DISTRICT OF COLUMBIA COURT OF APPEALS
BOARD ON PROFESSIONAL RESPONSIBILITY

Issued: April 3, 2018

In the Matter of:	:	
	:	
GREGORY L. LATTIMER,	:	Board Docket Nos. 11-BD-085 &
	:	15-BD-070
Respondent.	:	Bar Docket Nos. 2009-D170,
	:	2009-D319, 2010-D401 &
A Member of the Bar of the	:	2014-D145
District of Columbia Court of Appeals	:	
(Bar Registration No. 371926)	:	

REPORT AND RECOMMENDATION
OF THE BOARD ON PROFESSIONAL RESPONSIBILITY

Before the Board are Disciplinary Counsel's[1] charges, filed in two separate cases, that Respondent, Gregory L. Lattimer, violated the District of Columbia Rules of Professional Conduct ("Rules") and Virginia Rules of Professional Conduct with respect to multiple clients. In the first case (Lattimer I), Disciplinary Counsel charged Respondent with violating Rule 1.4(a) (failure to keep client reasonably informed) during the course of his representation of three different clients. In the second case (Lattimer II), Disciplinary Counsel charged Respondent with violating the following Rules, and their Virginia counterpart rules, in connection with his representation of a single client: 1.1 (competence, skill, and care), 1.3(a) (zeal and diligence), 1.3(c) (reasonable promptness), 1.4(a) (failure to keep a client reasonably informed), 1.4(b) (failure to explain a matter to a client), 3.3(a) (knowingly making

[1] These cases were filed by the Office of Bar Counsel. The District of Columbia Court of Appeals changed the title of "Bar Counsel" to "Disciplinary Counsel," effective December 19, 2015. We use the current title in this Report and Recommendation.

false statement of fact to a tribunal), and 8.4(c) (dishonesty). The cited Virginia Rules of Professional Conduct are: 1.1 (competence), 1.3(a) (diligence and promptness), 1.4(a) (failure to keep a client reasonably informed), 1.4(b) (failure to explain a matter to a client), 3.3(a) (knowingly making false statement of fact to a tribunal), and 8.4(c) (dishonesty).

In Lattimer I, the hearing committee ("Hearing Committee I") found Rule violations in connection with Respondent's handling of two of the three charged cases and recommended a public censure.[2] The Lattimer II hearing committee ("Hearing Committee II") found that Respondent violated all of the charged Rules with the exception of Rules 1.4(a) and 1.4(b). That Hearing Committee recommended that Respondent receive a 45-day suspension.

Respondent and Disciplinary Counsel filed exceptions to the Hearing Committee report in Lattimer I, and Respondent filed an exception to the report in Lattimer II. By Order of April 7, 2017, the Board consolidated Lattimer I and Lattimer II. In the instant consolidated case, Disciplinary Counsel seeks a 90-day suspension, a requirement that Respondent demonstrate fitness before reinstatement, and a requirement that he pay restitution to a client in Lattimer I. Respondent argues that he should, at most, receive an informal admonition.

[2] The Hearing Committee found that Disciplinary Counsel failed to prove a violation relating to Respondent's representation of client Debra Rowe (Bar Docket No. 2009-D319). Disciplinary Counsel filed no exceptions to that finding, and the Board does not consider it here.

The Board, having heard oral argument and reviewed the records and briefs of the parties, concurs with both Hearing Committees' factual findings, as supported by substantial evidence in the record, and conclusions of law as to each Rule violation, except two bases for the Rule 1.4(a) violations in Lattimer I and the Rule 3.3(a) violation in Lattimer II, as supported by clear and convincing evidence.[3] For the reasons stated below, based on the misconduct in both cases, the Board recommends that Respondent be suspended for 60 days, with the requirement that Respondent pay restitution to Mamie Strange (on behalf of the Strange family) prior to reinstatement. The Board declines to recommend a showing of fitness. The key facts and legal conclusions are summarized below.

I. PROCEDURAL BACKGROUND

The procedural background of this matter is set forth in the Hearing Committee reports. Of note is that, in a post-hearing brief to Hearing Committee I, Respondent disclosed that he had rejected a pre-charge informal admonition alleging only a Rule 1.4(a) violation with respect to his representation of three different clients. Pursuant to Board Rule 6.4, Hearing Committee I determined that Disciplinary Counsel was prohibited from adding more charges against Respondent. At oral argument before the Board, Disciplinary Counsel accepted that that determination was accurate.

This matter was argued before the Board on September 21, 2017.

[3] The Report and Recommendation in Lattimer I will be referred to as H.C. Rpt. I. The Report and Recommendation in Lattimer II will be referred to as H.C. Rpt. II.

II. KEY FACTUAL FINDINGS

Respondent objects to numerous findings of fact by the hearing committees. The Board reviews hearing committee findings based on "substantial evidence on the record as a whole." Board Rule 13.7. "[S]ubstantial evidence means 'more than a mere scintilla. It means such evidence as a reasonable mind might accept as adequate to support a conclusion.'" *District of Columbia v. District of Columbia Dept. of Employment Servs.*, 734 A.2d 1112, 1115 (D.C. 1999) (quoting *Shaw v. District of Columbia Dept. of Employment Servs.*, 641 A.2d 172, 175 (D.C. 1994)); *see In re Evans*, 578 A.2d 1141 (D.C. 1990) (per curiam). Where there is substantial evidence to support the finding of fact, the Board does not substitute the finding merely because there is substantial contrary evidence. *In re Szymkowicz*, 124 A.3d 1078, 1084 (D.C. 2015) (per curiam). Here, the hearing committees cite to substantial evidence on the record. Accordingly, in light of the evidence cited by the hearing committees, the Board concurs with the findings of fact of the hearing committees. Set forth herein are summaries of key portions of those findings.

A. Lattimer I

1. Roderick Strange case, Bar Docket No. 2009-D170

In December 2007, Roderick Strange was convicted in D.C. Superior Court of aggravated assault and related charges, receiving an 11-year prison sentence. Mr. Strange's sister, Jacqueline Byrd, contacted Respondent about handling Mr. Strange's appeal. On March 26, 2008, Respondent met Mr. Strange at the D.C. Jail. On March 31, 2008, Respondent was hired by Mr. Strange's mother, Mrs. Mamie

Strange, who signed a retainer agreement agreeing to pay a $7,500 flat fee, with $4,000 paid immediately and the rest to be paid on a schedule.

Although disputed by Respondent[4], the Hearing Committee found that Mamie Strange, accompanied by Mr. Strange's nephew, Antonio, visited Respondent's office on March 31, 2008, in order to sign the retainer agreement, but were unable to meet with Respondent.[5] In April 2008, Mr. Strange was transferred to a prison in South Carolina. Because Respondent never entered an appearance in connection with Mr. Strange's appeal, on April 21, 2008, another lawyer, Ian Williams, was appointed by the court.

[4] Respondent takes exception to a number of the Hearing Committee's Findings of Fact ("FF") in the Strange matter. *See* Resp. Br. at 2-12. For those findings that relate to the Hearing Committee's reliance on certain evidence where contrary evidence may have existed in the record (FF 92, 96, 101-04, 105, and 108-09), we defer to the Hearing Committee's findings, which are supported by substantial evidence. *See In re Downey*, 162 A.3d 162, 167 (D.C. 2017). For other findings (FF 99, 100, 108-09, 118), Respondent takes exception to the Committee's omission of certain details; however, we do not find these details material to the legal issues presented in this case and likewise defer to the Hearing Committee's findings. Furthermore, the bulk of Respondent's proposed additions to FF 118 appear in FF 119. Additionally, Respondent objects to certain hearsay and allegedly irrelevant findings (FF 108-09, 112-13); however, hearsay is admissible, and the evidence was given the weight the Hearing Committee deemed appropriate. *See* Board Rule 11.3; *In re Speights*, 173 A.3d 96, 102 (D.C. 2017) (per curiam) (weight and relevance of evidence is "within the ambit of the Hearing Committee's discretion"). Finally, we do not disturb the Hearing Committee's finding (FF 117) that "by September 2008," Mr. Strange considered Mr. Williams to be his attorney. Respondent points out that Mr. Strange testified that he considered Mr. Williams to be his attorney at some point in the summer of 2008. Resp. Br. at 12. That is true; however, Mr. Strange specifically stated that he held that belief in the "late summer," and no later than the date of a letter he sent Mr. Williams in September 2008. Tr. 314-15. That testimony supports the Hearing Committee's finding.

[5] Although the details of this meeting may not have been accurately described by Antonio during his testimony, the finding that the visit took place is supported by substantial evidence, including testimony from Antonio and Mamie Strange, as well as Respondent's check log, which reflects that the retainer check was deposited the next day.

Respondent visited the courthouse in May or June 2008 to check on the status of Mr. Strange's case, but took no further action on behalf of Mr. Strange. Mr. Strange tried to make collect calls to Respondent in the summer and fall of 2008, but the calls were not accepted.[6] Mr. Strange was not able to reach Respondent until October 2008, when he paid for a phone call. Again, as with many of the factual claims and factual findings, the parties and the witnesses dispute whether Mr. Strange and Respondent actually spoke in the summer of 2008. *See* Respondent's Brief to the Board ("Resp. Br.") at 5-9 (taking exception to Findings of Fact 101-04). Respondent testified that he called Mr. Strange at the prison in the summer of 2008. Mr. Strange testified that there was no such call. A telephone log book of incoming phone calls from attorneys to inmates maintained by witness Tanya Keys, a correctional counselor at the prison, does not contain a record of any call from or on behalf of Respondent. Although Respondent offers a possible explanation for that, his own letter to Disciplinary Counsel about his contact with Mr. Strange (RX 1) does not mention any such telephone call. The Hearing Committee credited Mr. Strange and Ms. Keys, and the Board adopts its finding that no such call occurred. Like the Hearing Committee, we decline to find that Respondent gave intentionally false testimony; his testimony was consistent with handwritten notes contained in his file, indicating that Ms. Berk called Ms. Keys three times to set up a phone call,

[6] Respondent's office assistant, Susan Berk, testified that she typically did not accept collect calls from prisoners if Respondent was not in the office; however, there is no evidence as to whether Respondent was in the office when Mr. Strange attempted to call.

and Ms. Keys' vacation may explain the absence of an entry in her log book. *See* Lattimer I Findings of Fact ("FF") 101-04. Clear and convincing evidence that there was no call between Respondent and Mr. Strange is not clear and convincing evidence that Respondent lied – that is, that he made an intentional misrepresentation – when he said that call took place.

Mr. Strange's trial counsel told Ms. Byrd (Mr. Strange's sister) that Respondent never contacted that counsel to obtain materials that she had compiled about Mr. Strange's case. Mr. Williams, as appointed appellate counsel, told Ms. Byrd that he had the trial transcript, and that he would send it to Respondent if Respondent entered an appearance in the case. Because of the apparent lack of engagement by Respondent on the case, the Strange family determined that Respondent was not working on the case and stopped making installment payments. By September 2008, Mr. Strange regarded Mr. Williams as his lawyer. Mr. Williams even cleared a brief with Mr. Strange and then filed it on December 10, 2008. The Strange family did not seek a retainer refund ($4,500) and did not get one from Respondent. Respondent effectively provided no value to the Strange family, notwithstanding his collection and retention of $4,500 from them.

2. Toby Cooper case, Bar Docket No. 2010-D401[7]

Toby Cooper alleges that in February 2009 she was a victim of racial discrimination when police in Leesburg, Virginia, accused her and her mother of

[7] With respect to the Cooper matter, Respondent again takes exception to a number of the Lattimer I Hearing Committee's Findings of Fact. *See* Resp. Br. at 20-29. For those findings that

trespassing at a country club where Ms. Cooper was a member. She filed a *pro se* lawsuit in state court, but on December 4, 2009, voluntarily withdrew it without prejudice with the understanding that it could be refiled within six months. On June 1, 2010, Ms. Cooper spoke with Respondent by telephone. Although she had not yet formally retained him, she believed that he would file a lawsuit in Virginia before June 4, 2010.

On June 7, 2010, Ms. Cooper and Respondent spoke again, and Ms. Cooper became angry to learn that Respondent had not refiled her case; Respondent explained that he intended to file in the U.S. District Court for the Eastern District of Virginia. They discussed a retainer of $5,500, with Respondent getting a percentage of any recovery in excess of the amount of the retainer. On June 18, 2010, Ms. Cooper and Respondent met in the District of Columbia, and Ms. Cooper signed the retainer agreement (with the terms discussed above) and paid in full.

After paying Respondent, Ms. Cooper had trouble contacting him. On July 28, 2010, Respondent emailed her after hearing from a colleague about Ms. Cooper's

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relate to the Hearing Committee's reliance on certain evidence where contrary evidence may have existed in the record (FF 137-38, 139-140, 147-48, and 166), we defer to the Hearing Committee's findings, which are supported by substantial evidence. For those findings that Respondent alleges are irrelevant and immaterial (FF 167-172), we see no reason to set aside the Hearing Committee's accurate findings. For other findings (FF 139-140, 141, 144-45, 147-48 152-53, and 154-161), Respondent takes exception to the Committee's omission of certain details; however, we do not find these details material to the legal issues presented in this case and likewise defer to the Hearing Committee's findings. Finally, Respondent takes issue with FF 150, which states that Respondent told Ms. Cooper that the Eastern District of Virginia was a "Rocket Docket," and that she would need to gather all necessary background information before filing her complaint. Respondent contends that the "Rocket Docket" reference had nothing to do with Ms. Cooper because it refers to the way that the docket is handled once the case has been filed. Resp. Br. at 26. We do not see these facts as irreconcilable and decline to disturb the Committee's finding.

allegedly unsuccessful efforts to contact him. Thereafter, Respondent did not respond to Ms. Cooper's additional efforts to contact him (July 30 and August 19 emails, and a September 3 telephone call). On September 22, 2010, Ms. Cooper discharged Respondent and requested a refund of her retainer. Respondent responded to that email, saying that he worked on her case and that he was entitled to part of the retainer. He returned her file, but not the retainer.

The statute of limitations on Ms. Cooper's case was due to expire in February 2011. She claims that she could not hire another lawyer as she had no money after paying Respondent and her mother's medical expenses. However, the evidence does not prove that Respondent's retention of Ms. Cooper's money is the reason that she did not hire another lawyer. On November 3, 2010, Ms. Cooper filed for arbitration with the Attorney/Client Arbitration Board (ACAB). Ms. Cooper prevailed on July 21, 2011, and was awarded a full refund of $5,500. After Respondent failed to pay, on September 20, 2011, Ms. Cooper requested that the D.C. Superior Court confirm the arbitration award. In February 2012, she applied to the D.C. Bar Clients' Security Fund for payment. On November 3, 2012, Respondent sued Ms. Cooper for $2,000,000 for defamation relating to her complaints to the ACAB and the D.C. Bar's Clients' Security Fund. For reasons that remain in dispute – either because of Respondent's independent research or because of a warning from Disciplinary Counsel – Respondent withdrew his lawsuit on November 30, 2012. On April 9, 2013, the Superior Court confirmed the arbitration award and later denied Respondent's motion to alter or amend it.

B. Lattimer II[8]

Respondent represented Ms. Denise Wilkins in a wrongful death action arising out of the February 27, 2010 murder of Ms. Wilkins' son, Justin Davis, by another inmate while both were in custody at Virginia's Central State Hospital. Mr. Davis was in custody to receive court-ordered treatment after he was found incompetent to stand trial for simple assault. He was murdered by patient George Phillips, who was in custody on capital murder charges. Senior medical staff at the hospital were aware of animosity between the two men, and were assigned, as a regular matter, to observe the patients' rooms and monitor their hallway – an observation that was to happen by a Forensic Mental Health Technician assigned to sit in a "yellow chair" in the hallway. The investigative report issued after the

[8] Respondent takes exception to a number of Hearing Committee II's Findings of Fact. *See* Resp. Br. at 40-42. First, Respondent objects to the Hearing Committee's reliance on certain evidence over contrary evidence (FF 11), but we have considered the record and conclude that this finding was supported by substantial evidence. Second, Respondent takes issue with the finding that Respondent did not attempt to learn the identity of others charged with Mr. Davis's care (FF 47), arguing that DX 3G – information on a team meeting about Mr. Davis and Mr. Phillips – identified all three members of Mr. Davis's treatment team, and that Respondent had that document in his possession in November 2011. However, the exhibit he cites specifically notes that "there were others" who attended the treatment-team meeting; thus, he could not have reasonably relied on that document in order to conclude that he did not need to learn the identity of others charged with Mr. Davis's care. Third, Respondent takes issue with the finding that Respondent made a "misstatement as to when the complaint was filed" (FF 78), contending that he correctly indicated that the complaint was filed on February 27, 2012. However, as FF 77 makes clear, the finding of a "misstatement" referred to Respondent's erroneous statement that he filed the complaint 23 months after Mr. Davis's death, when it fact he did so 24 months after. Finally, Respondent takes issue with the finding that Disciplinary Counsel's expert witness, Jeffrey Fogel, Esquire, "faulted" Respondent's preparation and theory of the case (FF 79), when he testified as to what he did not find in the file and explained that Respondent would have had a difficult time getting attorney's fees without time records. We find that the Hearing Committee properly characterized Mr. Fogel's testimony as a whole as reflecting negatively on Respondent, especially in the context of his ultimate conclusion that Respondent did not provide competent representation.

murder reflects that hospital staff failed in its duties to monitor the hallway, providing an opportunity for the murder to occur.

Prior to retaining Respondent, Ms. Wilkins had discharged several lawyers, including Donald Marcari, Esquire in September 2011. The retainer agreement with Ms. Wilkins was signed in October 2011, specifying that the client was retaining both Respondent and S.H. Woodson, III, Esquire.

Respondent obtained Ms. Wilkins' file in October 2011, but never discussed the case with Mr. Marcari. The file reflected that Mr. Marcari believed that Ms. Wilkins could recover $100,000 under the Virginia Tort Claims Act, plus punitive damages for gross negligence, perhaps totaling $500,000.

Respondent did not meet with Ms. Wilkins until December 2011, although he had spoken to and exchanged emails with her. Complicating this case is the fact that Ms. Wilkins made clear to Respondent that a $100,000 award would not be satisfactory, and that she wanted $7 million in damages and publicity for the wrongful death of her son.

On February 27, 2012, shortly before the expiration of the statute of limitations, Mr. Woodson filed in the U.S. District Court for the Eastern District of Virginia a complaint prepared by Respondent, naming the hospital, its then-Director Vicki Montgomery, and unidentified employees, and alleging claims under the Virginia Wrongful Death Act, gross negligence, and Constitutional violations under 42 U.S.C. § 1983 for cruel and unusual punishment. Respondent did not sue the hospital charge nurse or the Forensic Mental Health Technician who was assigned

to monitor the hallway because he believed that they were not aware of any threat to Mr. Davis and that they would not be able to satisfy a judgment; however, Respondent made no attempt to identify these persons to determine what they knew. He also did not attempt to take pre-filing discovery, instead relying solely on internet research, which led him to conclude that Ms. Montgomery ran the hospital as Assistant Director of Clinical Administration at the time of Mr. Davis's murder and sometimes held Acting Director positions. (Dr. Charles Davis was Director at time of the murder.) Respondent did not discuss the complaint with his client prior to its filing.

On March 21, 2012, the defendant hospital, as an institution of the Commonwealth of Virginia, and Ms. Montgomery in her official capacity, moved to dismiss based on grounds of sovereign immunity in federal court and because the allegations of gross negligence were not supported by fact. On April 4, 2012, Respondent filed an amended complaint dropping the hospital as a defendant and adding facts allegedly demonstrating gross negligence. On May 4, Ms. Montgomery moved for summary judgment, a motion that the court held in abeyance, ordering the defendants to produce documents regarding Ms. Montgomery's position and responsibilities.

On August 14, 2012, the court granted Respondent's request to take discovery. In response, the Virginia Attorney General's Office provided an unredacted hospital report of the murder of Mr. Davis, including a list of employees interviewed. Respondent did not seek to interview or depose any of these

employees, or to amend the complaint to name defendants that were previously unnamed. Also, when Respondent's identified expert could not provide the necessary testimony, Respondent sought an extension to identify an expert, ultimately designating a new expert who provided a one-sentence summary opinion on behalf of the plaintiff.

On December 13, 2012, Ms. Montgomery renewed her summary judgment motion, and later moved to exclude the expert report as late. The court excluded the expert as being untimely designated, and in April 2013 granted summary judgment, finding that Ms. Montgomery did not have supervisory duties at the time of Mr. Davis's death. Of great significance, the court noted that Respondent should have sued the technician who was supposed to sit in the yellow chair, as he "would have had a slam dunk." Respondent unsuccessfully argued that exclusion of the expert would be catastrophic and that Dr. Davis, the former hospital supervisor, could still be sued because he worked at the hospital and had notice of Ms. Wilkins' complaint. Respondent unsuccessfully appealed to the U.S. Court of Appeals for the Fourth Circuit, arguing that Dr. Davis had an office at the hospital and erroneously telling the court that Respondent filed his complaint twenty-three months after Ms. Wilkins' son's death. The court noted that the record on appeal contained no proof that Dr. Davis maintained an office at the hospital, and it noted that Respondent filed the complaint on the last day of the 24-month statutory period, not a month earlier. Although Respondent corrected the latter error, the court referred the matter to

Disciplinary Counsel based on its perceptions of Respondent's handling of the case and lack of candor to the court.

In these disciplinary proceedings, Disciplinary Counsel's expert witness, Jeffrey Fogel, Esquire,[9] testified regarding Respondent's inadequate investigation of Ms. Wilkins' claims, his failure to sue the hospital in state court, his failure to sue hospital employees for willful indifference to the victim's safety, his error in suing Ms. Montgomery, and his failure to take discovery expeditiously. Respondent counters that this would not have satisfied his client, and that suing in a Virginia county where hospital employees were residents would not be a good tactic for two African-American lawyers from the District of Columbia.

For the reasons stated below, the Board finds that the evidence clearly and convincingly establishes the charged violation of Rule 1.4(a) in Lattimer I, and the charged violations of Virginia Rules 1.1, 1.3(a), and 8.4(c) in Lattimer II.

III. CONCLUSIONS OF LAW

A. Lattimer I

The Board agrees with Hearing Committee I's conclusion that Disciplinary Counsel proved that Respondent violated Rule 1.4(a) in the Strange and Cooper matters.

[9] Respondent unsuccessfully objected to Mr. Fogel's expert qualifications. The Board agrees with the hearing committee's acceptance of Mr. Fogel, a lawyer with experience in handling tort cases involving Constitutional violations.

Rule 1.4(a) provides, "A lawyer shall keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information." "The guiding principle" for determining whether a violation has been established "is whether the lawyer fulfilled the client's 'reasonable . . . expectations for information.'" *In re Schoeneman*, 777 A.2d 259, 264 (D.C. 2001) (citations omitted). "To meet that expectation, a lawyer not only must respond to client inquiries but also must initiate communications to provide information when needed." *In re Hallmark*, 831 A.2d 366, 374 (D.C. 2003). "Lawyers have an obligation not only to reasonably communicate with their clients about pending matters but also to let them know if they cannot or will no longer continue to pursue their cases." *Id.* at 373.

Hearing Committee I found that Disciplinary Counsel met its burden of proving a Rule 1.4(a) violation in the Strange case with regard to both the adequacy of communications with Mamie Strange about the terms of the retainer agreement and generally with Mr. Strange for several months after being retained. However, the Hearing Committee found that Disciplinary Counsel did not prove that Respondent failed to discuss the substance of the case with Mr. Strange prior to being retained or that he failed to communicate with Mr. Strange's family (as opposed to Mr. Strange himself) after being retained, as there was no proof that the client authorized Respondent to speak with his family. In the Cooper case, the Hearing Committee found that Disciplinary Counsel met its burden of proving a Rule 1.4(a) violation because Respondent failed to communicate the terms of the

retainer agreement to Ms. Cooper, and failed to keep Ms. Cooper informed about the status of her case or respond to requests for information after she signed the retainer agreement.

In both the Strange and Cooper matters, the Board adopts in part Hearing Committee I's conclusions of law, finding that Respondent violated Rule 1.4(a) when he failed to communicate with and respond to requests for information from Mr. Strange and Ms. Cooper after the commencement of the representations.

Respondent takes exception, on due process grounds,[10] to the Hearing Committee's finding that he also violated Rule 1.4(a) by failing to explain (1) to Mamie Strange (Mr. Strange's mother), either orally or in the retainer agreement, that he would not enter an appearance in the case until he was paid in full, or (2) to Ms. Cooper that the fee was non-refundable. *See In re Day*, 717 A.2d 883, 886 (D.C. 1998) ("An attorney has a right to procedural due process in a disciplinary procedure." (citing *In re Ruffalo*, 390 U.S. 544, 550 (1968))).

We agree with Respondent that the Specification of Charges did not give him sufficient notice because it did not allege that Respondent failed to communicate with Mamie Strange, or that he failed to communicate with Ms. Cooper that he would be treating the fee as non-refundable. *See* Lattimer I Specification, ¶¶ 4, 6, 36. However, Respondent does not identify any prejudice he suffered as a result of

[10] While Respondent did not raise this specific argument before the Hearing Committee, in the absence of clear guidance from the Court regarding waiver, we will address Respondent's argument on the merits. *See generally In re Malyszek*, Board Docket Nos. 13-BD-102 & 14-BD-098, at 5-6 (BPR June 16, 2017), *pending review on exceptions filed by respondent*, D.C. App. No. 17-BG-663.

the additional bases for the Rule 1.4(a) violation, and we can identify none. Thus, we decline to find a due process violation. *See In re Fay*, 111 A.3d 1025, 1031 (D.C. 2015) (per curiam) (noting that a due process challenge "must show that the Committee erred and that the error 'resulted in substantial prejudice'" (quoting *In re Thyden*, 877 A.2d 129, 140 (D.C. 2005))).

However, the failure to adequately explain a retainer agreement, while broadly related to the duty to communicate, is more specifically covered by Rules 1.4(b) ("A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.") and 1.5(b) ("When the lawyer has not regularly represented the client, the basis or rate of the fee, the scope of the lawyer's representation, and the expenses for which the client will be responsible shall be communicated to the client, in writing, before or within a reasonable time after commencing the representation."), which were not charged. *See, e.g.*, *In re Rodriguez-Quesada*, Board Docket No. 10-BD-126, at 7, 17 (BPR July 31, 2014) (finding that the respondent's failure to explain his retainer agreement or strategy violated Rule 1.4(b), while failure to *keep* the clients informed violated Rule 1.4(a)), *recommendation adopted in relevant part*, 122 A.3d 913, 916, 919 (D.C. 2015) (per curiam); *see also* D.C. Rules of Professional Conduct, Scope ¶ [5] ("In interpreting these Rules, the specific shall control the general in the sense that any rule that specifically addresses conduct shall control the disposition of matters and the outcome of such matters shall not turn upon the application of a more general rule that arguably also applies to the conduct in question."). The Hearing Committee

based its finding with respect to Ms. Cooper on Respondent's failure to provide disclosures to Ms. Cooper required under *In re Mance,* 980 A.2d 1196 (D.C. 2009), but the requirements of *Mance* relate to Rule 1.15, and the respondent in that case was not charged with a failure to communicate. Thus, we find that Respondent was not charged with violating rules relevant to his failure to explain the retainer to Ms. Strange or the nature of his fee to Ms. Cooper and decline to stretch the application of Rule 1.4(a) merely because it was the only Rule charged.

B. Lattimer II

The Board agrees with Hearing Committee II's ultimate conclusion that Disciplinary Counsel proved that Respondent violated Virginia Rules of Professional Conduct 1.1 (competence), 1.3(a) (reasonable diligence and promptness), and 8.4(c) (dishonesty), or alternatively, D.C. Rules 1.1 (competence), 1.3(a) (diligence and zeal), 1.3(c) (promptness), and 8.4(c) (dishonesty).[11] The Board further agrees that Disciplinary Counsel did not establish a violation of Virginia Rules 1.4(a) (failure to keep client reasonably informed) and 1.4(b) (failure to explain a matter to the extent reasonably necessary), and Disciplinary Counsel does not take exception to that. We adopt the Committee's report as to these charges and the related findings, but find that Disciplinary Counsel did not establish a violation of Virginia Rule 3.3(a) (knowingly making false statement of fact to a

[11] In essence, the alleged violations of the D.C. Rules track the violations of the Virginia Rules, except that under the Virginia Rules the obligations imposed under D.C. Rule 1.3(c) are included in Virginia's Rule 1.3(a).

tribunal) because it failed to prove that his false statement to the Fourth Circuit was made "knowingly."

As noted by Hearing Committee II, the Virginia Rules apply[12] in accordance with D.C. Rule 8.5, which provides that:

> a. A lawyer admitted to practice in this jurisdiction is subject to the disciplinary authority of this jurisdiction, regardless of where the lawyer's conduct occurs . . . .
>
> b. In any exercise of the disciplinary authority of this jurisdiction, the Rules of Professional Conduct to be applied shall be as follows:
>
> > 1) For conduct in connection with a matter pending before a tribunal, the rules to be applied shall be the rules of the jurisdiction in which the tribunal sits, unless the rules of the tribunal provide otherwise . . . .

This disciplinary matter arose in connection with a matter pending in the Eastern District of Virginia, where Respondent was admitted *pro hac vice*. *Cf. In re Gonzalez*, 773 A.2d 1026, 1029 (D.C. 2001). Local Civil Rule 83.1(I) of the U.S. District Court for the Eastern District of Virginia provides that lawyers appearing before that court shall adhere to the Virginia Rules of Professional Conduct. Accordingly and appropriately, Hearing Committee II examined the Virginia Rules and caselaw, except where it could not find relevant precedent, when it then looked to the decisions of the District of Columbia Court of Appeals applying analogous Rules.

[12] The Committee noted that the misconduct violated the corresponding D.C. Rules as well.

A major part of Respondent's defense is that he was restricted in his approach to litigation by Ms. Wilkins' goals of a large damage award and a trial to expose the death of her son. Indeed, Ms. Wilkins had specific demands, and a lawyer has discretion to determine the means by which a client's objectives may be pursued. *See* Rule 1.3, cmt. [1] ("[A] lawyer is not bound to press for every advantage that might be realized for a client."). Even when a tactical error leads to negative results, "a judgmental or tactical error of this kind, revealed by later events or hindsight, does not in and of itself establish a disciplinary rule violation." *In re Thorup*, 432 A.2d 1221, 1226 (D.C. 1981). "An attorney is under no obligation . . . to maintain a position which the attorney does not believe that he can honorably defend, even if that position is urged upon him by the client . . . . It is the duty of an attorney to 'counsel or maintain such actions . . . only as appear to him legal and just.' . . . The determination of whether a proposed suit is 'legal and just' must be made by the attorney who signs the pleadings . . . ." *Mills v. Cooter*, 647 A.2d 1118, 1121 (D.C. 1994). The same holds true in Virginia, where "[d]isciplining an attorney on the basis of incompetent representation under Rule 1.1 . . . involves attorney performance that extends significantly beyond mere attorney error." *Barrett v. Virginia State Bar*, 634 S.E.2d 341, 347 (Va. 2006).

1. Virginia Rules 1.1 and 1.3(a) / D.C. Rules 1.1, 1.3(a), and 1.3(c)

In considering Respondent's discretion under the aforementioned standard, Hearing Committee II found that Respondent's investigation of Ms. Wilkins' claims and the manner in which he pursued her case did not meet the requirements imposed

by Virginia Rules 1.1 or 1.3(a), or their counterpart D.C. Rules. Hearing Committee II found that Disciplinary Counsel did not prove that Respondent's decision not to sue the hospital under the Virginia Tort Claims Act, or to sue the charge nurse or technician under Section 1983 or for gross negligence under Virginia law, violated Virginia Rules 1.1 or 1.3(a) or their counterpart D.C. Rules.

Rule 1.1 requires lawyers to provide competent representation to a client and to serve the client with skill and care commensurate with that generally afforded to clients. Rule l.3(a) requires a lawyer to represent his or her client with reasonable diligence and promptness. The Board agrees with the Hearing Committee's determination that Respondent failed to investigate thoroughly Ms. Wilkins's case before he filed his complaint. Specifically, Respondent received materials from Mr. Marcari and conducted some internet research, but he did not seek an unredacted investigative report or otherwise try to identify witnesses, and he failed to engage an expert in a timely manner. His failure to do so violated both Rules.

2. Virginia and D.C. Rules 3.3(a) and 8.4(c)

Virginia Rule 3.3(a) provides that a lawyer shall not knowingly make a false statement of law or fact to a tribunal, and Virginia Rule 8.4(c) prohibits a lawyer from engaging in conduct involving dishonesty. The counterpart D.C. Rules provide the same.

Disciplinary Counsel charges Respondent with violations of the Virginia Rules in connection with his statement to the Fourth Circuit Court of Appeals, given in response to a question from the court, that he "believe[d]" that he filed the Ms.

Wilkins' Complaint twenty-three months after Mr. Davis's death, rather than on the last day of the limitations period. When the court pointed out that he had filed on the last day of the period, Respondent admitted his mistake and apologized. The Board agrees with Hearing Committee II that there is no evidence that this was anything more than a minor, immaterial mistake, not violative of the Virginia or D.C. Rules.

Disciplinary Counsel also charges that Respondent violated Virginia Rules 3.3(a) and 8.4(c) by arguing in his brief to the Fourth Circuit, dated July 15, 2013, that Dr. Davis, the director of the hospital at the time of Mr. Davis's murder, "still has an office and practices medicine at the hospital," and thus that he was still associated with the hospital in December 2012, when Respondent sought to add him as a defendant in the Second Amended Complaint. In making this argument, Respondent asserted as fact matters that were contradicted by the record on appeal. Specifically, Respondent had deposed Dr. Davis, who testified that he had no continuing relationship with the hospital after May 2010, and that is the only statement in the record relating to this affiliation. The Hearing Committee found that Respondent knew or should have known that his statement was contradicted by the record, making it at least recklessly false. *See In re Ukwu*, 926 A.2d 1106, 1113-14 (D.C. 2007) (finding that "reckless disregard of the truth" is sufficient to support a violation of Rule 8.4(c)). As found by Hearing Committee II, this constituted dishonesty in violation of Virginia Rule 8.4(c). However, the Hearing Committee's finding that Respondent "knew or should have known" the state of the record

regarding Dr. Davis's affiliation is not sufficient to support the conclusion that this statement also violated Virginia Rule 3.3(a) which prohibits false statements made "knowingly." As is the case in the D.C. Rules, the Virginia Rules define "knowingly" as "denot[ing] actual knowledge of the fact in question." *See* Virginia Rules, Terminology; *see also, In re Ukwu*, 926 A.2d 1106, 1141 (D.C. 2007) (appended Board Report) (concluding that the hearing committee found implicitly that misrepresentations to the court were "knowing" and "false"). The Hearing Committee's finding that Respondent "knew or should have known" the state of the record when he made the misrepresentation to the Fourth Circuit is not a clear finding of "actual knowledge." Thus, we disagree with the Hearing Committee and find no violation of Virginia Rule 3.3(a).

IV. SANCTION

In Lattimer I, Disciplinary Counsel sought a sanction of six months suspension, with reinstatement conditioned on a showing of fitness and payment of $4,500 in restitution to the Strange family.[13] Respondent argued that he should

[13] Disciplinary Counsel also sought a restitution payment to Ms. Cooper, but the Hearing Committee disagreed in part because Ms. Cooper obtained a judgment awarding her the same amount Disciplinary Counsel sought as restitution. Although the record does not contain direct evidence that Respondent has paid the ACAB award, Disciplinary Counsel has not taken exception to the Hearing Committee's recommendation and notes in its brief that Respondent refused to pay the 2011 arbitration award "for two and one-half years," which implies that he paid in or around January 2014, the time of the final court order confirming the award. Furthermore, during oral argument, Disciplinary Counsel noted that Ms. Cooper got "every nickel" of her money back thanks to the ACAB award.

receive, at most, an informal admonition. In the end, Hearing Committee I recommended a public censure.

In Lattimer II, Disciplinary Counsel sought a 90-day suspension, with reinstatement conditioned on a showing of fitness to practice. Hearing Committee II settled on a recommended 45-day suspension with no fitness requirement.[14]

As Lattimer I and Lattimer II are now combined before the Board and Court, we must consider the findings in aggregate and recommend a sanction in accordance with the totality of the proven wrongdoing, as "[i]f all of the matters [underlying separate attorney discipline cases] were before the Board simultaneously." *In re Scott*, 19 A.3d 774, 782 (D.C. 2011) (quoting *In re Thompson*, 492 A.2d 866, 867 (D.C. 1985)). "[W]hen considered in combination, instances of misconduct charged in separate matters may 'justify a lengthy period of suspension,' even though when '[c]onsidered individually, and in isolation, these instances of misconduct might be deemed less serious' than the lengthy suspension indicates." *Id.* (quoting *In re Ditton*, 980 A.2d 1170, 1173 (D.C. 2009)).

In the combined case, Disciplinary Counsel seeks a 90-day suspension, a showing of fitness, and the payment of restitution. Respondent argues that, at most, he should receive an informal admonition. For the reasons stated herein, the Board recommends that Respondent be suspended for 60 days, with the requirement that

[14] Although Lattimer II involved a violation of the Virginia Rules, Disciplinary Counsel argues that the sanctions imposed under the D.C. Rules should apply. Respondent does not contest that, and the Board agrees. *See, e.g.*, *In re Ponds*, 888 A.2d 234, 245 (D.C. 2005) (applying D.C. sanctions for violations of Maryland rules).

that Respondent pay restitution to Mamie Strange (on behalf of the Strange family). The Board declines to impose a showing of fitness, although we recommend that restitution be paid before reinstatement is permitted.

Disciplinary Counsel argues that a severe sanction is warranted because Respondent repeatedly took advantage of vulnerable clients by requiring that they pay him substantial advance fees, and then failed to communicate with those clients or work on their cases. Disciplinary Counsel further asserts that Respondent retaliated against Ms. Cooper by refusing to satisfy the ACAB fee award in her favor, forcing her to apply to the Client Security Fund for reimbursement, and by filing a $2 million lawsuit against her for allegedly making defamatory statements during the ACAB arbitration and in connection with disciplinary proceedings. Disciplinary Counsel further argues that Respondent testified falsely at the hearing by claiming that he arranged a conference call with Mr. Strange while the client was in prison. The Hearing Committee did not credit Respondent's testimony on that point, but did not find that he testified falsely.

Respondent disputes Disciplinary Counsel's characterization of his conduct, and asserts that he did not deliberately withhold information from his clients. He notes that he voluntarily dismissed his lawsuit against Ms. Cooper after researching the defamation issue and discovering that statements made in ACAB proceedings are privileged. Respondent also denies Disciplinary Counsel's allegation that he lied at the hearing with respect to the Strange case.

Discipline is not intended to punish a lawyer, but to serve to maintain the integrity of the legal profession, protect the public and the courts, and deter future or similar misconduct, including by other lawyers. *See In re Martin*, 67 A.3d 1032, 1053 (D.C. 2013) (citing *In re Scanio*, 919 A.2d 1137, 1144 (D.C. 2007)); *In re Hutchinson*, 534 A.2d 919, 924 (D.C. 1987) (en banc); *In re Reback*, 513 A.2d 226, 231 (D.C. 1986) (en banc). The sanction imposed must also be consistent with cases involving comparable misconduct. *See* D.C. Bar R. XI, § 9(h)(1); *In re Elgin*, 918 A.2d 362, 373 (D.C. 2007); *In re Berryman*, 764 A.2d 760, 766 (D.C. 2000). The determination of a disciplinary sanction takes into account: (1) the seriousness of the conduct; (2) prejudice to the client; (3) whether the conduct involved dishonesty; (4) the presence or absence of violations of other provisions of the disciplinary rules; (5) previous disciplinary history; (6) whether or not the attorney acknowledged his or her wrongful conduct; and (7) circumstances in mitigation of the misconduct. *See In re Vohra*, 68 A.3d 766, 784 (D.C. 2013) (appended Board Report) (citing *Hutchinson*, 534 A.2d at 924); *Martin*, 67 A.3d at 1053; *Elgin*, 918 A.2d at 376.

A. Seriousness of the Misconduct

Respondent violated Rule 1.4(a) with respect to two clients, Ms. Cooper and Mr. Strange. Such conduct alone would not warrant a period of suspension, and Disciplinary Counsel cites no cases in which a suspension was imposed for a violation of Rule 1.4(a). But here, Respondent also failed to competently prosecute Ms. Wilkins' case, and made a recklessly false statement to the Fourth Circuit. Hearing Committee II notes that Ms. Wilkins' case was made more challenging

because of her desire to recover large damages and achieve publicity. But still, Respondent failed to pursue his theory of the case with vigor and diligence, lapses that resulted in summary judgment against his client, depriving Ms. Wilkins of a trial.

B. Prejudice to the Clients

Ms. Wilkins was prejudiced by Respondent's action, losing her chances to recover damages for the death of her son. However, as Hearing Committee II noted, Ms. Wilkins wanted more from a lawsuit than is typically recoverable in a tort or a Section 1983 case. She wanted to demonstrate Virginia's failure to address adequately mental health needs and the hospital's failure to protect her son. Because these demands made the case difficult, the committee found that they mitigated the prejudice in this case. The Board agrees.

C. Whether the Conduct Involved Dishonesty and/or Misrepresentation

In Lattimer I, Respondent testified that he made telephone calls to Mr. Strange while Mr. Strange was in prison, and that testimony was rejected. However, Hearing Committee I declined to find that he gave intentionally false testimony, and we agree. *See* page 7, *supra*. In Lattimer II, Respondent's statements to the Fourth Circuit Court of Appeals misrepresented the record. However, we find that there may have been a basis for Respondent to subjectively believe that the statement he made was true, despite the record, and thus do not consider that instance of dishonesty to be a serious aggravating factor.

D. Violation of Other Disciplinary Rules

Respondent violated a number of D.C. and Virginia Rules of Professional Conduct, affecting multiple clients. There were separate violations of D.C. Rule 1.4(a) in both the Strange and Cooper cases, and multiple violations of Virginia Rules in the Wilkins case.

E. Prior Discipline

In 2006, Respondent was issued an informal admonition for conduct that took place in 2003 involving his failure to properly distribute the proceeds of a settlement, in violation of Rules 1.1(a) (competent representation), 1.1(b) (skill and care), 1.5(e) (failure to advise client in writing of division of fees and responsibilities of co-counsel), and 1.15(a) and (b) (failure to promptly deposit a settlement check in escrow and properly disburse client funds). Respondent has no other disciplinary infractions before Lattimer I. That is Respondent's only disciplinary action in more than 33 years of practice.

F. Acknowledgement of the Wrongful Conduct

Respondent contends that he did not fail to keep Ms. Cooper and Mr. Strange informed about their cases. At the time that he defended himself in connection with the Wilkins case, he was also a defendant in a malpractice case brought by Ms.

Wilkins. However, before the Board – after the malpractice suit was non-suited – he continues to argue that he did nothing wrong.[15]

G. Other Circumstances in Aggravation and Mitigation

As noted above, the Board does not consider uncharged conduct that was excluded pursuant to Board Rule 6.4 in Lattimer I. But Respondent's retaliation against Ms. Cooper by filing a meritless defamation lawsuit one month after she testified against him in disciplinary proceedings, failing to pay the arbitration award in a timely manner, and forcing her to apply to the Client Security Fund for reimbursement, all occurred after the time of the proposed informal admonition. Hearing Committee I found, and we agree, that Respondent's frivolous lawsuit against Ms. Cooper is "particularly disturbing" – a significant aggravating factor that makes Lattimer I stand apart from those Rule 1.4 cases in which no suspension was imposed. *See In re Baber*, 106 A.3d 1072, 1077 (D.C. 2015) (per curiam) (respondent's frivolous lawsuit against former client was considered an aggravating factor; the Court noted that the attorney's misconduct was "particularly disturbing" where "it came at the expense of his client's interests" and involved knowingly false accusations against the client).[16]

Disciplinary Counsel cites a number of cases in support of its request that Respondent be suspended. The Hearing Committee in Lattimer II found on point *In*

[15] Respondent did acknowledge at oral argument that he should have been more proactive about contacting Mr. Strange and that he should have recognized at the outset that Ms. Cooper was a difficult client.

[16] There is no evidence that Respondent made false accusations against Ms. Cooper.

re Fox, 35 A.3d 441 (D.C. 2012) (per curiam), in which the Court suspended that respondent for 45 days for violations of Rules 1.1(a) and (b), 1.3(a) and (c), and 1.4(a) and (b), by not filing a complaint within the statute of limitations and failing to contact key witnesses. That sanction was mitigated by respondent's 24 years of practice with one informal admonition. Other relevant cases involving Rule 1.1 and 1.3 violations are *In re Bah*, 999 A.2d 21 (D.C. 2010) (per curiam) (30-day suspension, stayed for one year of probation plus CLE, for failure to file a competent application to the Board of Immigration Appeals and to advise the client in a timely manner); *In re Cole*, 967 A.2d 1264 (D.C. 2009) (30-day suspension for not filing a correct immigration application and falsely telling client that he had); and *In re Chapman*, 962 A.2d 922 (D.C. 2009) (per curiam) (60-day suspension with 30 days stayed in favor of probation for failing to conduct discovery, resulting in dismissal of the case). Respondent's violation of Rule 8.4(c) is more serious, but did not truly result in the Fourth Circuit being misled, and the misconduct occurred in a single case. *See, e.g.*, *In re Uchendu*, 812 A.2d 933 (D.C. 2002) (30-day suspension with six-hour CLE course for submitting to Probate Division purportedly verified documents that respondent had signed with clients' names and had improperly notarized); *In re Rosen*, 481 A.2d 451 (D.C. 1984) (30-day suspension for misrepresentations in papers filed with the Court on three separate occasions). The Board, in light of the totality of misconduct in Lattimer I and II, recommends a 60-day suspension.

H. Fitness Requirement

"[T]o 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." *In re Cater*, 887 A.2d 1, 6 (D.C. 2005). Proof of a "serious doubt" requires "real skepticism, not just a lack of certainty," that a lawyer will not engage in similar conduct in the future. *In re Guberman*, 978 A.2d 200, 213 (D.C. 2009) (quoting *Cater*, 887 A.2d at 24).

> 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.

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.

Disciplinary Counsel contends that a fitness requirement is appropriate, but does not address Respondent's present character or competence to practice law.

Respondent has practiced law for more than thirty-three years, twenty-four of which as a solo practitioner. Although we are concerned about Respondent's failure to acknowledge wrongdoing, Disciplinary Counsel has not demonstrated on clear and convincing evidence a serious doubt about Respondent's continuing fitness to practice after a fixed period of suspension.

I. Restitution

Disciplinary Counsel contends that Respondent should pay $4,500 to the Strange family, but the hearing committee in Lattimer I found that Disciplinary Counsel cited no authority for the proposition that restitution may be ordered for failure to communicate under Rule 1.4(a). The Board agrees with Disciplinary Counsel. "D.C. Bar R. XI, § 3(b) empowers . . . the Board on Professional Responsibility to 'require an attorney to make restitution . . . to persons financially injured by the attorney's conduct . . . as a condition of probation or of reinstatement." *In re Robertson*, 612 A.2d 1236, 1239 (D.C. 1992). Mamie Strange paid Respondent, but Respondent in turn contributed nothing of value to Mr. Strange, who believed that Respondent had abandoned his case. Although, pursuant to Board Rule 6.4, we do not consider other instances of uncharged misconduct not included in the Informal Admonition offered in Lattimer I that may have strengthened the

case for restitution, we find that Respondent's failure to communicate alone sufficiently deprived Mr. Strange of any value of the representation to warrant restitution. Accordingly, the Board recommends that, as a condition of reinstatement, Respondent pay restitution to Mamie Strange in the amount of $4,500, plus interest at the statutory rate.

V. CONCLUSION

The Board concurs with the Hearing Committees' proposed findings of fact and conclusions of law, except as noted. The Board finds that Respondent violated D.C. Rule 1.4(a) with respect to Mr. Strange and Ms. Cooper, and Virginia Rules 1.1, 1.3(a), and 8.4(c) with respect to Ms. Wilkins. The Board recommends that Respondent be suspended for 60 days, with the requirement that Respondent pay restitution to Mamie Strange in the amount of $4,500, plus statutory interest, and provide to Disciplinary Counsel proof of restitution prior to reinstatement.

BOARD ON PROFESSIONAL RESPONSIBILITY

By: _____
Jason E. Carter

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