THIS REPORT IS NOT A FINAL ORDER OF DISCIPLINE*

DISTRICT OF COLUMBIA COURT OF APPEALS
BOARD ON PROFESSIONAL RESPONSIBILITY
HEARING COMMITTEE NUMBER FIVE

In the Matter of:	:	
	:	
BRYAN A. CHAPMAN,	:	
	:	
Respondent.	:	Board Docket No. 20-BD-034
	:	Disc. Docket No. 2014-D269
A Member of the Bar of the	:	
District of Columbia Court of Appeals	:	
(Bar Registration No. 439184)	:	

REPORT AND RECOMMENDATION OF
HEARING COMMITTEE NUMBER FIVE

Respondent, Bryan A. Chapman, Esquire, is charged with violating Maryland Rule 19-301.1 (Competence), Rule 19-301.2(a) (Failing to Consult with Client), Rule 19-301.4(b) (Failing to Explain a Matter), and Rule 19-303.1 (Frivolous Claims).[1] The charged violations arise from his representation of a teacher in an employment discrimination and breach of duty of fair representation case filed in the U.S. District Court for the District of Maryland. Disciplinary Counsel contends that

[1] "Effective July 1, 2016, the Maryland Lawyers' Rules of Professional Conduct were renamed the Maryland Attorneys' Rules of Professional Conduct and moved to Title 19, Chapter 300 of the Maryland Rules." *Attorney Grievance Comm'n v. Rheinstein*, 223 A.3d 505, 509, n.1 (Md. 2020). The current, renamed Maryland Attorneys' Rules are cited in the Specification of Charges. However, because the relevant conduct occurred prior to July 1, 2016, citations and references should be to the Maryland Lawyers' Rules, *see id.*, which were previously found at Title 16, Chapter 800 of the Maryland Rules. Because there is no difference (other than changing the term "lawyer" to "attorney") between the relevant Maryland Rules, Respondent suffers no prejudice by the Specification of Charges' recitation of the current numbering of the Maryland Attorneys' Rules of Professional Conduct ("Maryland Rules").

* Consult the 'Disciplinary Decisions' tab on the Board on Professional Responsibility's website (www.dcattorneydiscipline.org) to view any subsequent decisions in this case.

Respondent committed all of the charged violations and should be suspended for ninety days as a sanction for his misconduct. Respondent contends that no Rules were violated and the charges should be dismissed.

As set forth below, the Hearing Committee finds that Disciplinary Counsel has proven a violation of the Rules cited above by clear and convincing evidence. We recommend that Respondent be suspended from the practice of law for ninety days.

I. PROCEDURAL HISTORY

On March 20, 2020, Disciplinary Counsel served Respondent with a Specification of Charges ("Specification"). Respondent filed an Answer on April 15, 2020. DCX 3. Disciplinary Counsel filed a corrected Specification of Charges on September 23, 2020.[2] *See* DCX 2 at 8, 16.

The Specification alleges that Respondent, in connection with his representation of a client in her employment discrimination and union lawsuit filed in U.S. District Court for the District of Maryland, violated the following rules[3]:

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[2] The only modification was a citation to the correct provision of D.C. Rule of Professional Conduct ("D.C. Rule") 8.5(b) (Choice of Law).

[3] The alleged misconduct here was in connection with matters pending before a Maryland tribunal. Under D.C. Rule 8.5(b)(1) the applicable rules are those of the jurisdiction in which the tribunal sits, unless the rules of the tribunal provide otherwise. Because the representation was in connection with a matter pending before the U.S. District Court for the District of Maryland, the Maryland Rules apply. *See* D. Md. Loc. R. 704. Respondent is a member of the District of Columbia Bar and not a member of the Maryland Bar. D.C. Rule 8.5(a) provides that "[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." Accordingly, the Specification properly charges violations of the Maryland Rules.

- Maryland Rule 19-301.1, by failing to provide competent representation with the legal knowledge, skill, thoroughness, and preparation reasonably necessary for the representation;
- Maryland Rule 19-301.2(a), by failing to consult with the client as to the means he would employ in fulfilling the client's objectives of the representation;
- Maryland Rule 19-301.4(b), by failing to explain a matter to the extent reasonably necessary to permit the client to make an informed decision regarding the representation; and
- Maryland Rule 19-303.1, by filing an action when there was no basis in law or fact for doing so.

Specification ¶ 32. Respondent filed a motion to dismiss on September 21, 2020, and we include a recommended disposition of Respondent's motion below.

A hearing was held on October 26 and 27, 2020 before the members of Hearing Committee Number Five: Christian S. White, Esquire, Chair; Dr. William Hindle, Public Member; and Theodore Hirt, Esquire, Attorney Member. The Office of Disciplinary Counsel was represented at the hearing by Assistant Disciplinary Counsel Sean P. O'Brien, Esquire. Respondent was present and proceeded *pro se*.

During the hearing, Disciplinary Counsel called as witnesses Respondent, Myrna Roberts, and Linda Correia, Esquire. Respondent testified on his own behalf. The following exhibits were admitted into evidence: Disciplinary Counsel's Exhibits 1-48 ("DCX 1-48") and Respondent's Exhibits 1-27 ("RX 1-27").[4]

[4] *See* Notice of Parties' Agreement on Examination Order and Exhibits (Oct. 23, 2020); *see also* Tr. 382. "DCX" refers to Disciplinary Counsel's exhibits. "RX" refers to Respondent's exhibits. "Tr." refers to the transcript of the hearing held on October 26 and 27, 2020.

At the end of the violations phase of the hearing, the Committee made a preliminary non-binding determination that Disciplinary Counsel had proven at least one of the Rule violations set forth in the Specification of Charges. Tr. 453; *see* Board Rule 11.11. In the sanctions phase of the hearing, Disciplinary Counsel identified Respondent's prior discipline (*In re Chapman*, 962 A.2d 922 (D.C. 2008)) and reserved the right to raise additional aggravating factors in its post-hearing briefing. *See* Tr. 454. Respondent declined to address the question of sanction at the hearing. Tr. 456. In its post-hearing briefing, Disciplinary Counsel argues that the following are aggravating circumstances in addition to Respondent's prior discipline history: (1) Respondent's misleading testimony before the Hearing Committee and his misleading assertions to Disciplinary Counsel during its investigation; (2) his failure to acknowledge his misconduct; and (3) his continued pattern of blaming others for the misconduct. *See* Disciplinary Counsel's Proposed Findings of Fact, Conclusions of Law, and Recommendation as to Sanction ("ODC Br.") at 33-34. Respondent does not brief the sanction factors but argues for dismissal of all charges. *See* Respondent's Proposed Findings of Fact and Conclusions of Law ("Resp. Br.") at 67.

II. FINDINGS OF FACT

The following findings of fact are based on the testimony and documentary evidence admitted at the hearing. These findings are established by clear and convincing evidence.[5]

A. Background

1. Respondent, Bryan Chapman, is a member of the Bar of the District of Columbia Court of Appeals, having been admitted on October 4, 1993, and assigned Bar number 439184. DCX 1.

2. Myrna Roberts was born in St. Croix in the United States Virgin Islands. Tr. 29 (Roberts). She moved to Baltimore in 1967, where she graduated from Morgan State University. Tr. 29-30.

3. Beginning in the 1970s, Ms. Roberts taught mathematics. In 1999, she began teaching mathematics at Crossland High School in Prince George's County, where she remained until she retired in 2014. Tr. 29-31 (Roberts).

B. Ms. Roberts Was Reassigned to the Position of Co-Teacher.

4. In 2005, Ms. Roberts's principal, Mr. Thomas, removed her from her full-time mathematics class. Tr. 34-36, 69 (Roberts); DCX 20 at 120. She was instead assigned to a mathematics laboratory. Tr. 34-36 (Roberts); DCX 20 at 120. During the 2006-07 schoolyear, she received no teaching assignment. Tr. 36

[5] *See* Board Rule 11.6; *In re Cater*, 887 A.2d 1, 24 (D.C. 2005) ("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 fact sought to be established").

(Roberts); DCX 20 at 120. She would report to work but had nothing to do. Tr. 36-37, 96 (Roberts); DCX 20 at 120.

5. For the 2007-08 schoolyear, Ms. Roberts was assigned to the America's Choice teaching program and was assigned to her own classroom. Tr. 41 (Roberts); DCX 20 at 120; DCX 22 at 129. But in March 2008, her principal, Mr. Thomas, reassigned her to be a co-teacher. Tr. 41 (Roberts); DCX 20 at 120; DCX 22 at 129. Her students were reassigned to other teachers in the mathematics department, and Ms. Roberts taught classes alongside different teachers in different class periods. Tr. 40-41, 69 (Roberts).

6. In the summer of 2008, Ms. Roberts complained about her co-teaching assignment to her principal, her teachers' union, and various entities within the Prince George's County Public Schools system. Tr. 43-44, 49-50 (Roberts); DCX 48 (Aug. 20, 2008 letter). *See generally* DCX 39. At that time, she hired an attorney, Jerry Goldstein, who sent a letter demanding that the school retract her co- teaching reassignment because it violated the collective-bargaining agreement. DCX 48; *see* Tr. 45-46 (Roberts).

7. Ms. Roberts's complaints to the Prince George's County school system about her teaching assignment did not assert or suggest that she had been reassigned based on her national origin or that the school was discriminating against her based on her national origin. *See* DCX 48; *see also* Tr. 112-13 (Roberts) (Respondent in 2010 was the one who "put [her] in a category of national origin" discrimination); Tr. 354 (Respondent) (same). In fact, Ms. Roberts's complaints were focused on

contractual violations of the school's collective bargaining agreement with the teachers' union. *See* DCX 48.

8. Ms. Roberts continued as a co-teacher, and she continued to teach at the school, and she received positive performance reviews. Tr. 30-31 (Roberts); Tr. 400-02 (Respondent) (She received positive performance reviews from at least 2007 through 2010); *see also* DCX 12 at 93 (Draft Affidavit: "I have consistently received satisfactory job performance evaluations").

C. Ms. Roberts Hires Respondent.

9. In September 2010, Respondent began to represent a group of at least 11 teachers and school staff from a different high school than Crossland High School, where Ms. Roberts was employed. Tr. 16-17, 297 (Respondent); DCX 20 at 120; *see* DCX 27 (identifying eleven plaintiffs, excluding Ms. Roberts); DCX 28 at 171-72, 186-88 (showing ten plaintiffs currently or formerly employed at Largo High School, one plaintiff employed at Central High School, and Ms. Roberts employed at Crossland High School). The ten teachers and staff connected to Largo High School alleged that the Largo High School principal, Ms. Simpson-Marcus, engaged in racially motivated discrimination or retaliation against them. Tr. 16-22, 297-302 (Respondent). They alleged the Largo High School principal used racially inappropriate and derogatory terms towards a White (Caucasian) teacher, Jon Everhart, and retaliated against teachers who supported Mr. Everhart. Tr. 18-20, 300-02, 318-19 (Respondent). They also alleged that the School Board was aware of the Largo High School principal's harassment and failed to respond to it. Tr. 20,

301-02, 304 (Respondent). These claims were based on racial discrimination or retaliation. Tr. 18-20, 300-02; DCX 20 at 121. *See generally* DCX 27.

10. Ms. Roberts was friends with Ms. Vallie Dean, one of the Largo High School teachers whom Respondent was representing. Tr. 33 (Roberts); DCX 27 at 156 (listing Ms. Dean as a plaintiff). Because she felt that she was being unfairly treated, Ms. Roberts contacted Respondent to discuss whether she might have a claim. Tr. 32-34 (Roberts); DCX 20 at 121 (Respondent: "Ms. Roberts contacted me about joining the lawsuit").

11. On October 9, 2010, Ms. Roberts met with Respondent to discuss her case. Tr. 33-34 (Roberts); Tr. 354, 425 (Respondent). Ms. Roberts understood the meeting was to consider joining a pending case against Prince George's County Public Schools for the "ill treatment of teachers." Tr. 50-51; 57 (Roberts).

12. Respondent explained to Ms. Roberts that, while he did not believe she had a racial discrimination claim like the other plaintiffs in the pending case, (both she and her principal were Black, *see* Tr. 111 (Roberts)), she had a viable national origin discrimination claim, *i.e.*, a claim that she was discriminated against because she was born in the U.S. Virgin Islands. Tr. 124-25 (Roberts) ("[Respondent] kept saying 'national origin.'"); Tr. 354 (Respondent) ("If anything, it was me who sat back and said, 'Okay, tell me about your case' and ultimately came to the conclusion that she met the standards of a *prima facie* national origin discrimination case . . . .").

13. Employment law attorney Linda Correia, who testified as an expert witness in this case, *see infra* FF 47, opined that Respondent knew or should have known that in order to pursue a national origin claim under Title VII of the Civil Rights Act, Ms. Roberts had to first exhaust her administrative remedies by filing a charge of discrimination or retaliation with the U.S. Equal Employment Opportunity Commission within 300 days of the last discriminatory or retaliatory act. Tr. 176-77 (Correia); *see also* Tr. 312-13, 355-56 (Respondent).

14. Respondent also knew or should have known that Ms. Roberts did not have a timely claim under Title VII because her claims arose from conduct well beyond the 300-day deadline. *See* DCX 22 at 130; Tr. 23-24 (Respondent) ("Title VII was never a real option for Ms. Roberts . . . ."); Tr. 415-16 (Respondent) ("So right away I knew that there was no way in which you could rely on Title VII."); Tr. 425-26 (Respondent).

15. Nevertheless, Respondent did not explain to Ms. Roberts that her claim might be time-barred, nor did he explain that there were other potential problems or difficulties with her claim. Tr. 50 (Roberts) ("[H]e said, 'I see the picture . . . and you have a case . . . that you could come aboard with the group.[']"); Tr. 56-57 (Roberts) ("I was told nothing about a problem or a weakness."). To the contrary, Respondent told Ms. Roberts that she had a good case. Tr. 56-57 (Roberts) ("We were just going to roll: We had a good case."); *see also infra* FF 20, 28, 35-36.

16. In the opinion of expert witness Correia, by failing to tell Ms. Roberts that her Title VII claim was time-barred, Respondent failed to disclose information that was "essential" to evaluating her case. Tr. 181-82 (Correia).

17. On October 28, 2010, Ms. Roberts signed an "Attorney/Client Agreement" and hired Respondent. DCX 4; Tr. 51-53 (Roberts). Respondent agreed to pursue an employment discrimination case in federal court, and Ms. Roberts agreed to pay Respondent $300 per hour. DCX 4 at 59-60; Tr. 51-53 (Roberts). Separate from the written agreement, Ms. Roberts agreed to pay Respondent a $3,000 initial retainer, which she paid in installments, with the last $500 payment made in August 2011. *See* DCX 3 at 30 (Answer ¶ 5 (Admitted)); Tr. 54-55 (Roberts). Although the agreement required Respondent to send Ms. Roberts periodic billing invoices, he never provided her with any billing statements or invoices. DCX 4 at 60; Tr. 53-55 (Roberts); Tr. 405 (Respondent).

D. Respondent Combined Ms. Roberts's Claim with Eleven Unrelated Plaintiffs.

18. Initially, Respondent joined Ms. Roberts's claim in a joint complaint with the ten current and former teachers and staff from Largo High School ("Largo plaintiffs") and a current teacher from Central High School. DCX 22 at 127-29; DCX 27; DCX 28 at 171-72.

19. Jon Everhart, the White teacher who featured prominently in the Largo plaintiffs' claims, had filed a timely Equal Employment Opportunity Commission ("EEOC") claim. Tr. 409-410 (Respondent). Respondent initially believed that by "piggybacking" Ms. Roberts's complaint on Mr. Everhart's complaint, she might

avoid having her case dismissed as time-barred. *Id.*; *see also* DCX 22 at 130 (Respondent acknowledged there was a "timeliness problem," but said he "hoped that 'single filing' would allow Ms. Roberts and several other plaintiffs to 'piggyback' on to Jon Everhart's EEOC charge of discrimination").

20. Respondent did not explain to Ms. Roberts that he was employing a "piggybacking" strategy to avoid her timeliness problem. *See* Tr. 56-57 (Roberts) ("I was told nothing about a problem or a weakness."). Nor did he explain that he thought his strategy was not viable. *See id.*; Tr. 23-24 (Respondent) ("Title VII was never a real option for Ms. Roberts."); Tr. 409 (Respondent) ("I don't think I ever took the Title VII part of this thing as viable or realistic.").

21. Ms. Roberts's claims were very different from the ten Largo plaintiffs' claims. Those teachers and staff taught at Largo High School, and they had similar discrimination claims stemming from Principal Simpson-Marcus's racially charged behavior. *See* Tr. 318 (Respondent) ("[S]ince all the plaintiffs for the most part, their claims were based around Jon Everhart . . ."). Ms. Roberts taught at a different high school, she worked for a different principal, and she alleged no racial discrimination. *See generally* DCX 27 (Complaint filed November 22, 2010); DCX 30 (Amended Complaint filed January 19, 2011); DCX 39 (Complaint as to Ms. Roberts, solely, filed May 23, 2011). Her only claim was that she was discriminated against based on her national origin. DCX 27 at 161-63; DCX 30 at 302-04; DCX 39. As to whether she may have had similar claims with the other plaintiffs against the Superintendent of Prince George's County schools, Respondent never alleged

facts necessary to establish the Superintendent's liability. *Compare* DCX 27 at 161-63, *and* DCX 30 at 302-04, *with, e.g.*, DCX 30 at 261-62.

22. Nonetheless, on November 22, 2010, Respondent filed a joint complaint on behalf of the group of Largo High teachers and staff, the Central High School teacher, and Ms. Roberts in the United States District Court for the District of Maryland, styled *Johnson, et. al v. Prince George's County Public Schools, et. al*, Civil Action No. 10-CV-3291-PJM. *See* DCX 27; *see infra* FF 37.

23. Respondent ultimately asserted only national origin discrimination claims on Ms. Roberts's behalf under Title VII of the Civil Rights Act and 42 U.S.C. § 1981 after abandoning other claims. *See generally* DCX 27. *Compare* DCX 27 at 159-160, *with* DCX 39 at 444-45 (later individual complaint dropped 42 U.S.C. § 1983 and 42 U.S.C. § 1985), *and* DCX 46 at 517 (Respondent later conceded and dropped Maryland state law claims).

E. Respondent Told Ms. Roberts to File a Claim with the EEOC.

24. On January 10, 2011, the school board filed a motion to dismiss the joint complaint, or in the alternative, for summary judgment. DCX 28. The school board argued that Ms. Roberts's Title VII claim for national origin discrimination should be dismissed because she had failed to exhaust her administrative remedies by filing a charge of discrimination with the EEOC. *See* DCX 28 at 194-95. It further argued that it was immune under sovereign immunity theories. DCX 28 at 190-92; Tr. 421-22 (Respondent).

25. On January 11, 2011, the next day, Respondent instructed Ms. Roberts by email to file a claim with the EEOC. DCX 6 at 64; Tr. 422 (Respondent). The entirety of his email to her read:

> File an EEOC complaint based on national origin and retaliation with the Baltimore EEOC office as soon as you can. Please do not delay.

Respondent provided insufficient guidance about how she should go about filing a complaint with EEOC or what information she should include. *See* DCX 6 at 64; Tr. 422 (Respondent); Tr. 65-68 (Roberts). The January 2011 instruction was also the *first* time Respondent told Ms. Roberts to file an EEOC claim. *See* Tr. 57 (Roberts) ("He didn't tell me that I had to do anything [when she hired him]."); Tr. 58-60, 67, 100-101, 118 (Roberts); *see also* DCX 9 at 75. We credit Ms. Roberts's testimony about Respondent's initial failure to advise her to file a complaint with the EEOC. *See also* Tr. 67 ("[W]hen I first met with [Respondent, Respondent] told me I didn't need to go to the EEOC . . . .").

26. On January 12, 2011, Respondent similarly advised the entire plaintiff group by email that he "strongly encourage[d] all of [them] to file EEOC complaints and/or request Right to Sue letters immediately." DCX 6 at 65.

27. Respondent did not respond to the defendants' motions to dismiss.[6] *See* DCX 26 (Docket). Instead, on January 19, 2011, he filed an Amended Complaint. DCX 30. The Amended Complaint added (1) a claim for discrimination

[6] The union, the Prince George's County Educator's Association, filed a motion to dismiss the initial complaint on January 12, 2011. DCX 26 at 154.

under Title VI of the Civil Rights Act of 1964, and (2) an "Exhaustion of Administrative Remedies" section for three of the plaintiffs who had filed claims with the EEOC. *See* DCX 30 at 258-59, 260 (additions underlined). The exhaustion of administrative remedies section did *not* include Ms. Roberts, who had not yet filed a claim with the EEOC. *See id.* at 260.

28. Respondent did not explain to Ms. Roberts that he planned to avoid her timeliness problem by asserting a claim under Title VI. *See* Tr. 56-57, 65-68 (Roberts); Tr. 420 (Respondent). Nor did he explain to her that Title VI had more stringent pleading requirements and requirements of proof. *Id.*; *see also* Tr. 323 (Respondent: conceding that "actual notice" and "deliberate indifference" were required elements of Title VI). As Respondent knew, but did not explain to Ms. Roberts: "Liability under Title VI occurs when the [school board] knows about discriminatory/retaliatory misconduct and fails to take action to prevent it." DCX 24 at 147 (Respondent's letter to ODC, dated July 15, 2019); *see also* Tr. 238 (Respondent, colloquy during cross-examination of Correia), 323, 433-34 (Respondent); Tr. 164 (Correia).

F. Ms. Roberts Filed a Claim with the EEOC on March 20, 2011.

29. On February 17, 2011, Respondent emailed Ms. Roberts that she had "a viable national origin-disparate [sic] treatment claim" and that she needed to "mail [him] the $2,000 balance [on her initial retainer] as soon as possible." DCX 9 at 74. He also instructed her: "As I asked you to do some time ago, you urgently need to file a discrimination complaint with EEOC," and failing to do so

"immediately is foolish because PGCPS's attorneys are already seeking to get your claim dismissed on this issue." *Id.*

30. Ms. Roberts, surprised by the email, told Respondent that she needed his help. Tr. 66-67 (Roberts); DCX 9 at 75 ("I need your help because I hate to do anything that will hurt my case, I need your guidance in filling in the form. . . . This is messed up. We need to meet so that I can understand what is going on and have the EEOC forms filled out.").

31. Notwithstanding her request, Respondent did not help Ms. Roberts in preparing and filing her EEOC claim, which she did without his assistance. Tr. 65, 67-68 (Roberts). Respondent only provided Ms. Roberts with some "model" documents that other claimants had filed, but the documents did not discuss facts or issues related to Ms. Roberts's claim. Tr. 67 (Roberts). *See generally* DCX 11.

32. Expert witness Correia opined that not helping a client to file her EEOC charge upon the client's request is not what a reasonable employment law practitioner would do. *See* Tr. 202-05 (Correia). Such inaction risks that the client unwittingly damages her own case. *Id.* Nor is it sufficient to simply provide a sample charge or "model" in lieu of actually assisting the client to draft an EEOC charge. Tr. 205 (Correia explaining that providing a sample EEOC form is "[n]ever" sufficient on its own).

33. On March 10, 2011, Ms. Roberts filed her claim with the EEOC. DCX 15. The facts that Ms. Roberts provided dated back to 2005 and 2008. *See id.* at 104, 107. On March 17, 2011, the EEOC dismissed her claim and sent her a letter

notifying her that she was therefore free to file a complaint in federal court. Tr. 73 (Roberts); DCX 14 at 100; DCX 15 at 110. Ms. Roberts informed Respondent that she had received the Dismissal and Notice of Rights form. Tr. at 72-73; DCX 14 at 100. On March 19, 2011, Respondent wrote an email to Ms. Roberts stating that "Everything seems to be coming together," that "everyone should have coverage" after getting their EEOC Right to Sue Letters, and that he was "confident that we will be able to go forward under Title VI as well." DCX 14 at 101.

G. The Court Dismissed the Joint Complaint, and Respondent Filed an Individual Complaint for Ms. Roberts.

34. On April 28, 2011, the court dismissed the joint complaint without prejudice and permitted *each* individual plaintiff to refile an individual complaint. DCX 37.

35. Respondent continued to tell Ms. Roberts that she had a good case. Tr. 80-81 (Roberts); DCX 17 at 113 (Respondent stating: "I am confident you will succeed"); DCX 17 at 114 (Respondent stating: "I am very optimistic about your case").

36. Respondent did not explain that to succeed under Title VI, Ms. Roberts would have to prove that the school board had actual knowledge that she was being discriminated against and willfully allowed it to continue. *See* Tr. 80-81 (Roberts); DCX 17 at 113-14; *see also* FF 28, 35. He did not explain Title VI's higher pleading standard even though he knew that Ms. Roberts had not complained to or otherwise informed the school board about alleged discrimination prior to the lawsuit. *See* FF 7 (her complaints were about collective bargaining agreement, not about

discrimination); DCX 13 at 96 (Ms. Roberts told Respondent about Mr. Goldstein's letter); DCX 9 at 76 (Respondent: "You have been complaining . . . for many years . . . . The problem is that you and many others never use the word discrimination"); *see also* Tr. 395-97 (Respondent) (Ms. Roberts did not provide him any information about specific complaints that she made about discrimination); *cf.* DCX 39 at 447-48 ¶¶ 28, 40, 42 (Respondent alleging only that Ms. Roberts complained about "not having a teaching assignment"—not about discrimination). Respondent cites to DCX 37 for the proposition that the district court judge ordered the plaintiffs to file with the EEOC. However, nothing in DCX 37 supports that proposition. *Compare* Resp. Br. at 48, *with* DCX 37 (dismissing the case and directing that the plaintiffs have thirty days to "refile individual complaints in accordance with the [c]ourt's comments").

37. On May 23, 2011, Respondent filed Ms. Roberts's individual complaint in the U.S. District Court, asserting national origin discrimination claims against the school board and the teachers' union. DCX 39. Aside from claims that were withdrawn, Respondent pursued three claims on Ms. Roberts's behalf: (1) a claim against the school board under Title VII; (2) a claim against the school board under Title VI; and (3) a claim against the teacher's union under 42 U.S.C. § 1981. *See generally* DCX 39; DCX 46 at 517 (setting forth claims remaining in the case).

38. Respondent continued to assert the Title VII claim against the school board even though he knew or should have known it was time-barred. *See* FF 14, 20; DCX 39; DCX 46 at 517-18.

39. In support of the Title VI claim, Respondent did not allege facts to show that the school board was notified or otherwise knew about the alleged discrimination—only that Ms. Roberts had complained generally about her teaching assignment. *See* DCX 39 at 446-48. In fact, under his heading for the Title VI Count in the complaint, the allegations concerned only Ms. Roberts's *principal*; Respondent included no allegations about the school board, let alone that it knew about the alleged discrimination. *See* DCX 39 at 448-49 ¶ 50-51.

40. In support of the Section 1981 claim against the teachers' union, Respondent did not allege racial discrimination even though the statute creates a cause of action *only* for racial discrimination, not discrimination based solely on national origin. *See* DCX 39; DCX 39 at 448 ¶ 38 (contrasting Ms. Roberts from teachers who were "American born"); DCX 39 at 449 ¶ 54 ("In 2009, Ms. Roberts attempted to file a grievance, based on national origin discrimination, with [the teachers' union] against Principal Thomas."); DCX 42 at 484 (cause of action "based on national origin"); Tr. 193-94 (Correia). Nor did he affirmatively allege that the union was notified of any discriminatory acts or actively discriminated against Ms. Roberts. Tr. 195-97 (Correia); *see* DCX 39 at 448-50. The pleadings asserted only that Ms. Roberts complained "about not having a teaching assignment," DCX 39 at 448 ¶ 42, and that the union refused to provide her with a grievance form, DCX 39 at 449 ¶ 55. Additionally, the Hearing Committee finds that Ms. Roberts's request for a grievance form was made in 2006, not 2009, as alleged in the complaint drafted by Respondent. *Compare* DCX 39 at 449 ¶¶ 54-55 (complaint alleging that the

union's refusal to provide a grievance sheet took place in 2009), *with* DCX 19 at 117 (Ms. Roberts's July 10, 2011 email message to Respondent which explicitly stated that her notes showed that she sought a grievance form on June 26, 2006). As a result, the basis for the Section 1981 claim (union's refusal to provide a grievance sheet) took place more than four years before the filing of the suit, but this was not evident on the face of the complaint.

41. Respondent acknowledged that the individual complaint that he filed on Ms. Roberts's behalf was "bare[-]bones." Tr. 366 (Respondent). *See generally* DCX 39. He largely copied the facts that he had asserted in the original joint complaint. *Compare* DCX 27 at 161-63, *with* DCX 39. Disciplinary Counsel's expert Correia described the complaint as "woefully deficient." Tr. 206-08 (Correia). According to expert Correia, Respondent did not "connect the dots" between any claims of discrimination and factual allegations that could potentially support those claims. Tr. 257-58; *see also* Tr. 206-08, 220-22, 236 (Correia). The district court judge described Ms. Roberts's complaint's failure to state a claim as follows:

> No question the complaint really doesn't say anything here about why there should be national origin discrimination, other that the plaintiff is from Virgin Islands and speaks with a Caribbean accent and did not then get her own classroom in some period of time. Those complaints simply don't state a cause of action for national origin discrimination. They don't.

DCX 46 at 519.

42. The school board and teachers' union both filed motions to dismiss, or in the alternative for summary judgment. DCX 40; DCX 41.

43. At a December 7, 2011 hearing on the motions, the district court judge criticized Respondent's legal work by stating in open court: "I think you've really encouraged some of your clients to come forth with lawsuits that have no basis, Mr. Chapman." DCX 46 at 516. Ms. Roberts, who was present at the hearing, recalled that the court said that her case did not belong in federal court. *See* Tr. 85 (Roberts); *see also* DCX 46 at 523 (Court: "[T]his particular case doesn't belong in this court on these statutes"). This was the first time that Ms. Roberts ever heard that she might not have a viable case. Tr. 86 (Roberts). Respondent does not dispute the district court judge made these statements or that it was the first time Ms. Roberts heard she might not have a viable case, but he disagrees with the court's statements. *See* Resp. Br. at 60 ¶ 43.

44. The district court judge proceeded to find that Ms. Roberts's Title VII claim against the school board was time-barred, and the complaint failed to plead a cause of action for national origin discrimination (which negated the Title VI claim). The district court judge found her claim against her teachers' union could not be sustained under 42 U.S.C. § 1981, which did not apply to a claim based solely on national origin discrimination. DCX 46 at 516-524.

45. On December 8, 2011, the district court judge dismissed Ms. Roberts's claims with prejudice. DCX 47.

H. Credibility Determinations

46. The Committee finds that Ms. Roberts was a credible witness. She testified in a forthright manner about her dealings with Respondent. Her testimony,

especially her testimony about her interactions and communications with Respondent, was clear and detailed. Her recall of the circumstances and persons that negatively affected her employment was similarly detailed and specific. *See, e.g.*, Tr. 34-36, 43-44. When she could not specify certain dates, she was careful not to testify to those dates unless her recollection had been refreshed by reference to relevant documents. *See, e.g.*, Tr. 41, 44-47, 60-61. During Disciplinary Counsel's direct examination, she honestly explained that she did not have a specific recollection of the date when she signed the attorney agreement. Tr. 48. At the same time, her recall concerning the details of her initial conversations with Respondent was unequivocal and detailed. Tr. 49-51 (Ms. Roberts: "I told him as much as I could. And he said[,] 'I see the picture of what was happening with you, and you have a case . . . you could come aboard with the group.' And so there we went. I was part of the group.").

We also credit her testimony concerning Respondent's failure to help her fill out her EEOC form beyond sending her sample forms, despite her need for personal help. *See* Tr. 66-68, 90-91. We similarly credit her recollection of her surprise and frustration when the district court judge stated in open court that her claims did not belong in the court. Tr. 86-88. Having considered the admitted exhibits, we also conclude that Ms. Roberts's testimony was further corroborated by the contemporaneous documents and her email correspondence with Respondent. *See* DCX 48; DCX 12 at 91-94; DCX 13 at 95-96; DX 14 at 99-101; DCX 17 at 112-13.

47. Ms. Correia, Disciplinary Counsel's expert witness, has twenty-nine years of experience practicing civil rights and employment discrimination and retaliation. Tr. 140-41 (Correia). She is a member of various professional organizations, including the National Employment Lawyers Association and Metropolitan Washington Employment Lawyers Association, where she has served as Vice President and President, respectively. Tr. 141. In 2017, she was admitted to the College of Labor and Employment Lawyers, which is an honorary group of fellows, who are chosen for their advocacy and skill and vetted by fellow plaintiffs' and defense lawyers and judges. Tr. 142. She has lectured and presented on dozens of occasions about various topics related to employment and civil rights law. Tr. 143-44. During the hearing, the Hearing Committee qualified Ms. Correia as an expert, *see* Tr. 174, 210, and she testified knowledgeably about the standards, practices, and regulations applicable to practitioners of employment and civil rights law. *See, e.g.*, Tr. 179-183; 189-190. She also testified knowledgeably about the facts, legal issues, and legal claims in Ms. Roberts's case. *See, e.g.*, Tr, 170-72 (identifying the missing material allegations in the complaint Respondent filed on behalf of Ms. Roberts). We find her to be a credible and knowledgeable witness.

48. We find that Respondent's testimony lacked credibility. His testimony contradicted the contemporaneous documents. He did not testify with candor, and he contradicted his own testimony and his own prior written statements during the disciplinary proceeding. We find that Respondent mischaracterized facts and events in an apparent attempt to deflect blame from himself. Respondent falsely

testified about his interactions with Ms. Roberts, claiming that she failed to provide him with information, such as an adequately detailed timeline. *See, e.g.*, Tr. 358-360, 365, 368-69; *see also* Tr. 366 ("[S]he never gave me very much information. The complaint was bare bones. But it was not for lack of trying."); Tr. 370 ("Q: . . . Did you ever file an affidavit on behalf of Ms. Roberts? A: No. Q: Why? A: Because I didn't feel she provided me with [an] adequate amount of information."). However, the contemporaneous emails and documents demonstrate that Ms. Roberts provided Respondent with several pages of details, including her recollection of the chronology. DCX 8 at 67-71; DCX 13 at 95-96; *see* Tr. 371-79 (Respondent). During his testimony, Respondent also suggested without a good faith basis that the district court judge dismissed the joint complaint as a personal favor to someone. Tr. 429-431 (Respondent testifying that he believed the district court judge's actions were the result of "pure bias," and that the district court judge "was doing someone a favor"). We find that statement to be both unreliable and self-serving.

In connection with the disciplinary proceedings, Respondent was hesitant to admit the errors in his Answer during his cross-examination. For example, in his Answer, Respondent had indicated that he instructed Ms. Roberts to file an EEOC complaint at their first meeting. DCX 3 at 48 (Answer ¶ 23). He further stated that Ms. Roberts never confirmed that she ever made such a complaint or received a Notice of Right to Sue letter as a result of her EEOC complaint. *Id.* at 48-49 (Answer ¶¶ 23, 25). In spite of these assertions in his Answer, the record indicates that Respondent did not, in fact, instruct Ms. Roberts to file an EEOC complaint until

January 11, 2011. DCX 6 at 64; *see also* DCX 9 at 75 (Ms. Roberts: "When I first met with you[, you] told me that I did not need to file an EEOC.").

When Respondent was questioned about this discrepancy and other errors in his Answer, he was not straightforward in his responses, though he did ultimately admit that his Answer included incorrect statements. *See* Tr. 385-391 (Respondent). On the record before us, we cannot determine whether the errors in his Answer were deliberately false as opposed to mistakes in recollection due to his not having adequately reviewed his own files.

Before meeting Respondent, Ms. Roberts's complaints to school personnel about her teaching assignment were *general complaints*; they were not tied to allegations of national origin discrimination. *See* FF 7, 12. Respondent disputes that assertion. Resp. Br. at 11-24 ¶¶ 7, 11-12. Respondent, however, ignores Ms. Roberts's testimony and his own testimony that he was the one who, in October 2010, *first told* Ms. Roberts about the possibility of a claim for discrimination based on her national origin. *See* FF 7. He further ignores the record evidence that, before she met with him, Ms. Roberts's complaints about her teaching assignment were clearly general complaints about her assignment or about violations of her collective bargaining agreement—not about discrimination. *See* FF 6-7, 12; *see also* Resp. Br. at 13-14 (admitting that Ms. Roberts provided him with a copy of the 2008 letter her previous attorney wrote on her behalf, which complained that her teaching reassignment was a contractual violation, *see* DCX 48).

III. CONCLUSIONS OF LAW

Before turning to the charged Rule violations, we address Respondent's motion to dismiss and recommend that the Board deny the motion.[7] Respondent's motion to dismiss asserts that all the charges should be dismissed because they are not supported by the record. Respondent does not allege that the Specification of Charges is defective or assert a violation of his due process rights. A respondent's quarrel with the sufficiency of the evidence is more properly addressed during a contested hearing and is not properly the subject of a pre-hearing motion to dismiss. *See Ontell*, 593 A.2d at 1040 (quoting with approval *In re Hyman*, Bar Docket No. 69-79, at 10 (BPR Apr. 10, 1981)). Accordingly, we recommend that the motion to dismiss be denied.

As discussed below and supported by our Findings of Fact, we conclude that Respondent's representation of Ms. Roberts was not competent and that Respondent failed to appraise Ms. Roberts of the severe weaknesses in her employment and union case. We find that Respondent's various attempts to get around the critical flaws in Ms. Roberts's case were not well-founded and that a competent employment or union law practitioner would have known this and so advised her.

We additionally conclude that Respondent's pleadings filed on behalf of Ms. Roberts lacked any basis in fact or law and were, thus, frivolous. Respondent argues

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[7] A hearing committee is not authorized to rule on a motion to dismiss, but instead must include a recommended disposition of the motion in its report to the Board. *See* Board Rule 7.16(a); *In re Ontell*, 593 A.2d 1038, 1040 (D.C. 1991).

that his various strategies to pursue Ms. Roberts's complaint stated a *prima facie* case and that the district court judge's dismissal of Ms. Roberts's claims was biased and wrongly decided. We find that the complaints Respondent filed included claims that were untimely or unsupported by the facts his client provided. To this extent, we find that those filings were frivolous under Maryland Rule 3.1.[8]

A. Respondent's Representation of Ms. Roberts Was Not Competent Under Maryland Rule 1.1.

Maryland Rule 1.1 "requires an attorney to provide competent representation to his/her client by applying the appropriate knowledge, skill, thoroughness, and preparation to the client's issues." *Attorney Grievance Comm'n v. Shakir*, 46 A.3d 1162, 1167 (Md. 2012) (per curiam); *see also Attorney Grievance Comm'n v. Framm*, 144 A.3d 827, 842 (Md. 2016) ("The essence of competent representation under [Maryland Rule] 1.1 is adequate preparation and thoroughness in pursuing the matter." (citation omitted)).

This requires "inquiry into and analysis of the factual and legal elements of the problem, and use of methods and procedures meeting the standards of competent practitioners." *See* Maryland Rule 1.1, cmt. [5]. Consequently, "[a]ttorneys remain potentially susceptible to violating [Maryland Rule] 1.1 notwithstanding they possess the requisite skill or knowledge to represent a client." *Attorney Grievance Comm'n v. Adams*, 109 A.3d 114, 125 (Md. 2015). For example, a lawyer who

[8] We hereinafter refer to the shortened version of the Maryland Rule, *e.g.*, Rule 3.1 instead of Rule 19-303.1.

generally possesses the requisite skill and knowledge may still violate Maryland Rule 1.1 by "undertaking representation of [a client]" where the "likelihood of success with [the client's] claim was limited." *See Attorney Grievance Comm'n v. Sutton*, 906 A.2d 335, 342 (Md. 2006). Failing to explain this limited likelihood of success likewise demonstrates a lack of competence. *See Attorney Grievance Comm'n v. White*, 136 A.3d 819, 833 (Md. 2016) ("[F]ailing to sufficiently explain the likelihood of . . . success in filing" a motion over sixty days past the deadline for such a motion violates Maryland Rule 1.1). In the same way, a lawyer's "failure to advise" his or her client that the cost of litigation might outweigh any potential benefit violates Maryland Rule 1.1 because it "does not reflect thorough and competent representation." *Framm*, 144 A.3d at 842.

Here, Respondent acted incompetently when he continued to encourage Ms. Roberts to continue the litigation even though there was no likelihood of success. At the outset, Respondent knew or should have known that there were critical legal and factual deficiencies with Ms. Roberts's discrimination claim. First, her claims were time-barred under Title VII, a fact Respondent testified he knew. FF 14, 20, 38. Second, the statutes he claimed he relied on to get around the Title VII statute of limitations, such as 42 U.S.C § 1981 or Title VI, were unavailing. FF 28, 36, 39-41. Ms. Roberts's claims had obvious problems and had no likelihood of success under any of the theories Mr. Chapman pursued. *Id.* Yet Mr. Chapman never advised Ms. Roberts about these serious deficiencies. FF 15, 16, 20, 28, 29, 35, 36, 43. He consistently told her only that she had a good case. FF 15, 20, 29, 35, 43.

By failing to advise Ms. Roberts that she had no likelihood of success, Respondent violated Maryland Rule 1.1. *See Framm*, 144 A.3d at 842; *Attorney Grievance Comm'n v. White*, 136 A.3d at 833.

Respondent's pleadings also reflect that he did not approach Ms. Roberts's case with the preparation and thoroughness of a competent practitioner.

> Although the filing of a motion or pleading that ultimately proves to be unsuccessful or even lack merit is not *per se* a violation [of Maryland Rule 1.1], a violation may, nonetheless, exist when a claim in a pleading demonstrates an attorney's failure to apply requisite thoroughness and preparation, lacked merit and failed to advance a client's cause.

Rheinstein, 223 A.3d at 542 (citing *Attorney Grievance Comm'n v. Conwell*, 200 A.3d 820, 834-35 (Md. 2019)). Disciplinary Counsel's expert witness Correia characterized Mr. Chapman's pleading as "woefully deficient." FF 41. Even after filing three different versions of the complaint, Mr. Chapman failed to file a minimally competent pleading and state a proper claim for relief—each complaint failed to adequately allege that Ms. Roberts had been discriminated against, failed to "connect the dots" between her national origin and her assignment as a co-teacher, and failed to allege any genuine facts that could survive a motion to dismiss under any of the theories advanced by Respondent. *See* FF 24, 27, 34, 37, 40, 41, 43-45.

After conferring with Ms. Roberts, Respondent advised her that her claim would have to be premised on national origin discrimination. As a practitioner in employment discrimination law, he should have realized that such a claim could not be pursued under 42 U.S.C. § 1981 as pled in her individual discrimination complaint because suits brought under this statute must be premised on race

discrimination. *See* DCX 46 at 516-17 (describing the limitation of Section 1981 to race-based discrimination); Tr. 313 (Respondent) ("[Section] 1981 . . . deals primarily with race and ethnicity."); *see also Saint Francis College v. Al-Khazraji*, 481 U.S. 604, 613 (1987) ("If [plaintiff] can prove that he was subjected to intentional discrimination based on the fact that he was born an Arab, rather than solely on the place or nation of his origin, or his religion, he will have made out a case under § 1981."); *Anooya v. Hilton Hotels Corp.*, 733 F.2d 48, 49-50 (7th Cir. 1984) (per curiam) (finding that a claim cannot be brought under Section 1981 based solely on national origin discrimination); *Jenkins v. Gaylord Entertainment Co.*, 840 F. Supp. 2d 873, 883 (D. Md. 2012) (reiterating that discrimination based on national origin is not covered by Section 1981).

To the extent that Respondent now asserts that he intended the Section 1981 claim to contend that the union discriminated against Ms. Roberts based on her race, this is unsupported by the record. *See* Resp. Br. at 50-55. While the individual complaint does note that Ms. Roberts is black, it makes no allegation that the union treated Ms. Roberts differently than non-black teachers. *See* DCX 39 at 446 ¶ 11, 448 ¶¶ 42-43, 449 ¶¶ 52-55. Additionally, the district court understood that Ms. Roberts's Section 1981 claim was premised on her national origin, and the court properly dismissed it on that basis. *See* DCX 46 at 521.[9]

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[9] Although not raised by Disciplinary Counsel, Respondent erroneously cited the wrong date for the alleged basis of the Section 1981 claim (refusal to provide a grievance form in 2006, not 2009 as alleged in the complaint). *See* FF 40. If he accurately recalled the information provided by Ms.

In short, Respondent's pleadings reflect that he did not competently pursue Ms. Roberts's claims. *See Attorney Grievance Comm'n v. Conwell*, 200 A.3d 820, 829, 834-35 (Md. 2019) (lawyer violated Maryland Rule 1.1 because he filed various pleadings in child custody matter that "were not supported by fact or law and failed to advance [the client's] case").

In this proceeding, Respondent argues that Ms. Roberts should have been able to avoid the timeliness problem of her Title VII claim by alleging that the national origin discrimination was a continuing violation. Resp. Br. at 25; *see, e.g.*, *Holland v. Washington Homes, Inc.*, 487 F.3d 208, 219-220 (4th Cir. 2007) ("The continuing violation theory allows for consideration of incidents that occurred outside the time bar when those incidents are part of a single, ongoing pattern of discrimination, *i.e.*, when the incidents make up part of a hostile work environment claim. . . . [H]owever, [a plaintiff] cannot benefit from the continuing violations theory [when] he has alleged discrete violations."); *see* Tr. 179-181 (Correia). This continuing violation argument, however, was not made by Respondent on Ms. Roberts's behalf, but is an argument only raised in these proceedings. *See* DCX 39 at 448; DCX 46 at 518; Tr. 208-09 (Correia stating: "So all of these [arguments] about hostile work environment and continuing violation and whether something could be asserted beyond 300 days really [are] beside the point because [the individual] complaint doesn't get into those

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Roberts, Respondent would have realized that the Section 1981 count was untimely. *See* Tr. 197-98 (Correia); *White v. BFI Waste Servs., LLC*, 375 F.3d 288, 291-92 (4th Cir. 2004) (explaining that a four-year statute of limitations applies to claims brought under Section 1981).

issues."). There is nothing in the record indicating that Respondent pursued this argument before the district court, and Respondent's contention now in his brief that this was his intention, *see* Resp. Br. at 25, is unavailing.[10]

Disciplinary Counsel argues that Respondent's instructing Ms. Roberts to file a claim with the EEOC that Respondent knew was time-barred was not consistent with competent practice. Ms. Correia explained that "[u]nder no circumstances" should a lawyer advise a client to file a claim with the EEOC that the lawyer knows to be untimely. Tr. 186-87 (Correia). Respondent argues that the district court judge who dismissed the class complaint in Ms. Robert's case instructed the plaintiffs to do so before refiling individual complaints. *See* Resp. Br. at 48 (citing to DCX 37). That dismissal order, however, makes no reference to EEOC complaints. We find nothing in the record to corroborate Respondent's contention that the district court judge instructed Respondent to file untimely complaints with the EEOC.

Respondent's various contentions that his pleadings were sufficient are unsupported. He continues to mistakenly argue that pleadings alleging only that the plaintiff is a member of a protected class were sufficient to state a cause of action and shift the burden of proof to the defendants. *Cf. Blackman v. Visiting Nurses Ass'n*, 694 A.2d 865, 871 (D.C. 1997) (under fourth prong of *McDonnell Douglas*,

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[10] Respondent admitted that the Title VII claim was untimely in his brief: "As far as Respondent was concerned, the Title VII claim in the Roberts Complaint was untimely and should not have been part of the complaint, except for Judge Messitte's instruction that it be included." Resp. Br. at 48; *see also id.* at 41 ("[T]he Letter of Right to Sue [did] not resolve the untimeliness problem. The statute of limitations . . . is 300 days in Maryland. Ms. Roberts was filing a charge about a discrimination issue that started five (5) years earlier. Barring an escalation of the matter, such as a suspension or termination, there would be no way around the timeliness issue.").

employee must not only allege that he or she is a member of a protected class but that the "protected characteristic . . . was a substantial factor in the employee's termination."). Respondent's talismanic recitation of the *McDonnell-Douglas* factors misses the point. It is axiomatic that a discrimination complaint must allege some facts suggesting prohibited discrimination. *See* Tr. 171 (Correia: "[W]hether it's Title VII or Title VI or 1981 or whatever, there is not an allegation of discrimination here that is supported by facts"); *see, e.g.*, *In re Pressley*, Board Docket Nos. 18-BD-025 & 18-BD-093, at 37 (HC Rpt. July 3, 2019) (finding D.C. Rule 1.1(a) and 1.1(b) violations where respondent failed to "allege basic factual elements" of client's employment discrimination claims which respondent "could have accomplished by simply interviewing [the client], or, as the court pointed out, alleging certain facts on information or belief"), *review stayed for indefinite disability suspension*, D.C. App. No. 19-BS-531.

Finally, Disciplinary Counsel argues that ignoring a client's request for assistance drafting and filing a claim with the EEOC is inconsistent with the thoroughness and preparation expected of a competent practitioner. *See* FF 32. Ms. Correia testified that providing samples without further assistance was not competent practice. FF 32. Respondent contends that his assistance in this regard was sufficient. *See* Resp. Br. at 40-42. He notes that Ms. Roberts succeeded in obtaining the right to sue letter from the EEOC Regional Office. This fact does not change the fact that he instructed his client to file a complaint that he knew was time-barred.

Accordingly, Disciplinary Counsel has met its burden of proving the violation of Maryland Rule 1.1 by clear and convincing evidence.

B. Respondent Failed to Consult with Ms. Roberts as Required by Maryland Rule 1.2(a) and Explain her Situation as Required by Maryland Rule 1.4(b).

Respondent violated Maryland Rule 1.2(a) and Rule 1.4(b) by failing to tell Ms. Roberts that her claim had little or no likelihood of success. We analyze Maryland Rule 1.2(a) and Rule 1.4(b) together because they apply to similar conduct. These Rules both recognize that a client has a right to "consult with the attorney about the means to be used in pursuing [the client's] objectives." *See* Maryland Rule 1.2, cmt. [1]; *see also* Maryland Rule 1.4, cmt. [3] (discussing Maryland Rule 1.2(a)).

Maryland Rule 1.4(b) provides: "An attorney shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation." "A violation [of Maryland Rule 1.4(b)] turns on the substance, not regularity, of communication; thus, frequent attorney-client communication does not necessarily negate a violation." *Attorney Grievance Comm'n v. Lang*, 191 A.3d 474, 503 (Md. 2018) (citing *Attorney Grievance Comm'n v. Rand*, 128 A.3d 107 (Md. 2015)). Comment [5] to Maryland Rule 1.4 provides:

> The client should have sufficient information to participate intelligently in decisions concerning the objectives of the representation and the means by which they are to be pursued, to the extent the client is willing and able to do so. . . . In litigation an attorney should explain the general strategy and prospects of success and ordinarily should consult the client on tactics that are likely to result in significant expense or to injure or coerce others.

Similarly, "[i]n order for a lawyer to abide by a client's decisions concerning the objectives of the representation," as required by Maryland Rule 1.2(a), that lawyer "must give the client honest updates regarding the status of his or her case." *Attorney Grievance Comm'n v. Shapiro*, 108 A.3d 394, 402 (Md. 2015).

Here, Respondent failed to explain to Ms. Roberts the critical problems with her case and his purported strategies to overcome them. FF 15, 16, 20, 28, 29, 35, 36, 43. He never explained how or why he was joining her case with a group of dissimilar plaintiffs. *See* FF 20, 21. He similarly failed to consult with her about using Title VI as an end run around her missed statutory deadlines—a failing strategy from the outset given that the facts of her case did not support a Title VI claim. FF 36.

Without a doubt, Respondent never explained to Ms. Roberts the obvious deficiencies in her case. This lack of substantive communication deprived Ms. Roberts of the opportunity to make an informed decision about whether to pursue her claims. *See Attorney Grievance Comm'n v. Edwards*, 225 A.3d 19, 36-37 (Md. 2020) (finding a 1.2(a) violation where a lawyer failed to notify her client that her claim was barred by the statute of limitations); *Attorney Grievance Comm'n v. Smith*, 177 A.3d 640, 662, 675 (Md. 2018) (lawyer violated Maryland Rule 1.4(b) where he failed to adequately discuss the viability of his legal theories with the client). As Ms. Roberts pointed out, had Mr. Chapman provided a realistic assessment of her case, she would not have paid him to pursue it. Tr. 86-87 (Roberts). Accordingly,

Disciplinary Counsel has met its burden of proving a violation of Maryland Rule 1.2(a) by clear and convincing evidence.

Respondent repeatedly advised Ms. Roberts that she had a "good" or "strong" discrimination case. In fact, he knew or should have known that her cause of action under Title VII was time-barred. FF 20. He further advised that she could proceed under Title VI, which has a more lenient statute of limitations. *See* DCX 14 at 101 (Respondent email to Ms. Roberts, March 19, 2011) ("1 am also confident that we will be able to go forward under Title VI as well."). Respondent never told Ms. Roberts about the additional pleading requirements of Title VI and should have so advised her so that she would understand that her facts did not fall within Title VI. Title VI may have a longer statute of limitations, but it requires additional elements of proof not required under Title VII. By not explaining the additional pleading requirements, Respondent prevented his client from learning that her facts did not fall within Title VI.

Accordingly, Disciplinary Counsel has met its burden of proving a violation of Maryland Rule 1.4(b) by clear and convincing evidence

C. Frivolous Filings Under Maryland Rule 3.1

Maryland Rule 3.1 provides:

> An attorney shall not bring or defend a proceeding, or assert or controvert an issue therein, unless there is a basis for doing so that is not frivolous, which includes, a good faith argument for an extension, modification or reversal of existing law. An attorney may nevertheless

so defend the proceeding as to require that every element of the case be established.[11]

A violation of Maryland Rule 3.1 has been found where a prior court has sanctioned the attorney for filing a frivolous claim and the attorney then continued to engage in the same conduct despite being told that his arguments had no merit. *See Attorney Grievance Comm'n v. McClain*, 956 A.2d 135, 142 (Md. 2008) ("Respondent was advised . . . that his arguments had no merit. Despite this, he continued to file motions relying on the same facts, same argument and same legal theory.").

The filing of a single pleading also has been found to be sufficient to prove a violation. In *Attorney Grievance Comm'n v. Zdravkovich*, the Court of Appeals of Maryland decided that the respondent's attempt to remove a Texas action to a federal court in Maryland was frivolous because it was so obvious that the petition for removal would fail: "a reading of 28 U.S.C. § 1446 would have made it crystal clear to [r]espondent that, under the circumstances, he could not remove the Texas action." 762 A.2d 950, 965 (Md. 2000). Similarly, in *Attorney Grievance Commission v. Alison*, the Court of Appeals of Maryland relied on the disciplinary hearing judge's description of a respondent's claim against a law firm as

[11] The current version of D.C. Rule 3.1 provides that "[a] lawyer shall not bring or defend a proceeding, or assert or controvert an issue therein, unless there is a basis *in law and fact* for doing so that is not frivolous, which includes a good-faith argument for an extension, modification, or reversal of existing law." (emphasis added).

"'completely without foundation'" in finding a violation of Maryland Rule 3.1. 709 A.2d 1212, 1220 (Md. 1998).

As discussed above, Respondent knew that Ms. Roberts's Title VII discrimination complaint was time-barred. Respondent tried several strategies to overcome this deficiency. First, he joined her complaint with other, unrelated, complaints against the Prince George's County school system. When it is appropriately applied, this "piggybacking" strategy "allows plaintiffs who have not exhausted the administrative requirement of filing with the EEOC to join in a lawsuit with other plaintiffs who have exhausted the requirement, provided that all plaintiffs' claims are substantially similar and that the EEOC charge itself gave notice of the charge's collective nature." *White v. BFI Waste Servs., LLC*, 375 F.3d at 293; *see Foster v. Gueory*, 655 F.2d 1319, 1321-22 (D.C. Cir. 1981) ("[T]he critical factor in determining whether an individual Title VII plaintiff . . . may escape [the] requirement [to file an EEOC charge] by joining with another plaintiff who has filed such a charge, is the similarity of the two plaintiffs' complaints."). *But see* DCX 36 at 425 (school board arguing that "[t]o date, the 4th Circuit has not applied the single-filing rule to individual [p]laintiffs"). Because Ms. Roberts's case was different from and unrelated to the other plaintiffs' cases, the "piggybacking" strategy was not available to her Title VII claim. *See* FF 21.

Respondent also sought to rely on the more lenient statute of limitations under Title VI. This strategy failed for two reasons. First, Title VI requires additional elements of proof for which Ms. Roberts did not have the factual predicate. *See*

FF 39. A successful Title VI case for Ms. Roberts would have required her to establish that she had complained to the school board that she was being discriminated against. There is ample evidence in the record that Respondent knew that Ms. Roberts's complaints had been about contractual violations, not discrimination. She had provided him with the contractual complaint filed by her previous lawyer. FF 6-7. Both Respondent's and Ms. Roberts's recollection of their initial attorney-client conversation consistently show that she did not think that she had been discriminated against because of her race, gender, or age. *See* FF 12; Tr. 354 (Respondent), 111-13, 124-25 (Roberts). Respondent acknowledged that it was he who suggested the notion of national origin discrimination to Ms. Roberts. Tr. 354. However, he was aware that her previous complaints were contractual grievances not based on discrimination, *see* Tr. 447-450, and that she would not be able to establish that the defendants were on notice of a discrimination complaint, Tr. 443, eliminating Title VI as a viable option. Further, Ms. Roberts's individual complaint was out of time even under the Title VI standard. The court explained that Title VI has a three-year statute of limitations; the federal suit was filed by Respondent on May 23, 2011, more than three years after the alleged discriminatory act. DCX 46 at 518-520; *see also Jersey Heights Neighborhood Ass'n v. Glendening*, 174 F.3d 180, 187 (4th Cir. 1999) (applying three-year statute of limitations to Title VI claim).

Finally, Respondent's attempt to proceed with Ms. Roberts's case under 42 U.S.C. § 1981 failed both on timeliness grounds and because Section 1981 does

not apply to national origin discrimination. *Saint Francis College*, 481 U.S. at 613; *White v. BFI Waste Servs., LLC*, 375 F.3d at 291-92; *Anooya*, 733 F.2d at 49-50; *Jenkins*, 840 F. Supp. 2d at 883. Respondent did not have a viable theory for pursuing Ms. Roberts's complaints as discrimination but, nevertheless, continued to assert these theories in his complaints or her behalf.

Ms. Roberts's claims had obvious problems and had no likelihood of success under any of the theories Respondent pursued. *See* FF 13, 14, 36, 40, 44. Yet Respondent never advised Ms. Roberts about these serious deficiencies. FF 15, 16, 20, 28, 29, 35, 36, 43. He consistently told her only that she had a good case even as it became clear she had no chance of prevailing.

Accordingly, Disciplinary Counsel has met its burden of proving a violation of Maryland Rule 3.1 by clear and convincing evidence.

IV. RECOMMENDED SANCTION

Disciplinary Counsel has asked the Hearing Committee to recommend the sanction of a ninety-day suspension. Respondent has requested that the Hearing Committee recommend a dismissal. For the reasons described below, we recommend the sanction of a ninety-day suspension for Respondent's violations of the Maryland Rules.[12]

[12] While the choice of law results in our application of the Maryland Rules for assessing the alleged misconduct, we look to D.C. case law when making a sanction recommendation. *See, e.g.*, *In re Ponds*, 888 A.2d 234, 240, 245 (D.C. 2005).

The appropriate sanction is that which protects the public and the courts, maintains the integrity of the profession, and "deter[s] other attorneys from engaging in similar misconduct." *In re Kline*, 113 A.3d 202, 215 n.9 (D.C. 2015) (citing *In re Reback*, 513 A.2d 226, 231 (D.C. 1986) (en banc)). Sanction analysis must turn on the facts and circumstances of each case. *In re Goffe*, 641 A.2d 458, 463-64 (D.C. 1994) (per curiam). "In all cases, [the] purpose in imposing discipline is to serve the public and professional interests . . . rather than to visit punishment upon an attorney." *Reback*, 513 A.2d at 231.

Under D.C. Bar R. XI, § 9(h), the sanction imposed must be consistent with cases involving comparable misconduct. The sanction also must not "foster a tendency toward inconsistent dispositions for comparable conduct or . . . otherwise be unwarranted." D.C. Bar R. XI, § 9(h)(1); *see, e.g.*, *In re Hutchinson*, 534 A.2d 919, 923-24 (D.C. 1987) (en banc); *In re Berryman*, 764 A.2d 760, 766 (D.C. 2000). In determining the appropriate sanction, the Court of Appeals considers a number of factors, including: (1) the seriousness of the conduct at issue; (2) the prejudice, if any, to the client which resulted from the conduct; (3) whether the conduct involved dishonesty; (4) the presence or absence of violations of other provisions of the disciplinary rules; (5) whether the attorney has a previous disciplinary history; (6) whether the attorney has acknowledged his wrongful conduct; and (7) circumstances in mitigation or aggravation. *See, e.g.*, *In re Martin*, 67 A.3d 1032, 1053 (D.C. 2013) (citing *In re Elgin*, 918 A.2d 362, 376 (D.C. 2007)).

A. The Seriousness of the Misconduct

Respondent's misconduct consists of incompetently asserting frivolous claims and failing to tell his client that her claims were not viable. Respondent expended his client's and the court's resources while pursuing claims that had no basis in law or fact. Respondent failed to explain even basic concepts to his client about why her claims were facially deficient.

B. The Prejudice to the Client

Ms. Roberts was prejudiced when she paid $3,000 in fees and a $300 filing fee, Tr. 80, 87 (Roberts), to pursue a case that she did not know was frivolous. Although not clients, the school board, the teachers' union, and the district court were also prejudiced as they had to devote significant resources responding to Mr. Chapman's frivolous claims. *See In re Omwenga*, 49 A.3d 1235, 1238-39 (D.C. 2012) (per curiam); *In re Thyden*, 877 A.2d 129, 144 (D.C. 2005); *In re Jackson*, 650 A.2d 675, 678-79 (D.C. 1994) (per curiam) (appended Board Report); *In re Hill*, 619 A.2d 936, 939 (D.C. 1993) (per curiam) (appended Board Report).

C. Dishonesty

The Hearing Committee additionally finds that Respondent was less than candid throughout the disciplinary process. First, he falsely told Disciplinary Counsel that he informed Ms. Roberts from the outset that her claim was untimely. To the contrary, the documentary record and Ms. Roberts's credible testimony establishes that he continued to tell her that she had a "good" and "viable" case—without mentioning the problems in her case. FF 15, 20, 29, 35. In his initial

correspondence with Disciplinary Counsel, he also falsely suggested that Ms. Roberts was to blame for delaying her filing of an EEOC claim. *See supra* pp. 22-24. The record shows that Respondent did not tell Ms. Roberts to file a claim with EEOC until January 2011. FF 25. Moreover, after he told her to file the EEOC complaint, Respondent failed to help her file the claim even though she explicitly requested his assistance. FF 31.

D. Violations of Multiple Rules

Respondent violated multiple Maryland Rules. Disciplinary Counsel has established by clear and convincing evidence that Respondent violated Rule 1.1 (Competence), Rule 1.2(a) (Failing to Consult with Client), Rule 1.4(b) (Failing to Explain a Matter), and Rule 3.1 (Frivolous Claims).

E. Prior Disciplinary History

Respondent was previously suspended for sixty days, with thirty days stayed in favor of one-year probation. *See In re Chapman*, 962 A.2d 922 (D.C. 2009) (per curiam). In that case, Respondent was found to have neglected his client's employment case by failing to competently and diligently conduct discovery which resulted in his client's claim being dismissed. *See id*. at 923-24, 926 (violation of D.C. Rules 1.1(a), 1.1(b), and 1.3(a)). As aggravating factors in that case, Respondent "was found to be deliberately dishonest in his dealings with [Disciplinary] Counsel and not credible in his testimony before the Committee," and he "refused to take responsibility or show any remorse for his misconduct." *Id*. at 926-27. He does the same here.

F. Mitigating and Aggravating Circumstances

Respondent did not offer evidence in mitigation at the hearing or in his post-hearing briefing.

Respondent's misleading assertions to the Committee and to Disciplinary Counsel, his failure to acknowledge his misconduct, his blaming others for his misconduct, and his disciplinary history for similar misconduct are all aggravating factors.

We also treat Respondent's attitude toward the underlying misconduct as an aggravating factor. Respondent does not accept responsibility or acknowledge the seriousness and scope of his misconduct. For example, at the hearing, he blamed Ms. Roberts for his inadequate pleadings: "[S]he never gave me very much information. The complaint was bare bones. But it was not for lack of trying." Tr. 366 (Respondent). He falsely testified that she did not provide him with information. *Compare* Tr. 365 (Respondent: "She never [sent a timeline] other than to write down a few sentences on a piece of paper"), *with* Tr. 371-79 (Respondent acknowledging the detailed chronologies and narratives that Ms. Roberts provided him). He also incredibly blamed the district court judge for improperly dismissing the joint complaint as a "personal favor" to someone. FF 48; *see also* Tr. 431 (Respondent). Respondent made this incredible charge despite testifying that he knew his filing of the joint complaint "piggybacking" on unrelated Title VII claims was not a viable strategy. FF 14, 20; *see also* DCX 3 at 33 (Answer ¶ 10) ("Ms. Roberts's claims were time-barred under Title VII . . . ."); DCX 3 at 35 (Answer

¶ 11) ("Respondent never considered 'piggybacking' a permanent solution for Ms. Roberts or any of the Plaintiffs who failed to file timely EEOC complaints.").

Finally, Respondent refuses to acknowledge any wrongdoing. For example, he testified that Ms. Roberts's individual complaint should have withstood a motion to dismiss. He incredibly claimed that by merely asserting that Ms. Roberts's school received federal funding, he could survive a motion to dismiss the Title VI claim as a matter of law. *See, e.g.*, Tr. 317 ("[W]hat I realized was that in order to go forward with a Title VI claim [and survive a motion to dismiss], all I would have to do is think that the recipients of the federal funds received the funds for the primary purpose of employment."). He reiterated this argument throughout the disciplinary hearing. *See, e.g.*, Tr. 338, 434, 439 ("[C]ase law indicates that all you need is [paragraph] number three [paragraph alleging receipt of federal funds in the individual complaint]."), 440, 441 ("Q: And you believe that sitting here today? A: Yes. Moreso [sic] than even before."). Whether Respondent's assertion was a post-hoc rationalization taken too far, or an indication that Respondent cannot correctly interpret case law, this is an aggravating factor.

G. Sanctions Imposed for Comparable Misconduct

"[C]ases involving client neglect have resulted in a range of sanctions, from public censure to a period of suspension of thirty days or longer." *See Thyden*, 877 A.2d at 143-45 (thirty-day suspension for neglect involved in filing a frivolous action in a bankruptcy proceeding). Cases involving lawyers who assert frivolous claims in violation of Rules 3.1 and 8.4(d) have resulted in a range of sanctions from

a suspension of thirty days to ninety days. *See, e.g.*, *In re Pearson*, 228 A.3d 417, 428-29 (D.C. 2020) (per curiam) (ninety-day suspension for lawyer who litigated frivolous claims against his drycleaner); *In re Spikes*, 881 A.2d 1118, 1119, 1127-28 (D.C 2005) (thirty-day suspension for filing a frivolous defamation claim based on privileged complaint to Disciplinary Counsel).

Respondent's misconduct is not as egregious as the conduct in *Pearson*, and he did not assert personal claims for his own pecuniary gain, although he did expect Ms. Roberts to pay him. Nevertheless, we find that there are aggravating factors here, including Respondent's prior disciplinary history and his less than candid participation in the disciplinary process. Respondent's disciplinary history involved misconduct and aggravating factors that strongly resembled his conduct in the instant case. Previously, the Court of Appeals suspended Mr. Chapman for sixty days, but stayed thirty days of the suspension in favor of probation. The year after he was disciplined, Respondent began representing Ms. Roberts. Because his earlier discipline was insufficient to protect the public or adequately deter future misconduct, and given the other aggravating factors, the Hearing Committee recommends a ninety-day suspension.

V. CONCLUSION

For the reasons stated, the Hearing Committee finds that Respondent violated Maryland Rule 1.1 (Competence), 1.2(a) (Failing to Consult with Client), 1.4(b) (Failing to Explain a Matter), and 3.1 (Frivolous Claims) of the Maryland Rules. Based on the record of this proceeding and the aggravating factors described in detail

above, the Committee recommends that Respondent be suspended from the practice of law for ninety days. The Committee further recommends that the Court direct Respondent's attention to the requirements of D.C. Bar R. XI, § 14(g), and their effect on his eligibility for reinstatement. *See* D.C. Bar R. XI, § 16(c).

HEARING COMMITTEE NUMBER FIVE

Christian S. White, Chair

Dr. William Hindle, Public Member

Theodore Hirt, Attorney Member