiently serious to warrant a 30-day suspension. Respondent, in his disagreement with Mr. Stewart over the filing of an extension to oppose the renewed motion to dismiss, lost sight of his paramount obligation to his client. As a result, he allowed the deadline to pass without filing an opposition or a motion for an extension of time in which to do so. As the only attorney with knowledge that the deadline had passed, and without having taken any action to protect Ms. Norris, Respondent bore full responsibility for the subsequent dismissal of her complaint. Even then, Respondent failed to file a motion for reconsideration or to take any other action to protect his client. To make matters worse, Respondent filed a response to Ms. Norris's *pro se* motion for reconsideration, while he remained her counsel of record, in which he took no position on the merits but did take "exception to [Ms. Norris's] statement that [Respondent] has behaved unethically in some manner" and explained that "what happened in this case is not at all typical of the way that the undersigned practices law . . ." BX 9. *Id.* Respondent's response to the motion for reconsideration illustrates that his primary concern was protecting his own reputation, without regard for preserving his client's claims. Respondent's utter lack of recognition of his duty to his

client is further aggravated by his steadfast refusal in this disciplinary proceeding to acknowledge the wrongfulness of his conduct or the violation of his duty to Ms. Norris. Even during oral argument before the Board, Respondent persisted in denying any wrongdoing, asserting that Mr. Stewart alone was responsible for the dismissal of Ms. Norris's case.

The Court has recently emphasized the seriousness of an attorney's violation of a client's trust and the betrayal of the duty of loyalty to a client. *See In re Baber*, WL 176291 at *5, *8 (D.C. Jan. 15, 2015) (imposing disbarment on an attorney who "threw his client under the bus"); *compare Yelverton*, 105 A.3d at 423, 431 (imposing a 30-day suspension for numerous rule violations, where the misconduct was intended to benefit the client). Respondent's conduct is far more egregious than that in *Fa*y, the only disciplinary case in this jurisdiction involving misconduct by local counsel. In *Fay*, the respondent, who as local counsel did not have primary contact with the client, signed his name to a complaint and filed it in the Superior Court to avoid the expiration of the statute of limitations, thereafter believing that his fellow counsel would serve the complaint and follow through on the representation. When lead counsel failed to act and the client's case was dismissed, Fay moved to have the case reinstated. Although Fay fell short in upholding his obligations to his client by allowing the case to lapse without serving the complaint, the Board recommended the issuance of an informal admonition, because the respondent's conduct was well-intentioned, both before and after the dismissal of the client's case. *Fay*, Bar Docket No. 2002-D139 at 20-21.

In contrast, Respondent ignored his client and intentionally neglected her case, to her detriment. We recognize that Respondent has no disciplinary history and that his misconduct was not motivated by dishonesty. But the misconduct struck at the heart of the attorney-client relationship. For that reason, and those explained above, we find that Respondent's misconduct is

more serious than the conduct in *Fay* and warrants the imposition of a more severe sanction. Accordingly, we recommend a 30-day suspension, stayed in favor of a six-month period of unsupervised probation, during which Respondent must complete three hours of Continuing Legal Education on legal ethics.[9]

V. CONCLUSION

For the foregoing reasons, the Board adopts the findings of fact and conclusions of law of the Ad Hoc Hearing Committee, and finds that Respondent violated Rules 1.3(b)(1) and (2) and 1.4(a) and (b). The Board recommends that the Court suspend Respondent for 30 days, stayed in favor of a six-month period of unsupervised probation, during which Respondent must complete three credit hours of continuing legal education in legal ethics.

BOARD ON PROFESSIONAL RESPONSIBILITY

By: /JEC/
Jason E. Carter

Dated: March 17, 2015

All members of the Board concur in this recommendation.

[9] The Board recognizes that in separate proceedings before the New Jersey Disciplinary Review Board, Mr. Stewart received an admonition for his role in the dismissal of Ms. Norris's case. *See* attachment to Respondent's brief to the Board. Our recommended sanction is based on the record developed in this jurisdiction, which fully supports a more severe sanction for Respondent's intentional abandonment of his client and related misconduct.