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

In the Matter of:	:	
	:	
BRIGITTE L. ADAMS,	:	
	:	Board Docket No. 14-BD-031
Respondent.	:	Bar Docket No. 2010-D505,
	:	2011-D380, 2011-D378, 2011-D379,
A Member of the Bar of the	:	2011-D050, and 2012-D288
District of Columbia Court of Appeals	:	
(Bar Registration No. 426034)	:	

REPORT AND RECOMMENDATION OF THE AD HOC HEARING COMMITTEE

Bar Counsel filed a Specification of Charges alleging that Respondent, Brigitte L. Adams, violated several D.C. Rules of Professional Conduct and D.C. Bar R. XI, §§ 2(b)(3) and 2(b)(4), arising from her representation of five different clients under the Criminal Justice Act ("CJA") on appeal of their criminal convictions between 2006 and 2010, her unauthorized practice of law, and her failure to respond to Bar Counsel's inquiries in the course of its investigation. Bar Counsel recommends that Respondent be suspended from the practice of law for six months and required to prove her fitness to practice as a condition of reinstatement. Respondent admits to nearly all of the factual allegations in the Specification of Charges, and to violating all the disciplinary rules charged, except for Rules 3.4(c) and 5.5(a). Respondent requests that the Hearing Committee recommend that she be "suspended for a period of time proportionate to her disciplinary violations," without a fitness requirement.

As set forth below, the Hearing Committee finds clear and convincing evidence to support all the violations charged by Bar Counsel except D.C. Bar R. XI, § 2(b)(4). A majority of the Hearing Committee concurs with Bar Counsel's recommendation that Respondent be suspended for six (6) months, with the requirement to prove her fitness to practice as a condition of

reinstatement. Mr. Kassoff dissents from the majority's recommendation of a six-month suspension, and recommends that Respondent be suspended for 18 months. The Hearing Committee unanimously recommends that Respondent should be required to prove her fitness to practice as a condition of reinstatement.

I. PROCEDURAL HISTORY

On March 10, 2014, Bar Counsel served Respondent with a Specification of Charges alleging that Respondent violated the following disciplinary rules in each of the five client matters (Counts I-V):

- Rules 1.1(a) and (b), by failing represent her clients competently, and with skill and care;
- Rules 1.3(a), (b)(1), and (c), by failing to diligently and zealously represent her clients, intentionally failing to seek the lawful objectives of her clients, and failing to act with reasonable promptness;
- Rule 1.4(a), by failing to keep her clients reasonably informed about the status of the matter and failing to promptly comply with reasonable requests for information;
- Rule 1.4(b), by failing to explain a matter to the extent reasonably necessary to permit her clients to make informed decisions regarding the representation;
- Rule 1.16(d), by failing to take timely steps to the extent reasonably practicable to protect her clients' interests, in connection with the termination of representation;
- Rule 3.4(c), by disobeying the rules of a tribunal;
- Rule 8.4(d), by engaging in conduct that seriously interferes with the administration of justice; and
- D.C. Bar R. XI, §§ 2(b)(3) and 2(b)(4), by failing to comply with orders of the Court and the Board and failing to respond to an inquiry from the Court or the Board in connection with a disciplinary proceeding.

The Specification of Charges further alleges in Count VI that Respondent violated Rule 5.5(a) by practicing law in a jurisdiction where doing so violates the regulation of the legal profession.

Respondent filed an answer on March 31, 2014, and a motion to dismiss the Rule 3.4(c) charge on August 4, 2014. Bar Counsel opposed the motion. The Hearing Committee deferred

action on the motion pursuant to Board Rule 7.16(a), until filing its Report and Recommendation. *See In re Ontell*, 593 A.2d 1038, 1040 (D.C. 1991) (providing that hearing committees are required to "defer rulings on substantive motions and to include recommendations on such motions in their reports to the Board."). For the reasons set forth below, we recommend that the Board deny Respondent's motion to dismiss. *See* Part IV.E, *infra* at 21.

A prehearing conference was held on June 10, 2014, before the Hearing Committee Chair, Rudolph F. Pierce, Esquire. The evidentiary hearing was held on August 27, 2014, before this Hearing Committee, which in addition to Mr. Pierce, included Hal Kassoff, the public member, and Elizabeth Denise Curtis, Esquire. Bar Counsel was represented by Deputy Bar Counsel Elizabeth A. Herman, Esquire. Respondent, who was present throughout the hearing, was represented by Bernard DiMuro, Esquire.

At the hearing, Bar Exhibits ("BX") A through D and 1 through 20, and Respondent's Exhibits ("RX") 1 through 4, were received into evidence. Tr. 22-25.[1] The parties filed joint stipulations of fact on August 4, 2014. Tr. 24.

During the hearing, Bar Counsel did not call any witnesses. Respondent presented the testimony of four witnesses in mitigation of sanction in order to establish "her emotional and mental condition while the underlying events occurred." Tr. 5. Respondent testified on her own behalf, Tr. 28, and called three additional witnesses: Nickie Irish, a senior counselor at the D.C. Bar Lawyer Assistance Program, Tr. 152, Stefan Lopatkiewicz, Respondent's former supervisor and mentor at a law firm where Respondent worked as a legal assistant, Tr. 178, and Dr. Ronald Kimball, who performed a psychological evaluation of Respondent. Tr. 218.

[1] "Tr." is used to designate the transcript of the August 27, 2014 hearing.

After the close of the hearing, the parties filed briefs in support of their respective positions, and Bar Counsel filed a reply brief.[2]

II. STANDARD OF REVIEW

Bar Counsel bears the burden of establishing by clear and convincing evidence the facts underlying Respondent's alleged violations of the Rules of Professional Conduct. *See In re Anderson*, 778 A.2d 330, 335 (D.C. 2001) ("*Anderson I*"); *see also In re Anderson*, 979 A.2d 1206, 1213 (D.C. 2009) (applying clear and convincing evidence standard to charge of misappropriation of funds) ("*Anderson II*"); Board Rule 11.6. As the Court has explained, "[t]his more stringent standard expresses a preference for the attorney's interests by allocating more of the risk of error to Bar Counsel, who bears the burden of proof." *In re Allen*, 27 A.3d 1178, 1184 (D.C. 2011) (citation and internal quotations omitted). Clear and convincing evidence is more than a preponderance of the evidence, it is "evidence that will produce in the mind of the trier of fact a firm belief or conviction as to the facts sought to be established." *In re Cater*, 887 A.2d 1, 24 (D.C. 2005) (citation omitted).

On the basis of the oral testimony, stipulations, and exhibits submitted during the hearing, we make the following findings of fact, each of which is supported by clear and convincing evidence.

[2] Bar Counsel's Proposed Findings of Fact, Conclusions of Law, and Recommendation as to Sanction is cited as "BC PFF." Respondent's Reply to Bar Counsel's Findings of Fact, Conclusions of Law and Recommendation as to Sanctions is cited as "Resp't PFF." Bar Counsel's Reply Brief is cited as "BC Reply."

III. FINDINGS OF FACT

A. Background

1. Respondent was admitted to the Bar of the District of Columbia Court of Appeals on December 19, 1990, and assigned Bar number 426034. Joint Stipulations of Fact ("Stip.") ¶ 1.

2. Prior to 2008, Respondent had sought to be placed on the District of Columbia Court of Appeals' ("the Court's") panel of attorneys willing to accept appointments to represent indigent criminal defendants in appellate matters under the CJA. Respondent was placed on the panel. Stip. ¶ 4.

3. During the time period in question, 2008 through 2012, the address Respondent provided as her primary address both to the D.C. Bar membership office and to the Court as her address of record, remained the same and accurately reflected the address where she lived and received mail. The address was 2800 Wisconsin Ave., N.W., Apartment 208, Washington, D.C. 20007. Stip. ¶ 2.

4. All notices sent by the Court to Respondent, which are discussed in Counts I-VI below, were sent to Respondent's correct address. All notices sent by Bar Counsel or subpoenas delivered by process servers discussed hereafter were sent to that same address, and none of the notices or letters were returned as "undeliverable." Stip. ¶ 3.

B. Findings Relating to Counts I-V

5. Respondent testified that she "had a standard letter that she would write to all her [CJA] clients," which "went through about two, three pages of introducing [her]self and explaining the appellate process in very simple terms." Tr. 47-48, 102. Except as otherwise explained below, this testimony did not refer to any specific clients; therefore, while we credit Respondent's testimony about her ordinary practice, we make no finding as to whether she sent introductory letters to each of her five CJA clients at issue in Counts I-V.

6. Respondent also testified that she did not "recall receiving any correspondence" from any of her clients, and that between ". . . some point in 2009 until August 2012," she did not open her mail, receive calls on her home telephone or review her answering machine. Tr. 111-12. Further, Respondent testified that if any of these clients wrote to her, or if the Court forwarded any client correspondence to her in 2009, she [Respondent] would not have seen them because she stopped opening her mail. Tr. 111. Respondent maintained this position, notwithstanding the fact that she somehow received notice of her appointment to represent Ali Lee [Count III] on January 6, 2010, and was aware of the need to seek extensions of time for filing briefs on several occasions after early 2009, and in fact filed such motions. *See* FF 15, 17, 26-28, 33, 46, 51. We find Respondent's testimony that she did not open her mail, receive calls, or review her answering machine between 2009-12 incredible and inconsistent with the record evidence. We also find that when Respondent filed motions to extend the time for filing an appellate brief, she had no intention of actually filing the brief at issue.

7. After Respondent was removed from each of the cases in Counts I-V, the Court ordered her to transmit her files in each case to successor counsel "forthwith." Stip. ¶¶ 18, 29, 39, 51, 58. Respondent did not transmit to successor counsel any of the documents pertaining to the appeals. *Rather, Respondent shredded the correspondence and transcripts, and placed the remainder of the files in the dumpster behind her apartment.* Tr. 99-102. As a consequence, successor counsel were required to seek leave to secure additional sets of transcripts, thus further extending the delay for the filing of briefs. Stip. ¶¶ 20, 40, 52, 59.

C. Findings Specific to Count I (Bar Docket No. 2010-D505)

8. On September 9, 2009, the Court appointed Respondent to represent Charles E. Jones on appeal of his criminal conviction. Respondent accepted this appointment. Stip. ¶ 5; Tr. 97.

9. On October 15, 2009, the Court received a letter from Mr. Jones stating that he had been unable to contact Respondent and requesting the Court's assistance. Stip. ¶ 6.

10. On November 12, 2009, the Court forwarded Mr. Jones's letter to Respondent. Stip. ¶ 7.

11. On December 17, 2009, the Court received a second letter from Mr. Jones stating that he had been unable to contact Respondent and requesting the Court's assistance. On December 1, 2009, the Court forwarded Mr. Jones's second letter to Respondent. Stip. ¶ 8.

12. On January 7, 2010, the Court received a third letter from Mr. Jones indicating that he had been unable to contact Respondent and requesting that the Court appoint him new counsel. On January 11, 2010, the Court forwarded Mr. Jones's third letter to Respondent. Stip. ¶ 9.

13. Irrespective of whether Respondent sent an introductory letter to Mr. Jones or otherwise communicated with him at the outset of the representation, after September 2009, Respondent did not communicate with Mr. Jones. Stip. ¶ 10.

14. On November 3, 2009, the Court ordered Respondent to file a brief within 40 days of the date of the Court's order. Respondent did not respond to this Court order. She did not file a motion to extend the time to file the brief, nor did she file the brief. Stip. ¶ 11.

15. On December 30, 2009, the Court ordered Respondent to file a brief within 40 days of the Court's order. On February 16, 2010, Respondent filed a motion to extend the time to file the brief for two weeks. On February 24, 2010, the Court granted the motion and ordered that the

brief be filed by March 2, 2010. Respondent did not file a brief by March 2, 2010, nor did she file a motion seeking additional time to do so. Stip. ¶ 12.

16. On March 30, 2010, the Court ordered Respondent to file the brief and a motion to late-file within 20 days. Respondent did not respond to this Court order. Stip. ¶ 13.

17. On May 11, 2010, the Court ordered Respondent to file the brief and a motion to late-file within 15 days of the Court's order. On May 26, 2010, Respondent filed a motion to extend the time to file the brief for 40 days on the ground that she had been ill for an extended period of time. On June 14, 2010, the Court granted Respondent's motion and ordered that the brief be filed on or before July 6, 2010. Stip. ¶ 14.

18. Respondent did not file the brief on or before July 6, 2010, nor did she file a motion for an extension of time to do so. Stip. ¶15.

19. On July 15, 2010, the Court ordered Respondent to file the brief and a motion to late-file within 20 days of the Court's order. Respondent did not respond to this Court order. Stip. ¶ 16.

20. On August 13, 2010, the Court ordered Respondent to file the brief and a motion to late-file within 15 days of the Court's order. Respondent did not respond to this Court order. Stip. ¶ 17.

21. On September 23, 2010, the Court vacated Respondent's appointment and appointed successor counsel. Stip. ¶ 18.

D. Findings Specific to Count II (Bar Docket No. 2011-D378)

22. On October 16, 2006, the Court appointed Respondent to represent Antonio Williams on the appeal of his criminal conviction. Respondent accepted the appointment. Stip.

¶ 21; Tr. 97. Irrespective of whether Respondent communicated with Mr. Williams at the outset of the representation, Respondent ceased communicating with him in early 2010. Stip. ¶ 31.

23. On September 23, 2008, the Court ordered Respondent to file the brief within 40 days of the date of the Court's order. On November 3, 2008, Respondent filed a motion to extend the time to file the brief to November 12, 2008. On November 6, 2008, the Court granted Respondent's motion and ordered that the brief be filed on or before November 12, 2008. Stip. ¶ 22.

24. On November 12, 2008, Respondent filed a motion to extend the time to file the brief for 30 days. On January 8, 2009, the Court held Respondent's motion in abeyance and ordered Respondent to provide the Court information as to the status of the trial transcript within 20 days of the date of the Court order. On February 23, 2009, Respondent filed a response to the Court's order, but without a motion to late-file. On March 11, 2009, Respondent filed a motion to late-file the response. Stip. ¶ 23.

25. On November 13, 2009, the Court ordered Respondent to file the brief within 40 days of the date of the Court's order. Respondent did not respond to this order. On January 6, 2010, the Court ordered Respondent to file the brief, accompanied by a motion to late-file, within 20 days of the Court's order. Stip. ¶ 24.

26. On January 7, 2010, Respondent filed a motion to extend the time to file the brief until February 16, 2010. On January 12, 2010, the Court granted Respondent's motion and ordered the brief filed by February 16, 2010. Stip. ¶ 25.

27. On February 16, 2010, Respondent filed a motion to extend the time to file the brief for 30 days. The Court granted the motion and ordered that the brief be filed on or before March 18, 2010. Respondent did not respond to this order. Stip. ¶ 26.

28. On March 30, 2010, the Court ordered Respondent to file the brief and a motion to late-file within 20 days. Respondent did not respond to this order. On May 11, 2010, the Court ordered Respondent to file the brief within 15 days. On May 26, 2010, Respondent filed a motion for an extension of time to file the brief for 40 days on the ground that she had been ill for an extended period of time. Stip. ¶ 27.

29. On June 2, 2010, the Court granted the motion and ordered Respondent to file the brief on or before July 6, 2010. Respondent did not respond to this order. On July 21, 2010, the Court ordered Respondent to file the brief within 20 days. Respondent did not respond to this order. On August 19, 2010, the Court ordered Respondent to file the brief within 15 days. Respondent did not respond to this order. Stip. ¶ 28.

30. On September 21, 2010, the Court vacated Respondent's appointment and appointed successor counsel. Stip. ¶ 29.

E. Findings Specific to Count III (Bar Docket No. 2011-D379)

31. On January 6, 2010, the Court appointed Respondent to represent Ali Lee on appeal of his criminal conviction. Respondent accepted the appointment. Stip. ¶ 32. Between her appointment and the date of her removal from the case (September 23, 2010), Respondent did not communicate with Mr. Lee. Stip. ¶ 41.

32. On March 11, 2010, the Court ordered Respondent to file a brief within 40 days of the Court's order. Respondent did not respond to this Court order. She did not file the brief, nor did she file a motion for an extension of time to do so. Stip. ¶ 33.

33. On May 6, 2010, the Court ordered Respondent to file the brief within 20 days, with a motion to late-file. On May 26, 2010, Respondent filed a motion to extend the time to file the brief for 40 days on the ground that she had been ill for an extended period of time. Stip. ¶ 34.

34. On June 14, 2010, the Court granted the motion and ordered Respondent to file the brief on or before July 6, 2010. Respondent did not respond to this order. Stip. ¶ 35.

35. On July 15, 2010, the Court ordered Respondent to file the brief, with a motion to late-file, within 20 days of the date of the Court order. Respondent did not respond to this order. Stip. ¶ 36.

36. On August 13, 2010, the Court ordered Respondent to file the brief within 15 days of the Court's order. Respondent did not respond to this order. Stip. ¶ 37.

37. On September 14, 2010, the Court ordered Respondent to file the brief, with a motion to late-file, within 10 days of the Court's order. Respondent did not respond to this order. Stip. ¶ 38.

38. On September 23, 2010, the Court vacated Respondent's appointment and appointed successor counsel. Stip. ¶ 39.

F. Findings Specific to Count IV (Bar Docket No. 2011-D380)

39. On January 6, 2009, the Court appointed Respondent to represent Louis Medley on appeal of his criminal conviction. Respondent was aware of this order of appointment. Stip. ¶ 42. Irrespective of whether Respondent communicated with Mr. Medley at the outset of the representation, she stopped communicating with him after early 2009. Stip. ¶ 53.

40. On January 30, 2009, February 27, 2009 and August 14, 2009, the Court received letters from Mr. Medley stating that he had not been able to communicate with Respondent. On August 20, 2009, the Court forwarded Mr. Medley's August 14, 2009 letter to Respondent. Stip. ¶ 43.

41. On February 3, 2010, Mr. Medley filed a motion to appoint new counsel to represent him because Respondent had failed to communicate with him. On February 18, 2010,

the Court sent Mr. Medley's motion to Respondent and ordered her to respond to the motion within 20 days. Respondent failed to respond to the motion or to the Court's order. Stip. ¶ 44.

42. On April 19, 2010, the Court received another letter from Mr. Medley, which the Court forwarded to Respondent on April 23, 2010. Stip. ¶ 45. Respondent testified that she does not remember "receiving any correspondence" from Mr. Medley. Tr. 111. We do not consider this testimony relevant, because Respondent also testified that she was not opening her mail during this period of time. Respondent may well have received this letter, but failed to open it.

43. On May 28, 2010, the Court received a *pro se* mandamus petition from Mr. Medley based upon Respondent's failure to communicate with him. On June 1, 2010, the Court forwarded a copy of this mandamus petition to Respondent. Stip. ¶ 46.

44. On February 24, 2010, the Court ordered Respondent to file a brief within 40 days of the Court's order. Respondent did not respond to the Court's order. On April 13, 2010, the Court ordered Respondent to file the brief within 20 days of the Court's order, accompanied by a motion to late-file. Respondent did not respond to the Court's order. Stip. ¶ 47.

45. On May 12, 2010, the Court ordered Respondent to file a brief, accompanied by a motion to late-file, within 15 days of the Court's order. Stip. ¶ 48.

46. On May 26, 2010, Respondent filed a motion to extend the date to file the brief for 40 days on the ground that she had been ill for an extended period of time. On June 2, 2010, the Court granted Respondent's motion for an extension of time and ordered Respondent to file the brief on or before July 6, 2010. Respondent did not respond to this order. Stip. ¶ 49.

47. On August 12, 2010, the Court ordered Respondent to file the brief, accompanied by a motion to late-file, within 20 days of the order. Respondent did not respond to this Court

order. On September 14, 2010, the Court ordered Respondent to file the brief within 15 days of the date of the Court's order. Respondent did not respond to this order. Stip. ¶ 50.

48. On September 21, 2010, the Court vacated Respondent's appointment and appointed successor counsel. Stip. ¶ 51.

G. Findings Specific to Count V (Bar Docket No. 2011-D050)

49. On April 24, 2008, Respondent was appointed to represent Brian Gilliam on appeal of his criminal conviction. Respondent was aware of this order of appointment. Stip. ¶ 54. Respondent had several telephone conversations with Mr. Gillian following her appointment on April 24, 2008. Tr. 63-65. Mr. Gillian unnerved Respondent by his frequent unscheduled telephone calls (and their subject matter) to her apartment. Tr. 65. After ordering the transcripts in his case, Respondent concluded "I could not handle his appeal." Tr. 65. She then stopped communicating with Mr. Gillian. Stip. ¶ 60.

50. Mr. Gilliam's appeal was consolidated with the appeal of two other criminal defendants. On April 8, 2010, the record was completed. Stip. ¶ 55.

51. On April 14, 2010, the Court ordered Respondent to file a brief within 40 days of the Court's order. On May 24, 2010, Respondent filed a motion to extend the time to file the brief for 90 days. On June 8, 2010, the Court granted Respondent's motion and ordered that the brief be filed on or before July 6, 2010. Respondent did not respond to the Court's June 8, 2010 order. Stip. ¶ 56.

52. On July 13, 2010, the Court ordered Respondent to file the brief within 20 days of the Court's order. Respondent did not respond to the Court's July 13, 2010 order. On August 12, 2010, the Court ordered Respondent to file the brief within 15 days of the Court's order. Respondent did not respond to the Court's August 12, 2010 order. Stip. ¶ 57.

53. On September 14, 2010, the Court ordered Respondent to file the brief with a motion to late-file within 10 days of the Court's order. Respondent did not respond to the Court's order. Stip. ¶ 58. On October 8, 2010, the Court vacated Respondent's appointment and appointed successor counsel. Stip. ¶ 58.

H. Count VI (Bar Docket No. 2012-D288)

54. As a consequence of Respondent's failures described in Counts I through V, Bar Counsel commenced an investigation and sent inquiries to Respondent's residence requesting that she answer the allegations of misconduct. Respondent failed to respond to the inquiries. Stip. ¶ 61.

55. On December 27, 2010, Bar Counsel left a message on Respondent's voice mail requesting that she call Bar Counsel. No response was made. Stip. ¶ 63.

56. On December 28, 2010, Bar Counsel requested an order from the Board to compel a response to Bar Counsel's inquiries. The Board granted Bar Counsel's motion and issued an order compelling a response on January 14, 2011. Respondent did not respond either to Bar Counsel's motion or to the Board order. Stip. ¶ 64.

57. On December 15, 2010, Bar Counsel issued a subpoena for Respondent's client file in Bar Docket No. 2010-D505. Notice of the issuance was sent to Respondent. No response was received. On January 19, 2011, Bar Counsel filed a motion to enforce the subpoena. Notice of the motion was sent to Respondent, who did not respond. Stip. ¶ 65.

58. On February 9, 2011, the Court granted Bar Counsel's motion to enforce the subpoena and ordered Respondent to produce the materials subpoenaed within 10 days of the Court's order. Respondent failed to comply with the Court's order. Stip. ¶ 66.

59. On January 28, 2011, the Court referred the matter involving Mr. Gillian (Count V) to Bar Counsel and to Chief Judge Washington to designate a judge to "conduct a hearing on whether Respondent should be held in contempt for failure to comply with this court's previous orders." Stip. ¶ 67.

60. Superior Court Judge Bush was designated to hold the hearing, and scheduled it for April 18, 2011. Respondent failed to attend the hearing. Judge Bush issued a bench warrant for Respondent's arrest. Stip. ¶ 68.

61. On May 2, 2011, a process server sent by Bar Counsel, went to Respondent's residence and spoke to a building employee who called Respondent (while she was at another location) on the telephone and informed her that a person was there to deliver documents to her. BX 10, Attachment 2. The process server then spoke to Respondent and asked when she would be home to receive the documents, a Court order and subpoena. *Id.* Respondent refused to provide a date. *Id.* On May 14, the process server left a note on Respondent's apartment door asking her to call him to make arrangements to receive the documents. *Id.* No response was received. *Id.*; *see also* Stip. ¶ 62.

62. On May 4, 2012, the Board petitioned the Court pursuant to D.C. Bar R. XI, § 3(c) for Respondent's temporary suspension based upon her failure to comply with the Board's January 14, 2011 order compelling her to respond to Bar Counsel's written inquiries. On May 30, 2012, the Court entered an order of temporary suspension, and ordered Respondent to file an affidavit of compliance under D.C. Bar R. XI, § 14. The order was amended on June 18, 2012, but the amendment did not alter the substance of the original order. Respondent did not file the affidavit of compliance until October 1, 2012. Stip. ¶ 69.

63. Respondent concedes that "[she] knew [she] was getting mail from Bar Counsel" and that she was "in trouble to some degree." Tr. 133. Further, by May or June of 2010, when she stopped responding to the Court and Bar Counsel, she knew "something was going to happen" and that "it was bad." *Id.* Respondent simply did not want to know what action had been taken against her. *Id*.

64. On August 7, 2012, during the course of her temporary suspension, Respondent appeared before Judge Edelman in the Superior Court of the District of Columbia in the case styled *Eutelsat America Corp. v. Atlantic Television News*, Docket No. 2011-CAB 137, as counsel for Eutelsat. In view of the Court's order of suspension, the trial court refused to permit Respondent to proceed. Tr. 135.

65. Between the Court's order of temporary suspension (May 30, 2012, as amended June 18, 2012) and the date of Respondent's appearance before Judge Edelman (August 7, 2012), Respondent continued to practice law in the District of Columbia, the only jurisdiction in which she was licensed. Stip. ¶ 71.

66. On October 1, 2012, Respondent filed an affidavit pursuant to D.C. Bar R. XI, § 14(g). On October 9, 2012, Bar Counsel received a letter from Respondent's counsel responding to the allegations of unethical conduct. Bar Counsel filed a notice with the Court on December 3, 2012, noting Respondent's compliance with the Board's January 14, 2011 order compelling a response to the allegations. In response, on January 8, 2013, the Court vacated the order of temporary suspension. On November 8, 2012, Judge Bush quashed the bench warrant in the contempt proceeding when Respondent appeared in court with counsel. Stip. ¶ 72.

I. Findings Relevant to Sanction

67. We accept as credible Respondent's statement that some of the murder cases to which she was assigned were difficult for her emotionally and caused her "to shut down." Tr. 59-65. Specifically, Respondent described a particularly distressful case she handled in which the client was convicted of a "gruesome murder" and expressed no remorse, which "upset [her] very much." Tr. 58-59. Those negative feelings resurfaced when she began receiving calls from Mr. Gilliam with respect to his case, which also involved murder. Tr. 63. Afterward, while the appeals at issue in the instant case were pending, Respondent "would sit down with the transcripts and [she] would sit there and not be able to open it." Tr. 66. She testified that she "wasn't able to deal with what lay behind the pages of the transcript to discover what – what was at issue in these cases." Tr. 67. This "shut down" was limited to "getting into the details of these cases, ordering transcripts, reading through, [and] dealing with the clients. . . ." Tr. 127.

68. While the testimony of a psychologist was offered by Respondent (Tr. 216), no evidence was presented to establish that her emotional difficulties with these cases was based on any recognized mental illness. Tr. 228 (finding that "her judgment was intact and she was quite able to carry out the job of an attorney"), 231 (explaining that Respondent exhibited "borderline dependent personality features" that did not rise to the level requiring a clinical diagnosis).[3] While

[3] Respondent does not maintain that she is entitled to mitigation of sanction under *In re Kersey*, 520 A.2d 321 (D.C. 1987), which allows for a stay of an entire period of suspension if a respondent (1) proves by clear and convincing evidence that she had a disability; (2) proves by a preponderance of the evidence that the disability substantially affected her misconduct; and, (3) proves by clear and convincing evidence that she has been substantially rehabilitated. *In re Zakroff*, 934 A.2d 409, 423 (D.C. 2007). In her post-hearing brief to the Hearing Committee, Respondent makes clear that her "mental health evidence . . . does not qualify as a disability," and is being offered to explain her "aberrant and inappropriate conduct relative to the give clients and cases she abandoned," and to show that Bar Counsel had not proven by clear and convincing evidence that a fitness requirement should be imposed. *See* Respondent's post-hearing brief at 30.

we accept that these emotional difficulties may have existed, they did not render Respondent incapable of conducting her civil practice, or keeping up with deadlines in her CJA cases, or filing motions for extension of time to file briefs.

69. Throughout the entire period covered by Counts I-V, Respondent maintained a modest civil practice which she carried on from her residence until she became a full-time employee of Eutelsat Americorp in March 2011 (Tr. 190-91), earning approximately $100,000 per year. Tr. 145.

IV. CONCLUSIONS OF LAW

As the Findings of Fact establish, Respondent ultimately abandoned her clients and their interests and in the process of doing so, filed numerous motions for an extension of time for filing briefs which Respondent did not file, and did not intend to file, thereby (i) furthering the delay in each of her client's cases; (ii) misleading the Court as to Respondent's intentions; and (iii) violating approximately 26 briefing orders of the Court. Further, Respondent failed to preserve her client's files so they would be available for successor counsel, preferring instead to shred client correspondence and transcripts and to throw the reminder of their files in the trash; thereby, requiring successor counsel to secure new court records and new transcripts. Additionally, Respondent utterly failed to communicate any helpful information to her clients compelling them to write letters and motions to the court requesting that Respondent be compelled to take action or be removed and replaced by counsel willing to do so. Finally, Respondent refused to open mail from the Court or Bar Counsel and refused to make herself available to process servers, knowing that all of this conduct was in disregard of her obligations to her clients and to the Court; and knowing that these failures would require the Court to take action against her.

In concert, this evidence establishes the factual basis for the following violations alleged by Bar Counsel:[4]

A. Rules 1.1(a) (Competent Representation) and 1.1(b) (Skill and Care) (Counts I-V)

In *In re Evans*, 902 A.2d 56, 69-70 (D.C. 2006), the Court explained that "to prove a violation [of Rule 1.1(a)], Bar Counsel must not only show that the attorney failed to apply his or her skill and knowledge, but that this failure constituted a serious deficiency in the representation." As indicated above, Respondent utterly abandoned her clients and their interests. She did nothing to evince the "skill and care" required by Rule 1.1(b). This failure to act in her clients' interests "constituted a serious deficiency" because the actions Respondent did take, perversely, made her clients' situations worst — extended delay, required unnecessary work and expense for successor counsel and heightened anxiety amongst her clients.

B. Rules 1.3(a) (Diligence and Zeal) and 1.3 (c) (Reasonable Promptness) (Counts I-V)

Rule 1.3(a) provides that a lawyer "shall represent a client zealously and diligently within the bounds of the law." A violation of Rule 1.3(a) requires proof of "indifference and a consistent failure to carry out the obligations that the lawyer has assumed to the client or a conscious disregard of the responsibilities owed to the client." *In re Wright*, 702 A.2d 1251, 1254 (D.C. 1997) (quoting *In re Reback*, 487 A.2d 235, 238 (D.C. 1985)). While Rule 1.3(c) provides that "[a] lawyer shall

[4] The Hearing Committee would like to be able to accept Respondent's stipulations as sufficient evidence of Rule violations without the necessity to examine the factual record. To do so would promote efficiency and permit the Committee to focus on contested matters. We recognize that existing authority requires a delineated factual record which permits the Court to independently determine whether clear and convincing evidence supports the stipulated violations. As required, we have reviewed the evidence to determine if the charges are established by clear and convincing evidence. However, we suggest that it might be helpful in future proceedings if the Board would provide more explicit guidance on what conclusive effect, if any, a respondent's admission of liability and stipulation of facts in support thereof, can be given in a disciplinary proceeding.

act with reasonable promptness in representing a client," Comment [8] to the Rule explains that "[e]ven when the client's interests are not affected in substance . . . unreasonable delay can cause a client needless anxiety and undermine confidence in the lawyer's trustworthiness, making it a very serious violation."

The absence of "zealous and diligent" representation cannot be gainsaid on this record. Respondent admits, and the record establishes, her failure to do anything to advance her clients' interests. Furthermore, what actions she did take, as evidenced in painful detail in the Findings of Fact, turn the "reasonable promptness" requirement of Rule 1.3(c) on its head.

C. Rule 1.3(b)(1) (Intentional Failure to Seek a Client's Lawful Objectives) (Counts I-V); Rules 1. 4(a) (Communication) and 1.4(b) (Failure to Explain Matter to Client) (Counts I-V)

Similarly, Respondent admits, and the findings make clear, that although she knew what her obligations to her clients required — communicating with them and explaining their legal positions and preparing papers to advance their legal interests in Court — Respondent did nothing to carry out these objectives. As the Court stated in *In re Ukwu*, 926 A.2d 1106, 1116 (D.C. 2007), a violation of Rule 1.3(b) is established "when a lawyer's inaction coexists with an awareness of his obligations to his client."

Regarding Rule 1.4, the Court made clear in *In re Schoeneman*, 777 A.2d 259, 264 (D.C. 2001) that "[t]he guiding principle for evaluating conduct . . . is whether the lawyer fulfilled the client's 'reasonable . . . expectation for information.'" In this matter, it is not clear whether Respondent ever communicated with any of her clients with the exception of Brian Gillian. Even if we give Respondent the benefit of the doubt, she only sent one form letter to her clients which, by her own testimony, conveyed nothing of real importance regarding the substance of any of their cases. And after some unpleasant telephone conversations with Gillian, Respondent admits that

she cut off further contact with him. Contrariwise, the record reveals that the clients by their letters and motions submitted to the Court were hardly satisfied by the meager, if any, efforts made by Respondent to meet their informational needs. Further, Respondent admits that for a substantial period of time, say from early 2009-2012, she cut off contact with anyone regarding her CJA cases. Finally, since Respondent did nothing, what was there to communicate?

D. Rule 1.16(d) (Termination of Representation) (Counts I-V)

"Rule 1.16(b) requires a lawyer, in connection with the termination of a representation, to 'take timely steps to the extent reasonably practicable to protect a client's interests, such as . . . surrendering papers and property to which the client is entitled.'" *In re Edwards,* 990 A.2d 501, 521 (D.C. 2010) (quoting *Hallmark*, 831 A.2d at 372). Respondent's destruction of the clients' files in this case establishes a clear violation of this Rule.

E. Rule 3.4(c) (Knowingly Disobeying an Obligation Under The Rules of a Tribunal)

Respondent moved to dismiss this alleged violation on the grounds that Bar Counsel failed to plead "knowing" which she claims is an indispensable element of the Rule. For the reasons that follow, we recommend that the motion be denied. We agree that "knowledge" is a required element of the Rule; however, Rule 1.0(f) provides that "actual knowledge of the fact in question" may "be inferred from the circumstances."

The dispute between the parties at bar seems to revolve around the issue of whether Bar Counsel was required to plead "knowledge," even if Respondent had knowledge that in response to her various motions for extensions of time the Courts would set specific filing dates. Respondent's position is disingenuous. The record establishes that she is a seasoned appellate lawyer; therefore, it follows that Respondent knew that when she filed motions for an extension of time, the Court, in allowing her motion, would set new filing dates. In fact, new filing

dates were established in response to her motions, as Respondent "knew" from her experience they would be; and as the record reveals, Respondent "disobeyed" the Courts' orders to file briefs on those dates.

F. Rule 5.5(a) (Unauthorized Practice of Law) (Count VI)

Respondent's motion to dismiss included this alleged violation as well. Specifically, Respondent contends that Bar Counsel was required to prove that Respondent "knowingly" violated the Court's order of her suspension from practice. In fact, the record is barren of any evidence establishing Respondent's "actual notice" of the suspension order; nevertheless, we recommend that her motion be denied.

Bar Counsel maintains that practicing law after the order of suspension is issued is sufficient to establish a violation of the Rule, a notion of strict liability. We take no position on Bar Counsel's contention. Rather, we base our position on these facts from the record. Respondent, as indicated above, filed numerous motions to extend the periods for filing briefs and then did not file them; from early 2009-2012 she failed to open mail or otherwise respond to any communication from Bar Counsel or the Court; additionally, she refused to make herself available for a process server or to respond to a notice he left on her apartment door. Respondent reluctantly conceded during her testimony that "[she] knew [she] was getting mail from Bar Counsel" and that she was "in trouble to some degree." Tr. 133. And she knew, "something was going to happen" and that "it was bad." *Id.*

Given the extended period of Respondent's violations and their seriousness — e.g., disregarding court orders, destroying client files, — we feel that Respondent should have anticipated a suspension of her license to practice by 2012. After such an extended period of misconduct, Respondent, reasonably, should have assumed that the thing she feared "was going to

happen" was her suspension. Furthermore, Respondent should not be rewarded, in our judgement, for willfully blinding herself by refusing to open her mail or avoiding process servers and then claiming, as she does, that she lacked "actual knowledge" of the order of suspension.

G. Rule 8.4(d) (Serious Interference with Administration of Justice) (Counts I-V)

Rule 8.4(d) provides that it is professional misconduct for a lawyer to "[e]ngage in conduct that seriously interferes with the administration of justice." To establish a violation of Rule 8.4(d), Bar Counsel must demonstrate by clear and convincing evidence that: (i) Respondent's conduct was improper, i.e., that Respondent either acted or failed to act when he should have; (ii) Respondent's conduct bore directly upon the judicial process with respect to an identifiable case or tribunal; and (iii) Respondent's conduct "taint[ed] the judicial process in more than a *de minimis* way," i.e., it must have potentially had an "impact upon the process to a serious and averse degree." *In re Hopkins*, 677 A.2d 55, 60-61 (D.C. 1996). Rule 8.4(d) is violated if the attorney's conduct causes the unnecessary expenditure of time and resources in a judicial proceeding, where the impact is more than *de minimis*. *See In re Cole*, 967 A.2d 1264, 1266 (D.C. 2009). Failure to respond to Bar Counsel's inquiries and Court orders also violates Rule 8.4(d). Rule 8.4, cmt.[2]; *see, e.g., In re Askew*, Bar Docket No. 2011-D393 at 22-23 (BPR May 22, 2013) (finding a violation of 8.4(d) where the respondent failed to comply with a Court order requiring her to file a brief and to turn over client files), *aff'd in relevant part*, 96 A.3d 52 (D.C. 2014) (per curium).

In our judgement, Respondent violated Rule 8.4(d) when she (i) abandoned indigent clients she was Court-appointed to represent; (ii) filed frivolous motions needlessly extending the process; and (iii) ignored 26 separate Court orders to file briefs. All of this conduct bore directly on the judicial process in more than a *de minimis* way because it served to countermand judicial authority and to delay judicial consideration of her client's interest. *See In re Toppelberg*, Bar Docket No.

191-02 at 53 (BPR July 21, 2006), *recommendation adopted*, 906 A.2d 881 (D.C. 2006) (per curiam).

H. D.C. Bar R. XI, §§ 2(b)(3) (Failure to Comply with Board or Court Order) and 2(b)(4) (Failure to Respond to a Written Inquiry from the Court or the Board) (Count VI)

The "[f]ailure to comply with any order of the Court or the Board issued pursuant to [D.C. Bar R. XI]" is a grounds for discipline (D.C. Bar R. XI, §§ 2(b)(3)), as is the "[f]ailure to respond to a written inquiry from the Court or the Board in the course of a disciplinary proceeding without asserting, in writing, the grounds for refusing to do so." *Id.* at § 2(b)(4).[5] Respondent failed to comply orders from the Board and the Court pertaining to Bar Counsel's investigation and the instant disciplinary proceeding. *See* FF 56, 58. Accordingly, we find that Respondent violated D.C. Bar R. XI, § 2(b)(3). We do not find that Bar Counsel has proven a violation of D.C. Bar R. XI, § 2(b)(4) because there is no evidence that Respondent failed to respond any particular "inquiry" from the Board or the Court in connection with a disciplinary proceeding; rather, the evidence shows that she ignored *orders* from those authorities.

V. SANCTION RECOMMENDATION

The appropriate sanction is one that is necessary to protect the public and the courts, to maintain the integrity of the profession, and to deter Respondent and other attorneys from engaging in similar misconduct. *See In re Martin*, 67 A.3d 1032, 1053 (D.C. 2013) (citing *In re Scanio*, 919 A.2d 1137, 1144 (D.C. 2007)). The sanction imposed must also be consistent with cases involving

[5] Bar Counsel now contends in its post-hearing brief that due to the "little caselaw" and the fact that "it adds little to the violation of Rule XI, § 2(b)(3), the Committee need not find a violation of this section of Rule XI." We understand that "Bar Counsel does not have the authority to unilaterally elect not to pursue charges that have been approved by a contact member." *In re Mazahery*, Bar Docket Nos. 2009-D217 *et al.* at 3 n.2 (BPR Oct. 4, 2013) (citing *Drew*, 693 A.2d at 1132-33 and *Reilly*, Bar Docket No. 102-94 at 4).

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 at issue; (2) the prejudice, if any, to the client which resulted from the conduct; (3) whether the conduct involved dishonesty and/or misrepresentation; (4) the presence or absence of violations of other provisions of the disciplinary rules; (5) whether the attorney had a 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) (citing *In re Hutchinson,* 534 A.2d 919, 924 (D.C.1987) (en banc)).

The seriousness of Respondent's misconduct and its prejudice to her clients has been amply discussed in the preceding pages. Further, Respondent's numerous motions to extend filing dates certainly served to mislead the court and to misrepresent her true intention which, as it turned out, was to file nothing. We note too, though we do not want to over emphasize it, that Respondent has a record of prior discipline. She received an informal admonition in 2010 both for failing to communicate with an incarcerated client in a CJA case until after the brief was filed in his case and for delaying the transmission of the Court's decision to the client.

In mitigation, we note that Respondent has expressed remorse and accepted full responsibility for her conduct. She cooperated fully with Bar Counsel and stipulated to all the relevant facts.

Sanctions for Comparable Misconduct

D.C. Bar R. XI § 9(h)(1) provides the sanction imposed must not " foster a tendency toward inconsistent dispositions for comparable conduct or . . . otherwise be unwarranted." Recently in two cases, *Askew* and *In re Murdter,* Bar Docket Nos. 2010-D489, et al. (BPR Feb. 24, 2015),

review pending, D.C. App. No. 15-BG-213, the Board recommended a six-month suspension with all but 60 days stayed in favor of supervised probation. The first case involved the neglect of a single indigent client's appeal; and therefore, is readily distinguishable from the instant case. The second case involved the failure to file appellate briefs on behalf of five indigent clients; and therefore, is more comparable to the case at bar. The leniency of the sanction in *Murdter* resulted from the respondent's cooperation with Bar Counsel, evidence of his "remarkable and commendable legal career" (*id.* at 4) and the Board's sense of his genuine remorse. While we recognize Respondent's remorse in this case, the callousness of her misconduct — the numerous motions to extend, the particularity with which she went about the destruction of her clients' files and her inability to own up to the full scope of her misconduct (denying that she read her mail, answered her telephone or listened to her answering machine from early 2009-2012) — in the view of the majority, justifies a sanction of somewhat greater severity, a full six-month suspension followed by a fitness review.

Fitness Requirement

The Court established the standard for imposing a fitness requirement in *In re Cater*, 887 A.2d 1 (D.C. 2005). "[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." *Id.* at 6. Proof of a "serious doubt" involves "more than 'no confidence that a Respondent will not engage in similar conduct in the future.'" *In re Guberman*, 978 A.2d 200, 213 (D.C. 2009). It connotes "real skepticism, not just a lack of certainty." *Id.* (quoting *Cater*, 887 A.2d at 24).

There is a serious basis, in our judgement, for a fitness review of Respondent before permitting her to return to practice. As indicated repeatedly, the interests of five indigent clients

were neglected in this case. Not only did Respondent abandon her clients' interests but she seemingly did everything she could to interfere with their ability to secure timely representation from successor counsel. During her testimony, Respondent sought to explain her misconduct by stating she just "shut down." However, Respondent conceded that "shut down" did not mean "completely shut down." Tr.127; FF 69. Rather, as she testified, "[w]hen I say shut down, what I mean is - in terms of getting into the details of these cases. . . I was able to distinguish that from working with the civil practice, from working with . . . my administrative functions." *Id.* Indeed Respondent did carry on a civil practice throughout the period covered by Counts I-V and did "regulatory research" for Eutelsat on a contract basis prior to joining the company full time in March 2011. Tr. 189; FF69. Given her capacity to do civil practice and to perform "administrative functions," Respondent should have been able to file motions to withdraw from her CJA cases. During the period covered by Counts I - V, Respondent had ample time to collect herself and to report her "upset" to the Court or to CJA administrators as a basis to be relieved. Further, her extreme reaction (destroying client files, refusing all contact with Bar Counsel and the Court) raises questions about how Respondent might react to any difficult legal circumstance or client she comes to dislike. Unfortunately, stressful circumstances and unpleasant clients are endemic to the practice of law.

Finally, Respondent contends that because the cases which affected her emotionally were criminal, there is no reason to apply a fitness requirement to her ability to resume a civil practice. For the reasons expressed above, we see no basis for such a limitation. Moreover, we are not aware of any limited license to practice law.

VI. CONCLUSION

For all the above reasons, the Hearing Committee unanimously finds that Respondent violated the Rules charged by Bar Counsel, with the exception of D.C. Bar R. XI, § 2(b)(4). Mr. Pierce and Ms. Curtis recommend that Respondent be suspended for six months. For the reasons set forth in his dissenting statement, Mr. Kassoff recommends that Respondent be suspended for 18 months. The Hearing Committee unanimously recommends that Respondent be required to prove her fitness to practice law prior to reinstatement.

AD HOC HEARING COMMITTEE

/RFP/
Rudolph F. Pierce, Chair

/HK/
Hal Kassoff, Public Member

/EDC/
Elizabeth Denise Curtis, Attorney Member

Dated: May 28, 2015

Mr. Kassoff has filed a separate statement dissenting to the length of the recommended period of suspension only, and concurring with the majority in all other respects.

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

In the Matter of:	:	
	:	
BRIGITTE L. ADAMS,	:	
	:	Board Docket No. 14-BD-031
Respondent.	:	Bar Docket No. 2010-D505,
	:	2011-D380, 2011-D378, 2011-D379,
A Member of the Bar of the	:	2011-D050, and 2012-D288
District of Columbia Court of Appeals	:	
(Bar Registration No. 426034)	:	

DISSENT BY PUBIC MEMBER, HAL KASSOFF,
CONCERNING RECOMMENDED SIX MONTH SUSPENSION

I concur in the Findings of Fact and Conclusions of Law of the majority of the Hearing Committee and in the recommended fitness requirement as a condition of reinstatement, but it is the view of this public member that the recommended period of suspension of six months is not commensurate with the seriousness of the misconduct. A period of suspension of not less than 18 months is recommended. (It is only because of the acknowledgement of misconduct, expressed remorse on the part of Respondent, and voluntary treatment by a therapist that this dissenting recommendation is for a suspension for 18 months as opposed to an even more severe sanction.)

1. Bar Counsel's Recommendations

Bar Counsel was correct in asserting that:

> Respondent had a legitimate, ethical way out of her distress over representing criminal appellants. She could have moved to withdraw from the case or cases as easily as she moved repeatedly for more time. Instead, she walked out on her cases and chose to ignore the Court and disciplinary system and the consequences of her actions . . . .
>
> The misconduct here casts serious doubt on Respondent's fitness because it was intentional, lengthy, and a conscious disregard for the responsibilities that she owed to her client(s) which are the hallmarks of serious neglect.

Bar Counsel's Brief at 43-44.

2. Support for an 18-Month Period of Suspension

The Court has imposed lengthy suspensions for a pattern of serious neglect, coupled with dishonesty and conduct that seriously interferes with the administration of justice. *See, e.g., In re Scott*, 19 A.3d 774 (D.C. 2011) (three-year suspension with fitness for multiple instances of neglect and dishonesty); *In re Kitchings*, 857 A.2d 1059 (D.C. 2004) (per curiam) (18-month suspension with fitness for a pattern of intentional neglect of multiple clients and refusal to turn over client files to successor counsel, resulting in prejudice to the clients).

3. Seriousness of the Misconduct

Respondent's misconduct was repeated and serious. It involved:

a. Multiple instances of neglect in five different matters and the disregard of nearly 30 court orders;
b. A continuous pattern of misconduct over a period of approximately four years;
c. The failure to communicate with clients despite their repeated inquiries;
d. The failure to represent clients' interests;
e. The deliberate and careful destruction of case files, including:
    i. Boxes of transcripts that could have been transferred to successor attorneys were thrown in a dumpster at home address, and
    ii. Certain correspondence gleaned from these files and taken separately by Respondent to be shredded in a workplace office;
f. Dishonestly seeking extensions of time to file briefs when she knew that she was not going to file the briefs if the extensions were granted;
g. The failure to respond to dozens of court orders;
h. The refusal to accept or respond to subpoenas;
i. The failure to attend a contempt hearing resulting in a bench warrant for her arrest (later quashed when she finally appeared);
j. The failure to withdraw from cases in which she was not providing competent representation;
k. Respondent's placing her self-interest over the interests of the client; and
l. Respondent's practicing law without a license.

In addition, we have found that "Respondent's testimony that she did not open her mail, receive calls, or review her answering machine between 2009-12 incredible and inconsistent with the record evidence." Maj. Report at 5-6, ¶ 6. The above finding of a lack of credibility in Respondent's testimony before the Ad Hoc Hearing Committee culminates a deeply troubling, highly serious, willful, and sustained pattern of disregard and disrespect for the courts, for the obligations of attorneys to their clients, and for the very legal system which a member of the Bar is sworn to uphold. Thus, I consider Respondent's dishonesty to be a serious aggravating factor.

4. Lack of a Credible Explanation

I find Respondent's explanation that her misconduct was the result of a "shut down" to be incredible for the following reasons:

a. Respondent's defense of a "shut down" was partial and highly selective, as evidenced by:

   i. Respondent's own testimony that she was "painfully aware" that the courts were waiting for her briefs to be filed in the five cases (Tr. 119);
   ii. Respondent's own testimony that she knew at the time that in not responding to the court or filing briefs that she was in violation of the court's rules – "Yes. And I accepted that." (Tr. 120-121);
   iii. Respondent's own testimony that she was aware that it was her obligation to withdraw if she could not handle a case (Tr. 95);
   iv. Respondent's own testimony that "I can't say that I completely shut down" (Tr. 127);
   v. Respondent's presence of mind to file for extensions on multiple occasions– then consistently and without exception ignoring the extended dates;
   vi. Respondent's ability to conduct a private practice, handling other cases, communicating with other clients, during the period of her alleged "shut down";
   vii. Respondent's ability to secure concurrent employment and perform at a "superlative" level during these years according to testimony of her colleague and friend, Mr. Lopatkiewiscz (Tr. 193); and
   viii. The fact that during the period of her alleged shutdown, when she supposedly opened no mail, Respondent somehow managed to receive and respond to a Specification of Charges in a prior disciplinary matter (*In re Adams*, Bar Docket No. 111-09), and she received and responded to a notice to appear for a pre-

hearing conference and was able to represent herself in that matter. *See* BX 22. [1]

b. Ms. Irish, of the D.C. Bar's Lawyer Assistance Program, in her letter of October 19, 2012, referring to the period of Respondent's alleged "shut down," noted that "Ms. Adams reported that it did not occur to her at that time to seek medical treatment for her symptoms." RX 2 at 1.

c. Dr. Kimball, a psychologist who performed an evaluation, found no indication that Ms. Adams was suffering from PTSD as had been indicated by Ms. Irish. From Dr. Kimball's Psychological Evaluation (RX 1):

   i. "There is no indication in the data that Ms. Adams is suffering from PTSD – or from any other Axis I psychological problem for that matter" (Page 4); and
   ii. "In Ms. Adams' case, none of the scales . . . were in any way near the cut-off that would indicate problems of a nature related to traumatic response" (Page 2).

d. Respondent, for a while, refused to accept the advice of Ms. Irish for further treatment (Tr. 159, 160, 161) but began to see a therapist as these disciplinary proceedings drew closer (starting a series of sessions with a therapist, Ms. Elizabeth Piren, in February, 2013).

e.

5. Respondent's Failure to Withdraw Was Selfishly Motivated

I find that Respondent's decision not to withdraw from her court-appointed cases was made for selfish reasons, evidenced by:

a. Respondent's own testimony that she feared that if she filed a motion to withdraw in an individual case, that would be the end of her standing on the CJA appellate panel. Tr. 96.
b. Dr. Kimball's Psychological Evaluation:

   i. "In truth, she wanted to stop getting such cases, but at the same time feared that if she tried, she would get no such cases. Since her support relied almost entirely

[1] On October 6, 2010, a Contact Member granted Bar Counsel's motion to dismiss the Specification of Charges in Bar Docket No. 2009-D111 because Respondent had decided to accept a previously-rejected informal admonition. *See* Order, *In re Adams*, Bar Docket No. 2009-D111 (Oct. 6, 2010).

> in CJA, she was stuck – and extremely stressed as a result. This is the point at which she, as she puts it, 'shut down.'" RX 1 at 2.

6. Closing

Bar Counsel's brief and the majority report support the Findings of Fact, the Conclusions of Law, as well as the fitness requirement. However, it is the view of this public member that the seriousness of Respondent's lengthy and repeated acts of misconduct, the failure to provide a credible explanation for not withdrawing from the five cases over a period of years, and the inherent self-interest in not withdrawing as acknowledged by Respondent and as cited in her psychological examination, are inconsistent with the majority's recommendation of a period of suspension that is so short as to suggest to others in the legal system and to the public at large that Respondent's misconduct was not so serious as to warrant more than a minimal suspension.

In re Shorter, 570 A.2d 760, 767-68 (D.C. 1990) (per curiam), provides a definition of "dishonesty" that includes the following:

> Dishonesty is the most general category in Rule 8.4(c), and is defined as: fraudulent, deceitful or misrepresentative behavior [and] conduct evincing a lack of honesty, probity or integrity in principle; …"

In this case, the actions of the Respondent fit the definition of dishonesty, particularly in her deceitful actions, misrepresentations to clients and the courts, which evinced a lack of honesty, probity or integrity. Consider the Respondent's:

a. dishonesty in accepting additional cases under the CJA program time and again while she was well aware that she was failing to fulfill her responsibilities in the ones she already had.
b. dishonesty in seeking extensions of time to file briefs when she knew that she was not going to file the briefs if the extensions were granted.
c. dishonesty in failing to withdraw from these cases when she knew that she was unable to fulfill her responsibilities.
d. dishonesty in purposely destroying valuable and important case files that took time to acquire, at some cost, and most importantly, could have assisted a successor attorney.

e. dishonesty in persisting that her failure to fulfill her responsibilities represented a total "shut down," but, in the hearing and under oath, acknowledging that perhaps it was not such a total shut down after all since during the same period she managed to represent private clients in other cases and work in a separate, responsible job.
f. dishonesty in refusing to accept a court issued subpoena.
g. dishonesty in practicing without a license.

The issue here is not whether the Respondent was dishonest about being capable of handling these cases. Presumably, when she accepted the first case, she believed she could fulfill her responsibilities as an attorney. The issue is that over an extended time period, knowing she was not handling them, being dishonest in the many purposeful actions she took to evade her duties to her clients, the courts and the legal system.

I close with the following quote from the majority report, which I believe supports the case for a suspension of not less than 18 months rather than the six-month suspension that is recommended by the majority:

> . . . the callousness of her misconduct — the numerous motions to extend, the particularity with which she went about the destruction of her clients' files and her inability to own up to the full scope of her misconduct (denying that she read her mail, answered her telephone or listened to her answering machine from early 2009-2012) — in our judgment, justifies a sentence of somewhat greater severity. . .

Maj. Report at 26.

Respectfully submitted,

/HK/
Hal Kassoff
Public Member

Dated: May 28, 2015