THIS REPORT IS NOT A FINAL ORDER OF DISCIPLINE*

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

In the Matter of:	:	
	:	
DARLENE C. JACKSON,	:	
	:	Board Docket No. 22-BD-020
	:	Disciplinary Docket No. 2020-D171
Respondent.	:	
	:	
A Member of the Bar of the District of Columbia Court of Appeals (Bar Registration No. 445931)	:	

REPORT AND RECOMMENDATION
OF THE AD HOC HEARING COMMITTEE

Respondent, Darlene C. Jackson, is charged with violating District of Columbia Rules of Professional Conduct ("Rules") 3.4(c) (knowingly disobeying the obligations under the rules of a tribunal), 8.1(b) (knowingly failing to respond reasonably to a demand for information from disciplinary authority), and 8.4(d) (seriously interfering with the administration of justice), as well as D.C. Bar Rule XI, § 2(b)(3) (failing to comply with a Board order). Disciplinary Counsel contends that Respondent committed all of the charged Rule violations, and should be suspended for 60 days, with reinstatement conditioned on her proving that she is fit to practice law. Respondent did not appear in these proceedings, and has not responded to Disciplinary Counsel's arguments to the Hearing Committee.

As set forth below, the Hearing Committee finds that Disciplinary Counsel has proven, in discrete respects, violations of Rules 3.4(c), 8.1(b), 8.4(d), and D.C.

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

Bar Rule XI, §2(b)(3) by clear and convincing evidence, and recommends that Respondent be suspended from the practice of law for 60 days, with the requirement that she demonstrate fitness prior to resuming the practice of law.

PROCEDURAL HISTORY

On April 6, 2022, Disciplinary Counsel served Respondent with a Specification of Charges via certified U.S. Mail. *See* DCX 4.[1] Respondent did not file an answer, and did not otherwise appear in these proceedings. A hearing was held on September 13, 2022 before this Ad Hoc Hearing Committee. Respondent was not present, and no counsel appeared on her behalf. Disciplinary Counsel was represented at the hearing by Jason R. Horrell, Esquire. The following exhibits were received in evidence: DCX 1 – DCX 43. Unredacted copies of DCX 14 and DCX 24 were admitted under seal, pursuant to a September 12, 2022 Board Order.[2]

Upon conclusion of the hearing, the Hearing Committee made a preliminary non-binding determination that Disciplinary Counsel had proven at least one of the charged Rule violations set forth in the Specification of Charges. Tr. 222-23; *see*

[1] "DCX" refers to Disciplinary Counsel's exhibits. "Tr." refers to the transcript of the hearing held on September 13, 2022.

[2] The Board Chair granted Disciplinary Counsel's unopposed motion for a protective order to prevent the public disclosure of the contents of (i) DCX 14 – a sealed court filing identifying two minor children by their names and dates of birth and (ii) DCX 24 – a copy of a sealed court order. Order, *In re Jackson*, Board Docket No. 22-BD-020 (BPR Sept. 12, 2022). In order to comply with the Board's protective order, substantive references to the sealed exhibits are set forth in a "Confidential Appendix to Report and Recommendation" (hereinafter "Confidential Appendix") that the Ad Hoc Hearing Committee files under seal concurrently with and as part of this Report and Recommendation.

Board Rule 11.11. In the sanctions phase of the hearing, Disciplinary Counsel offered no evidence in aggravation of sanction. Tr. 223-24.

Disciplinary Counsel submitted its Proposed Findings of Fact, Conclusions of Law, and Recommendation as to Sanction on October 12, 2022 ("ODC Br."). Respondent did not file a post-hearing brief or otherwise respond to Disciplinary Counsel's brief.

FINDINGS OF FACT

The following findings of fact are based on the testimony and documentary evidence admitted at the hearing, and these findings of fact ("FF") are established by clear and convincing evidence. *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." (quoting *In re Dortch,* 860 A.2d 346, 358 (D.C. 2004)(internal quotation marks omitted))).

1. Respondent is a member of the Bar of the District of Columbia Court of Appeals, having been admitted on March 3, 1995, and assigned Bar number 445931. DCX 1; DCX 2.

The Yellow Line Cases

2. On January 21, 2015, Respondent filed a civil suit on behalf of Brittany Cobb against the Washington Metropolitan Area Transit Authority ("WMATA") in D.C. Superior Court. DCX 8 at 0092-98. The complaint alleged, *inter alia*, that Ms. Cobb had been a passenger on a Yellow Line metro train earlier that month, and that

she had suffered damages when her train became disabled and filled with smoke while inside a tunnel. *Id.*

3. Ms. Cobb's civil suit was one of many individual suits that passengers filed against WMATA alleging common issues of fact stemming from the Yellow Line incident. Tr. 22, 29 (Testimony of Barry Trebach); Tr. 126 (Testimony of Patrick Regan); DCX 9. In total, approximately 150-200 cases were filed against WMATA in the D.C. Superior Court and the United States District Court for the District of Columbia. Tr. 25-26, 29 (Trebach); Tr. 126 (Regan).

4. WMATA removed the cases filed in D.C. Superior Court to the district court, including the *Cobb* case. Tr. 25-26 (Trebach); DCX 8.

5. Several plaintiffs in other Yellow Line cases were represented by Patrick Regan, who had filed several civil actions against WMATA in the district court. Tr. 32, 35 (Trebach); Tr. 119-20 (Regan); DCX 12 at 0109-10.

6. The district court appointed Mr. Regan as the lead plaintiffs' attorney. He was responsible for administrative coordination among the various plaintiffs' lawyers. Tr. 119-20 (Regan). The district court also established one master case file for all Yellow Line cases, including the *Cobb* case. DCX 11.

7. The district court stayed the Yellow Line cases so that the parties could engage in settlement discussions. Tr. 30 (Trebach). The district court entered a stay in the *Cobb* case on February 19, 2015, shortly after it was removed from the D.C. Superior Court. DCX 7 at 0079.

8. On May 12, 2015, Respondent entered her appearance on behalf of Ms. Cobb in the district court. DCX 10.

Respondent's Conduct Before the District Court

9. On July 19, 2018, the district court held a status conference in the Yellow Line cases. DCX 12 at 0154. Respondent was present. DCX 6 at 0027. The court stayed the *Cobb* case for another 120 days so that settlement discussions could continue, and it scheduled another status conference for November 14, 2018. *Id.*

10. On September 2, 2018, Ms. Cobb died. DCX 6 at 0027; DCX 13; DCX 21; DCX 23.

11. On October 16, 2018, Respondent issued a subpoena to WMATA in Ms. Cobb's case. Tr. 64-65 (Trebach); DCX 18 at 0188. The subpoena commanded WMATA to produce various documents at the November 14 status conference. DCX 18 at 0188.

12. Respondent issued the subpoena to WMATA without first engaging in a pre-discovery conference as required by Local Rule 26.2(a) and Fed. R. Civ. P. 26. Tr. 68-69 (Trebach); DCX 18 at 0181; DCX 43 at 0814-15.

13. On or about October 19, 2018, Respondent called chambers to inform the court that Ms. Cobb had passed away. DCX 6 at 0027. Chambers staff instructed Respondent to file a notice on the docket. *Id.*

14. Respondent did not immediately file a notice regarding Ms. Cobb's death. *See* DCX 7 at 0080; DCX 12 at 0154-55. As a result, on October 30, 2018,

the court entered an order requiring a suggestion of death to be filed no later than November 16, 2018, "to avoid dismissal of this action for failure to prosecute." DCX 13; DCX 12 at 0155.

15. On November 5, 2018, WMATA wrote Respondent asking her to withdraw the subpoena voluntarily because the litigation was stayed and because Ms. Cobb had died and the subpoena had not been issued on behalf of Ms. Cobb's estate. DCX 18 at 0179. Respondent stated that she would respond to WMATA via certified mail, but did not do so. *Id.*; *see* Tr. 60 (Trebach).

16. On November 7, 2018, Respondent filed a Motion for Substitution of Parties Under Fed. R. Civ. P. 25(a)(1). DCX 14. The motion recited facts surrounding Ms. Cobb's death, but it did not identify a party to be substituted as the plaintiff. *Id.* In the motion, Respondent informed the court that Ms. Cobb was survived by two minor children, and she identified both children by their first names and gave their full dates of birth. *Id.* Respondent did not redact the children's identifying information as required by Local Rule 5.4(f). DCX 6 at 0028; DCX 43 at 0812.

17. That same day, the court entered a minute order denying Respondent's motion without prejudice because it did "not indicate who counsel wishes to substitute for the decedent." DCX 12 at 0155. The court also sealed Respondent's motion because it contained "unredacted information in violation of Local Civil Rule 5.4(f)." *Id.*

18. On November 8, 2018, Respondent filed a Motion to Substitute Successor-in-Interest, seeking to substitute a "Doe Plaintiff" for Ms. Cobb. DCX 15. Two days later, Respondent filed an Amended Motion for Substitution of Parties Under Fed. R. Civ. P. 25(a)(1), in which she combined various portions of her prior two motions. *Compare* DCX 16, *with* DCX 14 *and* DCX 15.

19. On November 13, 2018, WMATA filed an Opposition to Respondent's motions, arguing, *inter alia*, that Respondent had no authority to act on Ms. Cobb's behalf following her death. DCX 17. That day, WMATA also filed a motion to quash the subpoena that Respondent had issued two weeks prior, arguing that she issued it prematurely and she had no authority to do so since her client was deceased. DCX 18.

20. On November 13, 2018, Respondent filed a motion to stay the *Cobb* case. DCX 19. However, the court had never lifted the stay that had been in effect since February 2015. Tr. 71-72 (Trebach); DCX 6 at 0028.

21. Later that day, the court entered a minute order disallowing any further motions prior to the status conference scheduled for the next day. DCX 12 at 0156. The court entered the minute order at approximately 3:30 p.m. DCX 27 at 0215.

22. Approximately 40 minutes later, Respondent filed a Motion to Withdraw. DCX 12 at 0156; DCX 20; DCX 27 at 0215.

23. Respondent did not appear for the status conference on November 14, 2018. Tr. 80-81 (Trebach); Tr. 121 (Regan); DCX 6 at 0029. Her appearance was

not excused.[3] Mr. Regan feared that the court might dismiss the *Cobb* case for failure to prosecute as Respondent had not yet filed a Suggestion of Death. Tr. 124-25 (Regan); *see also* DCX 13; DCX 12 at 0155. Mr. Regan offered to take over the representation *pro bono* because he believed that dismissal would be an unfair result for Ms. Cobb's surviving children. Tr. 124-25 (Regan). The court denied Respondent's pending motions without ruling on the Motion to Withdraw, granted WMATA's motion to quash, and stayed the case for another 120 days. DCX 6 at 0029; DCX 12 at 0156.

24. After the status conference, Mr. Regan called Respondent and asked her to file the required Suggestion of Death and conveyed his offer to take over the *Cobb* case. Tr. 158 (Regan). Respondent filed a Suggestion of Death on November 14, 2018. DCX 21. Respondent also told Mr. Regan how to contact Ms. Cobb's mother, Sheila Warren-Gamble, who had been taking care of the children since Ms. Cobb's death. Tr. 156-58 (Regan).

25. In early 2019, Mr. Regan contacted Ms. Warren-Gamble to inform her that he had volunteered to take over the *Cobb* case from Respondent. Tr. 136-37 (Regan). Mr. Regan learned during this conversation that Ms. Warren-Gamble had been appointed as the personal representative of Ms. Cobb's estate. *Id.* Ms. Warren-

[3] Mr. Regan assumed Respondent would be present at the hearing and he believed he would have spoken to her but he could not remember when the conversation occurred. Tr. 123-25, 130-31 (Regan). On the record, Judge Chutkan indicated that Respondent spoke to Mr. Regan on the morning of the hearing. DCX 27 at 0215-16. The Hearing Committee recognized that Mr. Regan sometimes could not recall the timing of specific conversations, but otherwise finds that he was a credible witness, recalling in considerable detail the aspects of the litigation in which Respondent was involved. In addition, the Hearing Committee finds that the other two witnesses who testified – Barry Trebach, Esq. and Azadeh Matinpour, Esq. – were also credible witnesses.

Gamble then accepted Mr. Regan's offer to represent her *pro bono* as substitute plaintiff in the *Cobb* case. Tr. 157 (Regan); *see* DCX 22.

26. On February 20, 2019, with Respondent's authorization, Mr. Regan substituted himself as plaintiff's counsel in the *Cobb* case. Tr. 131-32 (Regan); DCX 22.

27. The following day, on February 21, 2019, Mr. Regan filed a motion to substitute Ms. Warren-Gamble as the plaintiff in the *Cobb* case. DCX 23. The motion included Letters of Administration issued on September 28, 2018, by the Register of Wills for Prince George's County, Maryland, appointing Ms. Warren-Gamble as the personal representative of Ms. Cobb's estate. *Id.* at 0203.

28. On February 21, 2019, the court allowed Respondent to withdraw. DCX 12 at 0156.

29. Over the next several months, Mr. Regan and WMATA's counsel, Barry Trebach, negotiated a settlement in the *Cobb* case and presented it to the court for approval. Tr. 83-85 (Trebach); Tr. 139-41 (Regan).

30. On July 12, 2019, the court approved the settlement agreement and placed it entirely under seal. DCX 6 at 0029; DCX 24 (sealed court order explicitly identified as such in the title and header of the document); DCX 27 at 0212.

31. The relevant details of the sealed settlement agreement and communications related thereto are discussed in the attached Confidential Appendix, ¶ 31.

32. Following the court's approval of the settlement, Mr. Regan called Respondent to discuss certain of its provisions. The relevant details of the sealed settlement agreement and communications related thereto are discussed in the attached Confidential Appendix, ¶ 32.

33. On or about July 30, 2019, Respondent posted on Twitter in a single, public Tweet under the username @DJacksonNBRC, with the associated name "Darlene Jackson, GOP":

a. Unredacted portions of the court's sealed order, including the case caption, as well as additional details discussed in the attached Confidential Appendix, ¶ 33(a);

b. Emails between Respondent and Mr. Trebach regarding provisions of the sealed settlement order;

c. A picture of Mr. Trebach;

d. A news article regarding Ms. Cobb's death; and

e. The words "Where's MY CA$H [sic]."

Tr. 95-102, 108-11 (Trebach); DCX 6 at 0030 (indicating date); DCX 25; DCX 26.

34. The Tweet mentioned[4] the accounts of several high-profile personalities, including @realDonaldTrump, @FLOTUS, @cabinet,

[4] A "mention" is a Tweet that contains another Twitter username preceded by the "@" symbol. When a Tweet includes a mention, the recipient will receive a notification about the Tweet, and "[a]nyone on Twitter who is following the sender of [the] mention will see the Tweet in their Home timeline." *About different types of Tweets*, TWITTER.COM, https://help.twitter.com/en/using-twitter/types-of-Tweets (last visited Sept. 28, 2022).

@WhiteHouse, @MarshaBlackburn, as well as several major news outlets, including @ABC, @nbc, @CBS, @CNN, @washpost, and @thehill. DCX 25.

35. The Tweet also tagged[5] Mr. Trebach's law firm using #BonnerKiernanTrebachCrociataLLP. Tr. 100 (Trebach); DCX 25.

36. Mr. Trebach learned about the Tweet from an associate. Tr. 95-96 (Trebach). His firm had previously set up an alert on Twitter so that it could monitor online commentary regarding the Yellow Line cases. *Id.*

37. Mr. Trebach informed chambers about the Tweet. Tr. 96-97 (Trebach). Mr. Trebach's firm also informed Mr. Regan about the Tweet. Tr. 163-64 (Regan).

38. Mr. Regan contacted Respondent and told her that she should take down the Tweet. Tr. 164 (Regan). The relevant details of the approved settlement and communications related thereto are discussed in the attached Confidential Appendix, ¶ 38.

39. On August 1, 2019, the court entered a minute order indicating that it had learned that Respondent "posted portions of this [c]ourt's sealed Order and emails from [Mr. Trebach] on her Twitter account." DCX 12 at 0159. The court ordered Respondent to appear on August 5, 2019, and "show cause why the [c]ourt should not impose sanctions, including instituting proceedings under Fed. R. Crim. P. 42, for violating this [c]ourt's July 12, 2019 Order." *Id.* The court also ordered

[5] "Tagging" is the use of the hashtag (#) symbol before a word or phrase in Tweets "to categorize those Tweets and help them show more easily in Twitter search." When a hashtag is included in a public Tweet, "anyone who does a search for that hashtag may find [the] Tweet." *How to use hashtags*, TWITTER.COM, https://help.twitter.com/en/using-twitter/how-to-use-hashtags (last visited Sept. 28, 2022).

Respondent to "cease and desist" from posting any other material from the sealed order on social media. *Id.*

40. Respondent appeared for the show cause hearing on August 5, 2019. DCX 27 at 0209. Mr. Regan appeared telephonically, and Mr. Trebach appeared in person. *Id.*

41. At the show cause hearing, Respondent admitted to posting the Tweet. DCX 27 at 0216-17, 0220.

42. The court asked Respondent why she posted the Tweet. The relevant details concerning her response addressing the confidential settlement agreement are discussed in the attached Confidential Appendix, ¶ 42.

43. Respondent also told the court that she had deleted the Tweet. DCX 27 at 0223-24.

44. The court decided to refer Respondent for disciplinary proceedings rather than institute criminal contempt proceedings. DCX 27 at 0224-25.[6] Judge Chutkan's referral letter explained:

> At the August 5, 2019 hearing, the court afforded Ms. Jackson the opportunity to explain her conduct.
>
> First, Ms. Jackson explained that she intended to post the sealed order without including her own name; she also questioned whether the information should have been under seal.
>
> Ms. Jackson then proceeded to speak in a rambling and somewhat incomprehensible manner about how a woman is the sole purpose of why we have a universe. In support of this position she cited to the process of child birth, James Brown's "It's a Man's, Man's Man's

[6] Pursuant to Local Rule 83.15, the district court follows the D.C. Rules of Professional Conduct.

> World," and Maxwell's "This Woman's Work." At other times in the hearing she invoked the "me too" movement.

DCX 6 at 0030-31.

45. On October 16, 2019, the court filed a complaint with its Committee on Grievances. DCX 6 at 0027-0076.

46. On May 19, 2020, the Committee on Grievances referred the complaint to Disciplinary Counsel. DCX 6 at 0025-26.

Disciplinary Counsel's Investigation

47. On August 17, 2020, Disciplinary Counsel emailed a letter to Respondent, using her email address of record with the District of Columbia Bar, informing her that it had docketed an investigation and requesting a written response to the complaint by August 28, 2020. DCX 2 (confirming email address); DCX 28. This letter also informed Respondent that the D.C. Court of Appeals has approved discipline based on an attorney's failure to comply with Disciplinary Counsel's request for information. *Id.* Disciplinary Counsel's email was not returned undelivered. Tr. 186 (Testimony of Azadeh Matinpour).

48. Disciplinary Counsel began monitoring Respondent's Twitter account as part of its investigation. Tr. 188 (Matinpour).

49. On August 18, 2020, one day after Disciplinary Counsel notified her of its investigation, Respondent posted a Tweet that included images of the District of Columbia Bar's logo, the words "Office of Disciplinary Counsel," and the question "Where you At [sic]?" Tr. 190-91 (Matinpour); DCX 30, 31.

50. Respondent did not respond to Disciplinary Counsel's August 17, 2020, letter. Tr. 187 (Matinpour).

51. On September 17, 2020, Disciplinary Counsel sent Respondent a follow-up letter by email, again using her email address of record. DCX 29. This follow-up letter included a copy of the complaint and Disciplinary Counsel's first letter. *Id.* It asked for a written response to the complaint by September 28, 2020. *Id.* It also reminded Respondent that she had an ethical obligation to respond to Disciplinary Counsel's inquiry and that a failure to do so might warrant discipline. *Id.* Disciplinary Counsel's email was not returned undelivered. Tr. 194 (Matinpour).

52. Between September 17 and 26, 2020, Respondent posted four separate Tweets, all of which included images explicitly referencing the Office of Disciplinary Counsel, juxtaposed to phrases such as "Lying and Stealing," "Just Ask Becky," "Smooth Criminals," and "Investigate the Investigators." Tr. 194-99 (Matinpour); DCX 32, 33, 34, 35, 36, 37, 38, 39. "Becky" is the first name of the Senior Assistant Disciplinary Counsel who notified Respondent of Disciplinary Counsel's investigation and who sent the September 17, 2020, follow-up letter. Tr. 197 (Matinpour); DCX 28 at 0231 (signature block); DCX 29 at 0303 (signature block).

53. Respondent did not respond to Disciplinary Counsel's September 17, 2020 letter. Tr. 194 (Matinpour).

54. On January 5, 2021, Disciplinary Counsel sent Respondent another follow-up letter by email, again using her email address of record. DCX 40. This follow-up letter included a copy of the complaint and Disciplinary Counsel's prior letters, and it reminded Respondent of her ethical obligation to cooperate with the investigation. *Id.* It asked for a written response to the complaint by January 19, 2021. *Id.* Disciplinary Counsel's email was not returned undelivered. Tr. 201 (Matinpour).

55. Respondent did not respond to Disciplinary Counsel's January 5, 2021, letter. Tr. 201 (Matinpour).

56. On January 29, 2021, Disciplinary Counsel moved the Board on Professional Responsibility to compel Respondent's response to the complaint. DCX 41. Disciplinary Counsel served its motion on Respondent via first-class mail and email to her addresses of record. *Id.* at 0519; DCX 2 (confirming addresses).

57. Respondent did not file an opposition or otherwise respond to Disciplinary Counsel's motion. Tr. 202 (Matinpour).

58. On March 2, 2021, the Board entered an Order compelling Respondent to "provide to Disciplinary Counsel a response to Disciplinary Counsel's written inquiry regarding the complaint within ten (10) calendar days. . . ." DCX 42 at 0807. The Office of the Executive Attorney sent a copy of the Board's Order to Respondent via her email address of record. *Id.* at 0806.

59. Respondent did not comply with the Board's Order. DCX 3 at 0011.

CONCLUSIONS OF LAW

Disciplinary Counsel argues that Respondent knowingly disobeyed court rules and orders, knowingly failed to respond to an investigation of her conduct, engaged in conduct that seriously interfered with the administration of justice, and failed to comply with a Board order. Respondent did not respond to Disciplinary Counsel's arguments.

A. Disciplinary Counsel Proved that Respondent Violated Rule 3.4(c).

Rule 3.4(c) provides that a lawyer shall not "[k]nowingly disobey an obligation under the rules of a tribunal except for an open refusal based on an assertion that no valid obligation exists." A violation of Rule 3.4(c) includes both the failure to follow court rules, as well as the failure to comply with court orders. *See, e.g.*, *In re Askew*, 225 A.3d 388, 396-97 (D.C. 2020) (failure to comply with court-ordered filing deadlines). The "knowing[]" element requires proof of "actual knowledge of the fact in question," which "may be inferred from circumstances." Rule 1.0(f). Attorneys are presumed to know the rules of the courts in which they practice. *See Dyson v. United States*, 418 A.2d 127, 129-30 (D.C. 1980); *Jarvis v. Parker*, 13 F.Supp.3d 74, 79 (D.D.C. 2014).

Disciplinary Counsel has argued that Respondent violated Rule 3.4(c) because (1) she prematurely issued a discovery subpoena to WMATA in violation of court rules and the court's stay order; (2) she filed a motion for substitution of parties without redacting the names and dates of birth of minor children, as required by the

court rules; (3) she filed a motion to withdraw after a court order prohibiting additional motions; and (4) she publicly disclosed portions of a sealed order. ODC Br. at 18-19. Disciplinary Counsel contends that "Respondent's conduct as outlined demonstrates an overall pattern of noncompliance with court rules and orders, and it violated Rule 3.4(c)." ODC Br. at 19. The Hearing Committee addresses each of these arguments in turn.

Premature Issuance of Subpoena to WMATA

At the time that Respondent entered her appearance in the Yellow Line litigation, a stay order already was in effect. FF 7-8. Respondent was aware of the order because she was present at the July 19, 2018 status conference when the court stayed the litigation for another 120 days so that settlement discussions could proceed. FF 9. Respondent's October 16, 2018 subpoena to WMATA clearly violated the court's stay order. Serving the subpoena was inconsistent with the existing stay of proceedings, which was intended to facilitate settlement negotiations and to reduce the costs of the litigation to the parties and to the court. Respondent's issuance of the subpoena also plainly violated the terms of Local Civil Rule 26.2(a) and Federal Rule of Civil Procedure 26(f), as WMATA pointed out in its correspondence. *See* DCX 18 at 0179. Moreover, counsel for WMATA wrote Respondent, asking her to withdraw the subpoena, but Respondent did not do so. FF 15.

There is no evidence in the record as to Respondent's justification for any of her conduct. She had a duty to refrain from seeking discovery given the stay of the Yellow Line litigation, a stay of which she had direct, personal knowledge. If she believed discovery was appropriate despite the stay, she had a duty to "meet and confer" with counsel before serving discovery and to seek a modification of the stay order to do so. Even after WMATA's counsel asked her to withdraw it, she did not, and she never proffered a reason for serving the subpoena in the first place.

The Hearing Committee concludes that Disciplinary Counsel has established clear and convincing evidence that Respondent's conduct violated Rule 3.4(c).

Motion for Substitution of Parties – Improper Disclosure of Minors' Names and Dates of Birth

The Hearing Committee concludes that Disciplinary Counsel has not demonstrated, by clear and convincing evidence, that Respondent knowingly violated the terms of Local Civil Rule 5.4(f) when she filed a motion that included the first names and dates of birth of the minor children involved in the case. *See* FF 16.

There is no question that Respondent's filing violated the Local Rule. But it is not clear that Respondent knowingly violated the rule's requirement that she redact the motion. The Hearing Committee recognizes that a respondent's knowledge may be inferred from the circumstances, *see* Rule 1.0(f), and that attorneys are presumed to know the rules of the courts in which they practice, *see*

Dyson v. United States, 418 A.2d at 127; *Jarvis v. Parker*, 13 F.Supp.3d at 79. Disciplinary Counsel did not provide any evidence as to how counsel in a case would make redactions or file a document under seal in the ECF system. Thus, under the particular circumstances of Respondent's filing of this particular motion, absent any evidence as to Respondent's state of mind, *i.e.* that she may not have realized that she was not filing the document under seal, the Hearing Committee cannot conclude, by clear and convincing evidence, that her violation of the Local Rule was either knowing or willful.

The Hearing Committee finds that this case is distinguishable from *In re Steele*, in which the Board determined that an attorney violated Rule 3.4(c) because he unilaterally terminated his representation of a client and failed to file a motion to withdraw his representation. Bar Docket Nos. 112-95, *et al.* (BPR July 31, 2003); *recommendation adopted*, 868 A.2d 146 (D.C. 2005). In that case, the attorney asserted that he did not "knowingly" violate the applicable court rule because he did not understand that the court rule required him to seek leave of court to withdraw from the case. The Hearing Committee sees this argument as distinct from a contention that he was unaware of the rule itself. *See Steele*, Bar Docket Nos. 112-95, *et al.*, at 28. The Board also remarked on the attorney's "disjointed and plainly incorrect" interpretation of the rule. *Id.* In this case, the Hearing Committee lacks

any evidence of Respondent's understanding of the method of filing documents in the ECF system containing personally identifying information.

Motion to Withdraw as Counsel

The Hearing Committee concludes that Disciplinary Counsel has not demonstrated, by clear and convincing evidence, that Respondent violated Rule 3.4(c) in connection with the filing of her motion to withdraw as counsel in the case.

Disciplinary Counsel asserts (ODC Br. at 18) that the filing of that motion violated the district court's pre-existing order that barred the filing of any additional motions. They point to Respondent's status as a registered electronic filer as evidence that she would have received electronic service of all documents, including court orders. *See* ODC Br. at 18-19. Here again, there is insufficient evidence as to Respondent's state of mind at the time she filed the motion to withdraw. There is no evidence that Respondent filed her motion with actual knowledge of the placement of the court's order on the ECF docket only 40 minutes earlier. Even if she were aware of the court's order, a reasonable attorney could have concluded that the stay order applied to *substantive* filings in the action, but not to a more ministerial matter such as a motion to withdraw as counsel from the case. Otherwise, how could Respondent have moved to withdraw her representation in the case?

Disclosure of Portions of Sealed Filings

The Hearing Committee concludes that Disciplinary Counsel has demonstrated, by clear and convincing evidence, that Respondent violated Rule 3.4(c) when she knowingly disclosed portions of the court's sealed order through a Tweet that Respondent posted on or about July 30, 2019. There is no question that Respondent was aware that the order was sealed, as it was explicitly identified as such in the order. *See* DCX 24 at 0204. The post plainly shows unredacted portions of the order. FF 33. The Tweet also displays what appear to be copies of emails between Respondent and Mr. Trebach, and the Tweet "tagged" his law firm. FF 33, 35.

There is undisputed testimony that Mr. Regan contacted Respondent and told her that she had to take down the Tweet. FF 38. During that conversation, Respondent admitted that she posted the Tweet. *See* FF 38. Finally, at the August 5, 2019 hearing, Respondent acknowledged posting the Tweet that contained excerpts from the sealed order. *See* FF 41. Based on the Hearing Committee's review of the hearing transcript, DCX 27, the Hearing Committee concludes that Respondent gave no cogent explanation for her misconduct.

The Hearing Committee concludes that Respondent's conduct was knowing and egregious. Respondent already had filed a motion without redaction of personally identifying information, *see* FF 16, and she had been told about that

violation of the applicable Local Rule. Respondent was on notice as to the serious nature of such unauthorized disclosures, and the potential consequences of such a violation. This disclosure of portions of the sealed order on Twitter could have been viewed by anyone with access to Twitter.

B. Disciplinary Counsel Proved that Respondent Violated Rule 8.1(b).

Rule 8.1(b) provides that "a lawyer . . . in connection with a disciplinary matter, shall not . . . knowingly fail to respond reasonably to a lawful demand for information from . . . [a] disciplinary authority . . . ." Thus, a knowing failure to respond to a request from Disciplinary Counsel regarding a disciplinary complaint constitutes a violation of Rule 8.1(b). *See, e.g.*, *In re Lea*, 969 A.2d 881, 888 (D.C. 2009). "Rule 8.1(b) specifically addresses the requirement of responding to [Disciplinary] Counsel as opposed to the more general requirements of Rule 8.4(d)." *In re Rivlin*, Bar Docket Nos. 436-96, *et al.*, at 40 n.20 (BPR Oct. 28, 2002). Failure to comply with Board orders may also subject an attorney to discipline under Rule 8.1(b). *See In re Edwards*, 990 A.2d 501, 525 (D.C. 2010), as amended (Mar. 18, 2010). As discussed above regarding Rule 3.4(c), the terms "known" and "knowingly" require proof of "actual knowledge of the fact in question," which "may be inferred from circumstances." Rule 1.0(f).

Disciplinary Counsel argues that Respondent failed to respond to its investigative inquiries or the Board order compelling a response. Disciplinary Counsel has proven that its inquiries and the Board order were emailed to Respondent at her address on file with the District of Columbia Bar, and that there

is no evidence that they were not received. It has also proven that Respondent tweeted about Disciplinary Counsel, shortly after its initial investigative inquiry, reflecting her knowledge of the inquiry. ODC Br. at 14-17.

The Hearing Committee concludes that Disciplinary Counsel has demonstrated, by clear and convincing evidence, that Respondent violated Rule 8.1(b). Disciplinary Counsel has provided undisputed evidence that it sent Respondent repeated written inquiries, via email, in connection with its investigation. *See* FF 47, 51, 54. Each inquiry was sent to Respondent via the email address she had on file with the District of Columbia Bar. *Id.* There is no evidence that the respective emails "bounced back" as undeliverable or as incorrectly addressed. *Id.*

In addition, there is ample evidence to demonstrate that Respondent was fully aware of Disciplinary Counsel's investigation. For example, on August 18, 2020, one day after Disciplinary Counsel sent its first letter to Respondent, she posted on Twitter an image of the District of Columbia Bar's logo and the words "Office of Disciplinary Counsel." FF 49. Second, during the September 17-26, 2020 time period, Respondent posted four separate Tweets that explicitly referenced the Office of Disciplinary Counsel, and also referenced the first name of the attorney in its office who sent Respondent the Office's second letter. FF 52.

The Hearing Committee also concludes that Respondent violated Rule 8.1(b) by failing to respond to the Board's March 2, 2021 order compelling her to respond to the Office of Disciplinary Counsel's inquiries. FF 58-59. As with the Office's prior correspondence, that order was transmitted to Respondent's email address of record. *Id.* The Hearing Committee observes that, based on this sequence of events, the record evidence demonstrates clearly and convincingly that Respondent was fully aware of the Board's order, but made a conscious, deliberate decision not to respond to it at all. Respondent's failure to cooperate with the disciplinary authorities required protracted proceedings and imposed a burden on the disciplinary system.

C. Disciplinary Counsel Proved that Respondent Violated Rule 8.4(d).

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), Disciplinary Counsel must meet the elements of the *Hopkins* test by clear and convincing evidence. *See In re Hopkins*, 677 A.2d 55, 60-61 (D.C. 1996). First, Disciplinary Counsel must prove that Respondent's conduct was improper, *i.e.*, that Respondent either acted or failed to act when she should have. Conduct may be improper because it violates a specific court rule or procedure or simply because, "considering all the circumstances in a given situation, the attorney should know that he or she would reasonably be expected to act in such a way as to avert any serious interference with the administration of justice." *Id.* at

61 (emphasis omitted). Second, Respondent's conduct must have born directly upon the judicial process with respect to an identifiable case or tribunal. *Id.* "This of course will very likely be the case where the attorney is acting either as an attorney or in a capacity ordinarily associated with the practice of law." *Id*. Finally, Respondent's conduct must have tainted 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 adverse degree. *Id*.

For example, Rule 8.4(d) can be violated if the attorney's conduct causes the unnecessary expenditure of time and resources in a judicial proceeding. *See In re Cole*, 967 A.2d 1264, 1266 (D.C. 2009). Failure to respond to Disciplinary Counsel's inquiries and orders of the court also constitute violations of Rule 8.4(d). Rule 8.4, cmt. [2]; *see, e.g.*, *Edwards*, 990 A.2d at 524 (failure to respond to Disciplinary Counsel's inquiry violated Rule 8.4(d)); *In re Carter*, 11 A.3d 1219, 1223 (D.C. 2011) (violations of Rule 8.4(d) occurred where the respondent failed to respond to notices of an investigation from Disciplinary Counsel and failed to comply with Board and court orders requiring compliance with Disciplinary Counsel's investigation).

Disciplinary Counsel has argued that Respondent violated Rule 8.4(d) during the Yellow Line litigation because (1) she failed to attend the November 14, 2018 status conference; (2) she failed to comply with various Local Rules and court orders, *i.e.*, the discovery subpoena to WMATA, the motion for substitution of parties, and the motion to withdraw as counsel; and (3) she disclosed portions of a

sealed order. ODC Br. at 22-23. Disciplinary Counsel also contends that "Respondent had no authority to act on behalf of her deceased client" and violated the Rule when she purported to do so. *Id.* at 23. Finally, Disciplinary Counsel argues that Respondent violated Rule 8.4(d) because of her failure to respond to the Office's investigation. *Id.* at 24-25. The Hearing Committee finds that the second element of the *Hopkins* test is met in each instance because Respondent was acting as the attorney at all relevant times. The Hearing Committee addresses the remaining elements below.

Failure to Attend November 14, 2018 Status Conference

The Hearing Committee concludes that Disciplinary Counsel has demonstrated, by clear and convincing evidence, that Respondent violated Rule 8.4(d) by failing to attend the November 14, 2018 status conference. *See* FF 23.

There is no question that the failure to appear in court for a scheduled hearing may violate Rule 8.4(d). *See* Comment [2]; *see also In re Ukwu*, 926 A.2d 1106, 1143-44 (2007) (respondent's failure to appear for scheduled court hearings violated Rule 8.4(d) because he knew or should have known that he would reasonably be expected to appear at the scheduled hearing); *In re Lyles*, 680 A.2d 408, 416 (D.C. 1996) (appended Board Report) ("no question that the willful failure to appear at a court hearing is subject to discipline.").

Respondent knew that the conference would occur on that date because she had attended the July 19, 2018 status conference at which the November conference

was scheduled. FF 9. In addition, Respondent issued a subpoena to WMATA returnable at the November 14, 2018 status conference. FF 11. Moreover, on November 13, 2018, the court entered a minute order disallowing any further motions prior to the status conference scheduled for the next day. FF 21. Respondent was not excused from the conference. *See* FF 23. Respondent's failure to attend the conference is particularly inexplicable because, by that time, Respondent had four motions pending before the court, including her November 14, 2018 motion to withdraw. *See* FF 18, 20, 22.

As in the *Lyles* and *Ukwu* cases, Respondent knew of the upcoming status conference, but failed to attend it. Mr. Regan had to step in and volunteer to take over the representation *pro bono* to prevent the dismissal of the *Cobb* case. FF 23. Had he not done so, the court could have dismissed that case outright. As a consequence, Respondent's client would have been severely prejudiced.

Failure to Comply with Various Local Rules and Court Orders

The Hearing Committee incorporates by reference its conclusions on these issues in its discussion of Rule 3.4(c). The Hearing Committee concludes that Disciplinary Counsel has demonstrated, by clear and convincing evidence, that Respondent violated Rule 8.4(d) with respect to Respondent's subpoena to WMATA. First, the issuance of the subpoena was improper because it violated the court's order staying the proceedings. It tainted the judicial process in more than

a *de minimis* way because it disrupted the existing stay of proceedings in the litigation. It required counsel for WMATA to file papers to secure the district court's intervention to halt Respondent's unauthorized discovery. That was a totally unnecessary use of party and court resources.

In contrast, as explained *supra*, the Hearing Committee has determined that Disciplinary Counsel has not demonstrated a violation of Rule 8.4(d) in connection with Respondent's motion to withdraw as counsel. Specifically, Disciplinary Counsel has failed to prove the first element of the *Hopkins* test, *i.e.* that Respondent's conduct was improper. It is not clear that such a motion was proscribed by the district court's stay order or that Respondent would reasonably have been expected to act otherwise under the circumstance. Even if Respondent's conduct was improper, Disciplinary Counsel failed to prove that Respondent's conduct tainted the judicial process in more than a *de minimis* way.

Similarly, the Hearing Committee has concluded that Respondent's filing of the motion that included the names and birthdays of the minor children, although in violation of the Local Rule, did not violate Rule 8.4(d). While the Committee recognizes that her conduct was improper because it violated the Local Rule, that improper disclosure may have been inadvertent and was quickly remedied by the court. Further, Disciplinary Counsel failed to prove that Respondent's failure to

appropriately redact her filing tainted the judicial process in more than a *de minimis* way.

Disciplinary Counsel also argues that Respondent violated Rule 8.4(d) insofar as she filed pleadings without the authority of her deceased client, referring to the issuance of the subpoena to WMATA. ODC Br. at 23. The Hearing Committee already has determined that issuance of the subpoena was improper and violated the Rule. But it is not clear that Respondent's acting without express authority from a client was an act that *itself* tainted the judicial proceedings in more than a *de minimis* way. Respondent did fail to file a Suggestion of Death as directed by the district court, but ultimately Mr. Regan stepped in as successor counsel. In addition, Respondent made several unsuccessful attempts to secure a substitution of counsel, although she proceeded in contravention of the court's directives and Fed. R. Civ. P. 25(a)(1). *See* FF 16, 18.

The Hearing Committee concludes that Disciplinary Counsel has demonstrated, by clear and convincing evidence, that Respondent violated Rule 8.4(d) by disclosing portions of the sealed court order. Respondent's posting of the sealed order not only violated a court rule – and thus was improper – but also tainted the judicial process in more than a *de minimis* way, as it required remedial action, including an additional status conference.

Failure to Respond to Disciplinary Counsel's Investigation

The Hearing Committee concludes that Disciplinary Counsel has demonstrated, by clear and convincing evidence, that Respondent violated Rule 8.4(d) insofar as Respondent failed to respond to Disciplinary Counsel's investigation or to its specific inquiries, or to the Board's March 2, 2021 order. *See* Comment [2] to Rule 8.4(d) (failure to respond to Disciplinary Counsel's inquiries or subpoenas violates Rule 8.4(d)). Because of Respondent's failure to cooperate with the investigation, neither Disciplinary Counsel nor this Committee has any explanation for Respondent's conduct during the Yellow Line litigation, or Respondent's later conduct in posting Tweets.

D. Disciplinary Counsel Proved that Respondent Violated D.C. Bar Rule XI, § 2(b)(3).

D.C. Bar Rule XI, § 2(b)(3) provides that "[f]ailure to comply with any order of the Court or the Board issued pursuant to" Rule XI is a ground for discipline. Disciplinary Counsel argues that Respondent violated § 2(b)(3) when she failed to respond to Disciplinary Counsel's inquiries pursuant to a March 2, 2021 Board order.

The Hearing Committee concludes that Disciplinary Counsel has demonstrated, by clear and convincing evidence, that Respondent violated District of Columbia Bar Rule XI, § 2(b)(3). As explained *supra*, Respondent failed to

comply with the Board's March 2, 2021 order. The Hearing Committee incorporates by reference those conclusions here.

RECOMMENDED SANCTION

In this case, Disciplinary Counsel has asked the Hearing Committee to recommend that Respondent be suspended from the practice of law for 60 days and that her reinstatement to practice be conditioned upon a showing of her fitness to resume the practice of law. ODC Br. at 26.

For the reasons described below, the Hearing Committee recommends that Respondent be suspended from the practice of law for 60 days, with the requirement that she demonstrate fitness to resume the practice of law.

A. Standard of Review

The sanction imposed in an attorney disciplinary matter is one that is necessary to protect the public and the courts, maintain the integrity of the legal profession, and deter the respondent and other attorneys from engaging in similar misconduct. *See, e.g.*, *In re Hutchinson*, 534 A.2d 919, 924 (D.C. 1987) (en banc); *In re Martin*, 67 A.3d 1032, 1053 (D.C. 2013); *In re Cater*, 887 A.2d 1, 17 (D.C. 2005). "In all cases, [the] purpose in imposing discipline is to serve the public and professional interests . . . rather than to visit punishment upon an attorney." *In re Reback*, 513 A.2d 226, 231 (D.C. 1986) (en banc) (citations omitted); *see also In re Goffe*, 641 A.2d 458, 464 (D.C. 1994) (per curiam). "[T]he choice of sanction is not an exact science but may depend on the facts and circumstances of each particular proceeding. Indeed, each of these decisions emerges from a forest of varying

considerations, many of which may be unique to the given case." *In re Edwards*, 870 A.2d 90, 94 (D.C. 2005) (internal quotation marks and citations omitted).

The sanction also must not "foster a tendency toward inconsistent dispositions for comparable conduct or . . . otherwise be unwarranted." D.C. Bar R. XI, § 9(h)(1); *see, e.g.*, *Hutchinson*, 534 A.2d at 923-24; *In re Berryman*, 764 A.2d 760, 766 (D.C. 2000). In determining the appropriate sanction, the Court of Appeals considers a number of factors, including: (1) the seriousness of the conduct at issue; (2) the prejudice, if any, to the client which resulted from the conduct; (3) whether the conduct involved dishonesty; (4) the presence or absence of violations of other provisions of the disciplinary rules; (5) whether the attorney has a previous disciplinary history; (6) whether the attorney has acknowledged his or her wrongful conduct; and (7) circumstances in mitigation or aggravation. *See, e.g.*, *Martin*, 67 A.3d at 1053 (citing *In re Elgin*, 918 A.2d 362, 376 (D.C. 2007)). The Court also considers "'the moral fitness of the attorney' and 'the need to protect the public, the courts, and the legal profession . . . .'" *In re Rodriguez-Quesada*, 122 A.3d 913, 921 (D.C. 2015) (per curiam) (quoting *In re Howes*, 52 A.3d 1, 15 (D.C. 2012)).

B. Application of the Sanction Factors

1. The Seriousness of the Misconduct

Respondent violated both local rules and court orders. Her serving a subpoena on WMATA while the stay order was in effect was inexcusable. She also chose not to act after WMATA's counsel requested that Respondent withdraw her subpoena voluntarily because the litigation was stayed. DCX 18 at 0179; Tr. 65-66 (Trebach).

Her failure to attend the November 14, 2018 status conference was also inexcusable and put her client at risk of dismissal of her case.

Moreover, Respondent then engaged in a series of public posts on Twitter, including one post that displayed portions of the court's sealed order. Her conduct constituted a knowing disregard of court orders and applicable rules.

Finally, Respondent failed to cooperate with Disciplinary Counsel's investigation. She ignored that Office's repeated inquiries and she also disobeyed a Board order compelling her to respond to those inquiries. Respondent received the letters and was aware of the investigation, as shown by her various Tweets. Yet, she made no effort whatsoever to respond to Disciplinary Counsel, or to cooperate with its investigation.

2. Prejudice to the Client

Although her client ultimately was not prejudiced by Respondent's actions, Respondent's misconduct did put her client's claim at risk for dismissal when she failed to appear at the November 14, 2018 status conference.

3. Dishonesty

There is no record evidence of dishonesty in this matter.

4. Violations of Other Disciplinary Rules

Respondent violated four rules, including Rules 3.4(c), 8.1(b), 8.4(d), and D.C. Bar Rule XI, § 2(b)(3).

5. Previous Disciplinary History

There is no record evidence that Respondent has a previous history of discipline.

6. Acknowledgement of Wrongful Conduct

During the August 5, 2019 status conference, Respondent tried to explain her Tweet, but the transcript indicates only one remark in which she appeared to apologize for that conduct. *See* DCX 27 at 0216-17. The Hearing Committee has no other evidence that Respondent has acknowledged her wrongful conduct.

7. Other Circumstances in Aggravation and Mitigation

There are no other factors for aggravation or mitigation.

C. Sanctions Imposed for Comparable Misconduct

The Hearing Committee concludes that Respondent's Rule violations merit a 60-day suspension. That sanction is comparable to those imposed in other similar cases cited by Disciplinary Counsel. ODC Br. at 29. In *In re Wemhoff*, 142 A.3d 573 (D.C. 2016), the Court suspended an attorney for 30 days, which was stayed with a one-year probation, and with additional conditions. In that case, the attorney had also violated several disciplinary rules, *i.e.*, Rules 3.4(c), 8.4(d), and 1.6(a). 142 A.3d at 573-74. Specifically, the attorney had disclosed client confidences while withdrawing from representation. The attorney also failed to attend a court-ordered status hearing.

In this case, Respondent also committed numerous Rule violations, ranging from violating the court's stay order and improperly serving a subpoena seeking discovery on WMATA, to her failure to attend the November 14, 2018 status conference and a Tweet that disclosed portions of a sealed order. The attorney in *Wemhoff* apparently cooperated with Disciplinary Counsel's investigation and acknowledged his failure to appear at the status hearing. In sharp contrast, Respondent has not acknowledged her misconduct during the Yellow Line litigation in a meaningful way, nor has she cooperated with Disciplinary Counsel's investigation.

Similarly, in *In re Padharia*, the Court imposed a six-month suspension, and conditioned reinstatement on the attorney's demonstrating his fitness to resume the practice of law. 235 A.3d 747 (D.C. 2020) (per curiam). The attorney had ignored court filing deadlines in 30 immigration matters, which had resulted in the dismissal of those matters. 235 A.3d at 748. In contrast, although Respondent ultimately did not prejudice her single client's case, that was only because Mr. Regan stepped in to preclude its dismissal.

In *Padharia*, the attorney failed to respond to Disciplinary Counsel's inquiries for almost seven months. In this case, Respondent totally ignored the Disciplinary Counsel's investigation, and she even disregarded a Board order compelling her to cooperate with that investigation.

D. Fitness

Disciplinary Counsel has requested that Respondent be required to prove her fitness to practice after completing her period of suspension. ODC Br. at 30-33. A fitness showing is a substantial undertaking. *In re Cater*, 887 A.2d 1, 20 (D.C. 2005). Thus, in *Cater*, the Court held that "to justify requiring a suspended attorney to prove fitness as a condition of reinstatement, the record in the disciplinary proceeding must contain clear and convincing evidence that casts a serious doubt upon the attorney's continuing fitness to practice law." *Id*. at 6. Proof of a "serious doubt" involves "more than 'no confidence that a Respondent will not engage in similar conduct in the future.'" *In re Guberman*, 978 A.2d 200, 213 (D.C. 2009). It connotes "real skepticism, not just a lack of certainty." *Id.* (quoting *Cater*, 887 A.2d at 24).

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

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

Cater, 887 A.2d at 22.

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

- the nature and circumstances of the misconduct for which the attorney was disciplined;
- whether the attorney recognizes the seriousness of the misconduct;
- the attorney's conduct since discipline was imposed, including the steps taken to remedy past wrongs and prevent future ones;
- the attorney's present character; and
- the attorney's present qualifications and competence to practice law.

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

The Hearing Committee concludes that Disciplinary Counsel's request that Respondent's reinstatement is to be conditioned upon a showing of her fitness to practice law is amply supported by the record of Respondent's violations and the applicable precedent. The record has "clear and convincing evidence" that establishes "serious doubt" on whether Respondent is fit to practice law. *See In re Cater*, 887 A.2d 1, 6 (D.C. 2005).

First and foremost, as explained above, Respondent's misconduct almost resulted in dismissal of her client's case. Along the way, Respondent violated the court's stay order by issuing an improper subpoena for discovery. Respondent again violated a court rule and acted in a wholly unprofessional manner, by posting portions of the court's sealed order on Twitter. Finally, the Hearing Committee

cannot ignore Judge Chutkan's first-hand observations concerning Respondent's proffered explanations for her misconduct. *See* FF 44.

Nor has Respondent acknowledged the seriousness of her misconduct. Respondent wholly disregarded her obligation to cooperate with Disciplinary Counsel. Respondent never replied to its inquiries, even though it is clear that she was properly served with them. Moreover, Respondent's Tweets showed that she knew about that investigation.

The Hearing Committee does not know if Respondent is currently engaged in the practice of law.[7] But Disciplinary Counsel's proposed fitness requirement is amply supported by the pattern of Respondent's wrongdoing.

CONCLUSION

For the foregoing reasons, the Hearing Committee finds that Respondent violated Rules 3.4(c), 8.1(b), 8.4(d), and D.C. Bar Rule XI, §2(b)(3) by clear and convincing evidence, and that Respondent be suspended from the practice of law for 60 days, with the requirement that she demonstrate fitness prior to resuming the practice of law.

[7] At the August 5, 2019, status conference, Respondent indicated that she was going to retire. DCX 27 at 0220, 0226. Judge Chutkan observed that, based on her evaluation of Respondent's conduct, it would be prudent. *Id.*

The Hearing Committee further recommends that Respondent's attention be directed to the requirements of D.C. Bar Rule XI, § 14, and their effect on eligibility for reinstatement. *See* D.C. Bar R. XI, § 16(c).

AD HOC HEARING COMMITTEE

Theodore C. Hirt, Chair

Lisa M. Harger, Public Member

A.J. Kramer, Attorney Member