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

In the Matter of:	:	
	:	Board Docket Nos. 14-BD-052
DAVID B. NOLAN, SR.,	:	& 14-BD-054
	:	
Respondent,	:	Bar Docket Nos. 2009-D285,
	:	2011-D295, 2011-D422, 2011-
A Suspended Member of the Bar of	:	D434, 2012-D183, 2012-D397
the District of Columbia Court of Appeals	:	& 2012-D193
(Bar Registration No. 379804)	:	

REPORT AND RECOMMENDATION
OF THE AD HOC HEARING COMMITTEE

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Respondent, David B. Nolan, is charged with violating Rules 1.1(a), 1.1(b), 1.2(a), 1.3(a), 1.3(b)(1), 1.3(b)(2), 1.3(c), 1.4(a), 1.4(b), 1.5(a), 1.5(b), 1.15(b),[1] 1.15(e), 3.3(a)(1), 7.1(a), 8.1(b), 8.4(b), 8.4(c), and 8.4(d) of the District of Columbia Rules of Professional Conduct (the "Rules"), and D.C. Bar R. XI, § 2(b)(3), arising from his handling of two client matters, and his failure to respond to the Office of Disciplinary Counsel's investigation in those two matters and four other matters.[2]

[1] Rule 1.15(b) was recodified as Rule 1.15(c) on February 1, 2007.

[2] The District of Columbia Court of Appeals changed the title of Bar Counsel to Disciplinary Counsel, effective December 19, 2015. We will use the current title in this opinion.

Respondent is also charged with violating Rules 3.3(a)(1), 8.4(b), 8.4(c), and 8.4(d), and D.C. Bar R. XI, § 10, arising from his conviction in Virginia on three counts of willful failure to appear in court. Disciplinary Counsel contends that Respondent committed all of the charged violations (except for the Rule 7.1(a) violation (see pp. 155-56 below)), and should be suspended for two years as a sanction for his misconduct with reinstatement contingent on proof of fitness to practice law and on restitution. Respondent has filed a motion to dismiss these proceedings, but has not otherwise participated in them.

As set forth below, the Hearing Committee finds clear and convincing evidence of the following violations charged by Disciplinary Counsel in two separate Specifications of Charges, one filed July 1, 2014, and the other June 30, 2014:

1. July 1, 2014 Specification (Counts I (Sagars) and IV (Currie)):
    a. Rule 1.1(a) (failure to provide competent representation)
    b. Rule 1.1(b) (failure to serve client with skill and care)
    c. Rule 1.2(a) (failure to consult with client)
    d. Rule 1.3(a) (failure to represent client with diligence and zeal)
    e. Rule 1.3(b)(1) (intentional failure to seek client's lawful objectives)

f. Rule 1.3(b)(2) (intentional damage to client) (only as to Count IV (Currie))

g. Rule 1.3(c) (failure to act promptly)

h. Rule 1.4(a) (failure to keep client reasonably informed about the status of a matter and promptly comply with reasonable requests for information)

i. Rule 1.4(b) (failure to explain a matter to the extent reasonably necessary to permit the client to make informed decisions) (only as to Count I (Sagars))

j. Rule 1.5(a) (charging an unreasonable fee)

k. Rule 1.5(b) (failure to communicate to client in writing the basis for the fee, the scope of representation, and client-responsible expenses) (only as to Count IV (Currie))

l. Rule 1.15(b) (failure to provide accounting of fees upon client's request) (only as to Count I (Sagars))

m. Rule 8.4(c) (dishonesty) (only as to Count I (Sagars))

2. July 1, 2014 Specification (Counts I-VI)

a. Rule 8.1(b) (failure to respond reasonably to lawful demand for information from a disciplinary authority) (Counts I-VI)

b. Rule 8.4(d) (serious interference with administration of justice in failure to cooperate with Disciplinary Counsel's investigations) (Counts I-VI)

c. D.C. Bar Rule XI, § 2(b)(3) (failure to comply with Board on Professional Responsibility orders and court orders) (Counts I-V only, no violation of this Rule charged in Count VI)

3. June 30, 2014 Specification

    a. D.C. Bar Rule XI, §10(b) (conviction of serious crimes)

    b. Rule 3.3(a)(1) (knowing false statement of fact to tribunal)

    c. Rule 8.4(b) (commission of a criminal act reflecting adversely on honesty, trustworthiness, or fitness)

    d. Rule 8.4(c) (dishonesty)

    e. Rule 8.4(d) (serious interference with the administration of justice)[3]

The Hearing Committee recommends that Respondent receive a three-year suspension, with reinstatement conditioned upon proof of fitness, restitution to clients (the Sagars and Mr. Currie), and full compliance with all outstanding Disciplinary Counsel subpoenas and related outstanding Board on Professional Responsibility and Court of Appeals orders.

I. PROCEDURAL HISTORY

On December 29, 2010, Respondent was convicted in Arlington County Circuit Court, 17th Judicial Circuit of Virginia, of one count of "No Operator's

[3] As set forth below, we find that Disciplinary Counsel failed to prove by clear and convincing evidence that Respondent violated Rules 1.4(b), 1.15(e), and 8.4(c) in his representation of Mr. Currie (July 1, 2014 Specification, Count IV). We agree with Disciplinary Counsel that there is no clear and convincing evidence that Respondent violated Rule 7.1(a) (again in Count IV).

License," in violation of Va. Code § 46.2-301, and three counts of misdemeanor failure to appear, in violation of Va. Code § 19.2-128(C). Disciplinary Counsel notified the District of Columbia Court of Appeals (the "Court") of Respondent's conviction. On December 17, 2012, the Court suspended Respondent pursuant to D.C. Bar R. XI, § 10(c), and referred the matter to the Board to determine whether Respondent's failures to appear involved moral turpitude within the meaning of D.C. Code § 11-2503(a). Order, *In re Nolan*, D.C. App. No. 12-BG-1892 (Dec. 17, 2012 (amended Dec. 26, 2012)).[4]

On January 25, 2013, the Board issued an order concluding that Respondent's crime did not involve moral turpitude *per se* and referring the matter to a Hearing Committee to determine (1) whether Respondent's conviction involved moral turpitude on the facts in light of any aggravating or mitigating circumstances, and

[4] On December 31, 2012, Respondent filed two motions with the Court of Appeals: (1) Motion to Vacate December 17, 2012 Order (Disciplinary Counsel Exhibit ("DCX") 7.K at 74-79), and (2) Motion for Reinstatement (DCX 7.L at 80-88)). Even though the Court's December 17, 2012 order suspending Respondent made clear that the "serious crimes" upon which the suspension was based were Respondent's three convictions for misdemeanor failure to appear (DCX 7.K at 77), Respondent never mentioned or discussed those convictions in either of his motions. Instead, he argued only that his additional conviction for the traffic offense of driving with no operator's license was not a "serious crime" under D.C. Bar Rule XI, § 10(b). DCX 7.K at 74 ("one cou[n]t of 'No Operator License' is not a 'serious crime' as defined by D.C. Bar Rule XI Section 10(b)"); DCX 7.L at 81 (same). The Court denied both motions. Order dated February 11, 2013 (DCX 7.M at 89).

(2) what final discipline was appropriate in light of Respondent's conviction of a "serious crime" as defined in D.C. Bar Rule XI, § 10(b). Order, *In re Nolan*, Board Docket No. 12-BD-084 (Jan. 25, 2013).

The Two Specifications of Charges. On June 30, 2014, Disciplinary Counsel filed a two-count Specification of Charges (the "June 30 Specification") arising out of Respondent's 2010 conviction in Virginia on three counts of failure to appear (Bar Docket No. 2012-D193). Disciplinary Counsel did not charge Respondent in the June 30 Specification with committing a crime involving moral turpitude.

On July 1, 2014, Disciplinary Counsel filed a six-count Specification of Charges (the "July 1 Specification") arising out of Respondent's handling of two different client matters and his failure to respond to Disciplinary Counsel's inquiries in those two matters and four others (Bar Docket Nos. 2009-D285, 2011-D295, 2011-D422, 2011-D434, 2012-D183, and 2012-D397).[5]

The November 24, 2014 Prehearing Conference. The Hearing Committee scheduled a prehearing conference for November 24, 2014 at 9:30 a.m. On November 24, a few minutes before the scheduled time for the commencement of

[5] On March 16, 2015, with leave of the Hearing Committee, Disciplinary Counsel amended the July 1 Specification. All references to the July 1 Specification refer to this Amended Specification.

the prehearing conference, Respondent sent a three-page facsimile to the Board on Professional Responsibility. The first page was a facsimile transmittal sheet from Minuteman Press in Centerville, MA, which stated in the "Comments" section: "I begin a long[-]scheduled medical procedure today and request an enlargement of time," and was apparently signed by Respondent. Respondent provided no details regarding the claimed "long[-]scheduled medical procedure," nor any explanation, if, as claimed, the procedure had been scheduled for a long time, why he had waited until a few minutes before the scheduled commencement of the prehearing conference to request that the conference be postponed.

The second page of Respondent's November 24 facsimile contained a five-line "Motion to Dismiss Charges and Grant Reinstatement," which stated in its entirety:

> I hereby contest each allegation against me. I request a hearing on each charge. I hereby appeal denied discovery on each charge.
>
> The record reflects that I was improperly denied substantive and procedural due process in my December 2012 suspension. I request member 379804 reinstatement pending further action herein.

Motion to Dismiss Charges and Grant Reinstatement at 1 (Nov. 24, 2014). This motion, which was also signed by Respondent, provided no factual or legal basis for

his claim of substantive and procedural due process violations in his suspension by the Court from the practice of law, or for his request for reinstatement.

Apart from submitting his motion to dismiss, Respondent did not participate in any way in the November 24 prehearing conference or in any other part of the proceedings before the Hearing Committee.

Although Respondent had failed to request a continuance until the morning of the prehearing conference (in violation of Board Rule 7.10), the Hearing Committee Chair granted a continuance and later rescheduled the prehearing conference for February 20, 2015.

On November 26, 2014, Disciplinary Counsel filed proof of service of both Specifications by regular and certified mail. Respondent did not file an answer to either Specification of Charges or otherwise participate in any of the proceedings before the Hearing Committee. On December 22, 2014, the Board Chair granted Disciplinary Counsel's motion to consolidate all above-referenced matters for all purposes.

The February 20, 2015 Prehearing Conference. A prehearing conference was held on February 20, 2015, before the Hearing Committee Chair, C. Coleman Bird, Esquire. Assistant Disciplinary Counsel Traci M. Tait, Esquire, and Assistant Disciplinary Counsel Joseph Perry, Esquire, were present. Neither Respondent nor

any attorney on his behalf participated in this conference. The hearing was scheduled for April 9-10, 2015. On February 27, 2015, the Hearing Committee issued an order memorializing the prehearing conference and setting a schedule for the submission of stipulations of facts and the exchange of witness lists and proposed documentary exhibits. In addition, because the Hearing Committee had an independent obligation to determine the moral turpitude issue, the February 27, 2015 order directed Disciplinary Counsel to:

> . . . file a statement addressing whether it has exhausted all reasonable means of inquiry to find proof of aggravating or mitigating circumstances relating to the moral turpitude issue, and explaining those efforts, as well as the basis for its determination that Respondent's criminal conviction does not involve moral turpitude on the facts.

Order dated February 27, 2015, at 2 ¶ .b. Disciplinary Counsel timely filed its statement regarding the moral turpitude issue on March 16, 2015.

On March 13, 2015, Disciplinary Counsel filed an emergency motion to depose Robert Currie, Respondent's client in Count IV of the July 1 Specification, and for a telephonic prehearing conference. The Hearing Committee granted Disciplinary Counsel's motion in part; it took the motion for a deposition under advisement pending a response from Respondent, and scheduled a telephonic prehearing conference for March 24, 2015. This further prehearing conference was

held on March 24, as scheduled. Neither Respondent nor any attorney on his behalf participated in the conference or responded to Disciplinary Counsel's emergency motion. On March 30, the Hearing Committee issued an order memorializing the telephonic prehearing conference, granting Disciplinary Counsel's motion to depose Mr. Currie, and rescheduling the hearing for May 7-8, 2015.

The May 7, 2015 Hearing. A hearing was held on May 7, 2015 before this Ad Hoc Hearing Committee (the "Hearing Committee"). Disciplinary Counsel was represented at the hearing by Traci M. Tait, Esquire, and Joseph Perry, Esquire. Neither Respondent nor any attorney acting on his behalf participated in the hearing in any way.

Prior to the hearing, Disciplinary Counsel submitted Disciplinary Counsel Exhibits ("DCX") A through G (exhibits common to all Counts), and DCX 1 through DCX 1.P, DCX 2 through DCX 2.A, DCX 3 through DCX 3.D, DCX 4 through DCX 4.I, DCX 5 through DCX 5.C, DCX 6 and DCX 6.A, and DCX 7 through DCX 7.M (a total of 59 exhibits, containing 1,057 pages). All of Disciplinary Counsel's exhibits were admitted into evidence. Transcript of Proceedings ("Tr.") 236-244. During the hearing, Disciplinary Counsel called as witnesses Charles Anderson, its investigator (Tr. 6 *et seq.*), and Ajay and Archana Sagar, Respondent's clients referred to in Count I of the July 1 Specification (Tr. 23 *et seq.* (Ajay Sagar), 182 *et*

seq. (Archana Sagar)). Disciplinary Counsel offered Mr. Currie's deposition testimony as an exhibit, which was also admitted into evidence. DCX 4.I. Tr. 240-41.

Following the close of the evidence, the Hearing Committee made a preliminary, non-binding determination that Disciplinary Counsel had proved at least one Rule violation. Tr. 244-45.

On June 11, 2015, Disciplinary Counsel filed Proposed Findings of Fact, Conclusions of Law and Recommendation as to Sanction. Respondent did not file a post-hearing brief or otherwise respond in any way to Disciplinary Counsel's filing.

II. FINDINGS OF FACT

The following findings of fact are based on facts established by clear and convincing evidence. *See* Board Rule 11.6.

A. Background

1. Respondent was admitted to the Bar of the District of Columbia Court of Appeals (the "Court") on June 25, 1984, and assigned Bar No. 379804. DCX A. The Court suspended Respondent by order dated December 17, 2012 (amended December 26, 2012), pending the disciplinary system's resolution of Respondent's sanction for his conviction of a serious crime under § 10(c) of Rule XI of the District of Columbia Court of Appeals Rules Governing the Bar ("D.C. Bar R. XI" or "Rule

XI"). DCX E. In its order, the Court directed the Board on Professional Responsibility (the "Board") to "institute a formal proceeding to determine the nature of the offenses [of which Respondent was convicted] and whether they involve moral turpitude within the meaning of D.C. Code § 11-2503(a) (2001)." *Id.*

2. Although the Court's order specifically drew "[R]espondent's attention . . . to the requirements of D.C. Bar Rule XI, § 14 relating to suspended attorneys," DCX E, there is no evidence that Respondent ever complied with the requirements of Rule XI, § 14, by filing with the Court and serving on Disciplinary Counsel the affidavit that § 14(g) requires. In its brief, Disciplinary Counsel contends that Respondent has never filed the required § 14(g) affidavit, but provides no proof of this failure. [Disciplinary Counsel's] Proposed Findings of Fact, Conclusions of Law, and Recommended Sanction ("ODC Br.") at 3 ¶ 2.

3. Respondent also was licensed but currently is not entitled to practice law in California because of his failure to comply with California's minimum continuing education requirements. DCX F.

4. There is no evidence that Respondent ever maintained a law office in the District of Columbia or that Respondent was ever licensed to practice law in Virginia or Maryland. In June 1984, when Respondent was admitted to the District of Columbia Bar, the only other jurisdiction in which he was admitted to practice

was California. DCX A.

B. The July 1, 2014 Specification, Count I (Sagars, Bar Docket No. 2009-D285)

5. Ajay and Archana Sagar are husband and wife, and the owners of Pixl, Inc. ("Pixl"), a Virginia-based technology company. Both were born in India and later moved to the United States and became naturalized United States citizens. Archana Sagar is the president and 75 per cent owner of Pixl; Ajay Sagar is vice president, and owner of the remaining 25 per cent. Tr. 24, 27-28 (Ajay Sagar), 183 (Archana Sagar); DCX 1 at 18; DCX 1.B at 181. Neither Ajay nor Archana appear to be sophisticated in legal matters.

6. On April 28, 2004, the Forest Service, an agency of the United States Department of Agriculture, awarded Pixl a task order contract (No. 43-3187-4-1017) (the "April 2004 Task Order") in the total amount of $998,000 to provide technical support for the Forest Service's computer systems. Tr. 29-30 (Ajay Sagar), 185 (Archana Sagar); DCX 1.A at 50; DCX 1.B at 228 *et seq.* This Task Order was a particular type of government contract (a "labor-hour contract"), under which Pixl would bill the Forest Service for hours of work performed by individuals in designated labor categories. See 48 C.F.R. § 16.602. The Statement of Work for this Task Order provided for a base-year performance period (from the date of award

through September 30, 2004), and two potential Option years: Option Year 1 (from October 1, 2004 through September 30, 2005), and Option Year 2 (from October 1, 2005 through September 30, 2006). DCX 1.B at 231. The Statement of Work stated: "The government has the right not to [e]xercise the two option period[s] of performance." *Id.*

7. The April 2004 Task Order was not the first time that Pixl had worked on a Forest Service contract either as a contractor or subcontractor. Tr. 29 (Ajay Sagar). Previously, in December 1999, Pixl had been awarded a contract to provide technical support for the Forest Service's computer systems. DCX 1.B at 200 *et seq.* While performing the 1999 contract, Pixl paid a total of $768,000 to another contractor (IRM Consulting Group, Inc.) that was also working on the same project for the Forest Service. Tr. 31-32 (Ajay Sagar).

8. Pixl had no satisfactory explanation for why it had made these payments to IRM Consulting. The only explanation it provided was:

> It was – when we started earlier on this contract [the 1999 contract], there was another contractor [IRM Consulting] working, you know, on this. And somehow he started taking, you know, money from us. And because of that, you know, like the demands kept going up and up, and I did bring it to the government officials. They pretty much [sic – said?] do what this guy tell[s] you to do.

Id. at 31 (Ajay Sagar). Pixl thought "this was money that was just being demanded

by this contract[or] for being there. We classified or thought it was an extortion." *Id.* at 31. IRM Consulting was not a subcontractor to Pixl on this project. Tr. 33.

9. Pixl paid $768,000 to IRM Consulting from the Government's payments to Pixl under the 1999 contract and the April 2004 Task Order. *Id.* When asked why, if Pixl had a task order contract with the Forest Service, it was necessary for Pixl to pay any amounts to any other contractor that was not working for Pixl, Mr. Sagar agreed that this might not appear necessary, but said that, when Pixl stopped making these payments to IRM Consulting, Pixl "started having problems with the government." Tr. 37 (Ajay Sagar). When Pixl stopped making these payments, IRM Consulting sued Pixl in Fairfax County Circuit Court claiming that the payments were owed under a verbal contract. This case was ultimately settled. Tr. 36 (Ajay Sagar).

10. At some time after Pixl stopped making these payments to IRM Consulting, Pixl became concerned about the difficulties it felt it was experiencing in its contractual relationship with the Forest Service. Pixl believed that the Government was improperly transferring business from Pixl to other contractors on the project and was not paying Pixl's invoices in a timely fashion. Tr. 32 (Ajay Sagar). Pixl was also concerned that IRM Consulting was hiring consultants to work on this project who had previously worked for Pixl as consultants on this project. Tr.

36 (Ajay Sagar).

1. Respondent's First Retainer Agreement with Pixl

11. These contracting issues led Pixl to hire Respondent as their legal counsel in approximately December 2005. Pixl's first check to Respondent (in the amount of $1,800) was dated December 30, 2005. DCX 1.O at 505-06.

12. In approximately May 2006, Pixl entered into a written retainer agreement with Respondent, but the Sagars were not able to locate a copy of this agreement. Tr. 186 (Archana Sagar). Under this 2006 written retainer agreement, Pixl agreed to pay Respondent $1,800 per month. Tr. 48 (Ajay Sagar). It is unclear whether this agreement included Respondent's representing Pixl both in the lawsuit brought by IRM Consulting against Pixl in Fairfax County and in Pixl's contractual disputes with the Forest Service. *Compare* Tr. 45 ("There was an agreement when we were doing commercial lawsuit [with IRM Consulting]. At that time we had signed an earlier agreement with him [Respondent]. However, that was not exactly, you know, direct – some relationship [with Forest Service disputes] and some not.") (Ajay Sagar) *with* Tr. 38 ("before [Respondent] was retained, that [the IRM Consulting case] had settled.") (Ajay Sagar).

13. Over the period of Respondent's representation of Pixl (*i.e.*, from December 2005 through June 2008), Pixl paid Respondent a total of $88,887.70, as

follows:

Year	***Payments***
2005	$ 1,800.00
2006	16,550.00
2007	56,137.70
2008	14.400.00
Total	***$ 88,887.70***

Table 1: Payments by Pixl, Inc. to Respondent (2005-2008) (Appendix 1 attached) (based upon DCX 1.O at 505-537, which lists each payment that Pixl made to Respondent during the course of the representation and contains photocopies of Pixl's canceled checks).

2. The Sagars' Objectives in Retaining Respondent

14. The Sagars' objectives in retaining Respondent were to resolve all the issues that Pixl was having with the Forest Service. Tr. 187 (Archana Sagar). These issues included (1) the Forest Service's "tak[ing] away" a "good portion of [Pixl's] contract" when consultants formerly employed by Pixl were hired by other contractors to work on the Forest Service project; (2) the Forest Service's failure to pay "many, many pending invoices;" and (3) Pix's desire for "backdated damages, because we had lost money in 2005 when they [the Forest Service] moved our people to the other company, and we wanted to get that money back, too." *Id.* At their very

first meeting with Respondent, the Sagars "made clear" to him the things they "wanted to fight for: [r]estoration of our contract, our invoices being paid in full, and all the money we had lost, we wanted to recover that." *Id.* at 188 (Archana Sagar).

15. Ajay Sagar explained that, when Pixl stopped making payments to IRM Consulting, the Forest Service "started shifting our business to [IRM Consulting]," *i.e.*, "people from our company were being moved to [IRM Consulting]" and payments of Pixl's invoices were being delayed, causing damage to Pixl. Tr. 35-36 (Ajay Sagar). The Sagars discussed all of these problems with Respondent at their first meeting with him. *Id.* at 53-54, 56 (they discussed timely payment of invoices and the Forest Service's moving consultants from Pixl to IRM Consulting) (Ajay Sagar).

3. Respondent's Representations to the Sagars

16. At Respondent's first meeting with the Sagars, he assured them that he could get Pixl's problems quickly resolved ("pretty much taken care of . . . fairly quickly"). Tr. 36 (Ajay Sagar). Respondent told them that Pixl "really ha[d] a case against the government," and that Pixl "should really go after the government." Tr. 40 (Ajay Sagar). Respondent told the Sagars that it would take a "couple of months" to resolve their problems. Tr. 48-49 (Ajay Sagar) ("it's going to take a couple of months, and we will be able to get it done for you."). He repeated that it would take

a couple of months to "get them [Sagars] back in the game," *id.* at 56 (Ajay Sagar), promising them that the results would be "restoring the contract back, getting the payments in time, [and] stopping them [the government] from doing any further damage to us." *Id.* at 58 (Ajay Sagar).

17. Respondent did not provide any detailed discussion of his strategy to accomplish the promised results. He told the Sagars that they would need to exhaust their administrative remedies (which, as he described it, involved sending letters to members of Congress and Senators, and filing a protest with the Government Accountability Office (GAO), among other efforts), and then "go to federal courts as soon as possible." Tr. 190 (Archana Sagar); *id.* at 56 (Ajay Sagar). Respondent never explained what was involved in exhausting their administrative remedies other than to "mak[e] a lot of noise" in the hope that one of the Government officials would "pick [Pixl's problems] up as their cause." Tr. 191-92 (Archana Sagar).

4. Respondent's Representation of Pixl

18. Although Respondent failed to provide any details of his strategy and approach, the Sagars were generally aware of what he was doing because of Respondent's unusual approach to preparing the various letters and legal filings that he made on their behalf. Respondent had an office in his home, and, as far as the Sagars were aware, had no other office.

19. Respondent came to Pixl's offices and drafted all documents using Pixl's office computers. The Sagars then performed the remaining tasks on their own time and at their own expense to get the documents formatted in proper form, printed with correct attachments attached, and mailed or delivered by hand to the addressees. Tr. 63 ("Pretty much this guy [Respondent] would come as a boss, give us something, and the rest of the work we are doing, hoping that this guy will get us some justice.") (Ajay Sagar); *id.* at 192-93 (Respondent would visit Pixl's office and "after a quick talk – like okay, we will write to so-and-so, fire off some letters, and then we would spend the rest of the day compiling and mailing") (Archana Sagar). See Tr. 203 (Respondent drafted the U.S. District Court complaint referred to in Findings of Fact ("FOF") ¶¶ 38 *et seq.* below, and the Sagars did the "legwork, which is formatting, printing, packaging, mailing.") (Archana Sagar).

20. As a result of the Sagars' role in the preparation of the documents that were sent out, they were usually generally aware of the contents of the documents because they would normally read the documents before they were filed. Tr. 208 ("We normally did read things that were filed.") (Archana Sagar).

5. Respondent's Second Retainer Agreement with Pixl

21. In May 2007, Respondent asked the Sagars to sign a new retainer agreement that he had prepared. On May 26, 2007, the Sagars and Respondent

signed this agreement. DCX 1 at 17-18 ("Retainer Agreement for USDA Contract Dispute"). This agreement was signed one month before Respondent filed the complaint in the U.S. District Court for the District of Columbia styled *Archana Sagar, et al. v. Mike Johanns, Secretary of Agriculture*, Civil Action No. 1:07-cv-01150-RCL (filed June 27, 2007), referred to in FOF ¶¶ 38 *et seq.* below.

22. Under the terms of the May 2007 retainer agreement, the Sagars and Pixl agreed to pay Respondent $3,600 per month as an "Advance Payment," and one-third (33 1/3%) of the "winnings" (apparently the total amount recovered minus deductions for the principal amount of Pixl's invoices to the Forest Service and for legal expenses (filing fees, *etc.*)). DCX 1 at 17. Pixl and the Sagars would owe Respondent the difference between one-third of the total recovery adjusted as described and the total amount of all monthly payments made to Respondent. *Id.* This agreement doubled the amount of the Sagars' monthly payment to Respondent (from $1,800 to $3,600 per month). The Sagars and Pixl never agreed, either in the May 2007 retainer agreement or otherwise, that their advance payments of fees to Respondent were not their property until the fees were earned by Respondent.

23. Under the heading "Termination," the May 2007 retainer agreement permitted the Sagars to terminate the agreement (with 30 days' notice) only after 11 months ("on or after April 26, 2008"). *Id.* at 18. Respondent told the Sagars that the

retainer agreement provided that they would be unable to discharge him as their lawyer for a year. Tr. 158-59 (Ajay Sagar). He claimed that he needed the minimum one-year period to "get the results" he had promised. *Id.*

24. The agreement also contained a mutual indemnification clause that required the Sagars to indemnify and hold Respondent harmless "from and against any and all claims, losses, and liability arising out of [Respondent's] breach of any of [Respondent's] obligations in this agreement." DCX 1 at 18.

6. Respondent's Administrative Civil Rights Claim to USDA and Other Efforts before Filing Suit

25. Respondent wrote or contacted various members of the United States House of Representatives and the United States Senate on Pixl's behalf. Respondent's efforts included contacts with the offices of Congressman Frank R. Wolf (DCX 1.A. at 71-73, 76-77), and Senator John Warner (*id.* at 74-75, 78-79).

26. Respondent also sent other correspondence on Pixl's behalf. On August 14, 2006, he sent a letter to the Acting Inspector General, Small Business Administration, with copies to Congressman Wolf, the White House Office of Cabinet Liaison, the Secretary of Agriculture, the Chief of the Forest Service, the USDA Assistant Secretary for Civil Rights, the Director of USDA's Office of Civil Rights, and the "Director, OSDBU, USDA." DCX 1.A at 56.31 *et seq*.

27. This letter ("the civil rights claim") complained that, in April 2005, the Forest Service had improperly transferred various Pixl computer engineer consultants to another contractor (IRM Consulting), and that the Forest Service had improperly converted Pixl's contract from a Section 8(a) contract to a GSA Schedule contract. *Id.*[6] Respondent's letter noted that Pixl was "75% owned by Archana Sagar. a foreign[-]born Asiatic Indian woman," and asked the USDA Assistant Secretary for Civil Rights or the USDA Director of Civil Rights to appoint an EEO counselor to investigate the appearance of "prohibited discrimination concerning disparate treatment and disparate impact against minorities and people of color." *Id.* at 56.32.

28. Before filing the civil rights claim with the USDA's Office of Civil Rights ("OCR"), Respondent never discussed its contents with the Sagars. Tr. 74 (no substantive discussion about the civil rights claim before it was filed) (Ajay Sagar);

[6] A "Section 8(a) contract" is a contract under the Small Business Administration's Section 8(a) program. This program is a business development program for small businesses owned by individuals who are both socially and economically disadvantaged. See *DynaLantic Corp. v. United States Department of Defense*, 885 F. Supp. 2d. 237, 243-46 (D.D.C. 2012) (summary of 8(a) program and its requirements). A "GSA Schedule contract" is a contract under which a government contractor agrees to provide specified products or services to ordering agencies at prices that the contractor previously negotiated and agreed upon with the General Services Administration ("GSA"). A GSA Schedule contract does not provide the safeguards and protections for the contractor that a Section 8(a) contract provides for disadvantaged small businesses. See generally 48 C.F.R. § 8.402 (2017).

id. at 199 (same) (Archana Sagar). He never discussed with them what the process of the OCR's investigation would be. Tr. 86-88 (Ajay Sagar).

29. By letter to Respondent dated December 21, 2006, the OCR responded to Respondent's August 14, 2006 civil rights claim. The OCR determined that it had jurisdiction to investigate whether Pixl "was discriminated against on the bases of national origin (Asiatic Indian) and sex (female), when the Forest Service changed Pixl's 8(a) contract to a GSA Schedule contract on August 9, 2006." DCX 1.A at 55. The letter stated that "[y]our issue concerning allegations of discrimination, when seven of Pixl's employees transferred to IRM Consulting in April of 2005, was not filed with our office within 180 days of the alleged discriminatory event. Therefore, that issue is untimely and will not be processed." *Id.* Respondent never discussed with the Sagars the significance of the OCR's response. Tr. 196-97 (Archana Sagar); *id.* at 86-88 (Ajay Sagar).

30. As noted above, Respondent was retained by the Sagars in December 2005. FOF ¶¶ 11; Tr. 200-01 (Archana Sagar). The 180-day period within which Pixl could have timely complained of the alleged discrimination involving the April 2005 transfer of seven of Pixl's employees to IRM Consulting expired at the latest in October 2005, 180 days after the transfer, several months before Respondent was retained. As a result, Respondent cannot be held responsible for the failure to bring

this particular claim within the required 180-day time period.

31. Respondent's August 14, 2006 civil rights claim was very similar to the complaint Respondent prepared and filed in the District Court action described below (see FOF ¶¶ 38 *et seq.* below). Tr. 73-74 (Ajay Sagar).

32. In March 2007, Respondent sent a Freedom of Information Act request to the Office of Civil Rights, Office of the Assistant Secretary for Civil Rights, U. S. Department of Agriculture (the OCR's response, dated April 20, 2007 refers to Respondent's March 2, 2007 request (see DCX 1.A at 56.1)). By letter dated May 9, 2007, Respondent filed a FOIA appeal from the Forest Service's response to Respondent's two FOIA requests dated January 20, 2007 (one to the Forest Service, and the other to the Small Business Administration ("SBA"), which had forwarded the request to the Forest Service for response). The Forest Service's letter denying Respondent's FOIA appeal refers to the May 9, 2007 appeal and the January 20, 2007 requests. DCX 1.A at 106-07. Respondent also filed a FOIA appeal with the SBA by letter dated June 26, 2007. DCX 1.A at 105.

33. By letter dated November 15, 2006 to Mr. Hank Kashdan, Deputy Chief of the Forest Service, Respondent complained about the Forest Service's treatment of Pixl regarding the alleged conversion of Pixl's 8(a) contract to a GSA Schedule contract and other respects as well. DCX 1.A at 87-88.

7. Respondent's Certified Contract Claim

34. On or about December 11, 2006, Respondent submitted a formal certified contract claim to the Forest Service on Pixl's behalf ("Pixl's Formal Claim and Request for Decision Regarding INFRA Contract Administration Complaints FY 01 Thru FY07"). See DCX 1.A at 85-86. The certified contract claim (which was apparently 25 pages long, with more than 100 pages of attachments) is not in the record, but the Forest Service's contracting officer (Mr. Robert D. Jaeger) referred to Pixl's certified claim in his March 5, 2007 response to the claim. *Id.*

35. The formal certified contract claim that Respondent filed with the Forest Service's contracting officer was identical to the August 14, 2006 civil rights claim that he had previously filed that had been referred to the USDA OCR. Tr. 73 (Ajay Sagar); *id.* at 193 (certified contract claim was same document as the civil rights claim "just filed in two different places") (Archana Sagar).

36. On April 13, 2007, Respondent filed a protest with the Government Accountability Office on Pixl's behalf. DCX 1.B at 288-95. The protest objected to a Forest Service solicitation. The GAO denied this protest on April 2, 2007, because Pixl was not an eligible bidder for the solicitation. *Id.* at 300.

37. On August 9, 2007, Respondent filed another protest with the GAO, objecting to the award of a contract by the Forest Service for I-web Technical

Services and Support. DCX 1.B at 302-10. The GAO denied this protest on August 20, 2007, because Pixl, as a prospective subcontractor, was not an "interested party." DCX 1.B at 312.

8. Respondent's Complaint Filed in U.S. District Court

38. On June 27, 2007, Respondent filed a two-count class action complaint in the United States District Court for the District of Columbia styled *Archana Sagar, et al. v. Mike Johanns*, *Secretary of Agriculture*, Civil Action No. 1:07-cv-01150-RCL. The named plaintiffs were Archana Sagar, Ajay Sagar, and Pixl. The sole named defendant was Mike Johanns, who was sued in his official capacity as Secretary of Agriculture. DCX 1.A at 21 *et seq.* The complaint demanded a trial by jury.

39. The complaint (the "District Court Complaint") sought damages and injunctive and other affirmative relief to prevent claimed "prohibited discrimination and tortious interference with contract in violation of federal statute, the laws of the District of Columbia, [and] the Fifth and Thirteenth Amendments to the Constitution of the United States." DCX 1.A at 21 ¶ I.

40. Respondent's District Court Complaint sought relief on behalf of numerous classes that were not clearly defined ("[t]he classes of race (Asiatic, Brown, female and Asiatic couple")). *Id.* at 24 ¶ VII. It alleged that, but for the race

("Asian") and skin color (brown) of the Sagars, the Forest Service would not have subjected them to prohibited discrimination, would not have "infringed upon their substantive right to do business with the federal government," would not have "adversely and disparately treated Archana and Ajay Sagar and their Woman and Minority owned firm in violation of substantive and procedural guarantees under Section 8(a) of the Small Business Act and the Fifth and Thirteenth Amendments to the United States Constitution," and would not have subjected Archana Sagar to "prohibited discrimination on the basis of color and sex under both USDA regulations and the laws of the District of Columbia." *Id.* at 23-24 ¶ VI.

41. In Count I of the District Court Complaint, Respondent recited the Forest Service's various alleged breaches of its contracts with Pixl, but attempted to label them as tortious interferences with contract and tortious breaches of contract. See *id.* at 26 ¶¶ XI *et seq.* The complaint demanded damages of at least $5,700,000. *Id.* at 29 ¶ XIX.

42. In Count II, Respondent made a claim against the Secretary of Agriculture for treble damages under the Racketeer Influenced and Corrupt Organizations ("RICO") statute (codified at 18 U.S.C. §§ 1961-68), claiming that "an enterprise of *Bivens* actors" had "furthered a racketeering scheme of emotional and economic duress upon plaintiffs and their business through fraudulent mailings

and wires" in violation of the mail fraud and wire fraud statutes (18 U.S.C. §§ 1341, 1343). *Id.* at 30 ¶¶ XXII *et seq.*

43. The alleged "fraudulent mailings and wires" upon which Respondent's RICO claim was based were the Forest Service's responses to inquiries made by Congressman Wolf and Senator Warner on behalf of Pixl, and the Forest Service's direct response to the Sagars, in which the Forest Service disputed Respondent's claims of breach of contract. See *id.* at 32 ¶ XXVII (and *id.* at 65-86 (the USDA's allegedly false mailings and wire communications)). The complaint also alleged that the "*Bivens* enterprise has refused to process plaintiff's accepted civil rights complaint within 180 days of the agency's December 21, 2007 [sic] acceptance of said complaint," a failure that also allegedly constituted a violation of the RICO statute (18 U.S.C. §§ 1961(c), (d)). *Id.* at 32 ¶ XXVI.

44. In its prayer for relief, Respondent's District Court Complaint sought, among other relief, a "preliminary and permanent injunction infringing upon [sic] both Woman and Minority business 8(a) contractual awards by the USDA Forest Service," "compensatory damages in the amount of $300,000," "punitive or exemplary damages in the amount of $300,000," and "[g]ranting relief for 5.7 million dollars in damages for tortious interference with contract under the Federal Tort Claims Act (FTCA) and disparagement of business reputation through

fraudulent misrepresentations under the laws of the District of Columbia." *Id.* at 35-36.

45. Respondent's District Court Complaint is garbled and incoherent. It alleges numerous claims that have no possible legal basis, such as a Thirteenth Amendment claim on behalf of the Sagars. The Thirteenth Amendment abolished "slavery and involuntary servitude" in the United States. Thirteenth Amendment, § 1. There is no basis for any claim that the USDA subjected the Sagars to "slavery" or "involuntary servitude." In addition, the law is clear that "there is no private right of action under the Thirteenth Amendment." *Doe v. Siddig*, 810 F. Supp. 2d 127, 135 (D.D.C. 2011) (citations omitted). Similarly, there is no basis for a Fifth Amendment due process claim based on alleged breach of contractual obligations. *Information Systems & Networks Corp. v. U.S. Department of Health & Human Services*, 970 F. Supp. 1, 9-10 (D.D.C. 1997).

46. Further, no RICO claim can be asserted against the Federal Government. *Berger v. Pierce*, 933 F.2d 393, 397 (6th Cir. 1991) ("it is clear there can be no RICO claim against the federal government").

47. Finally, there is no evidence in the record suggesting that the USDA or Forest Service's contractual actions complained of resulted from discrimination against the Sagars because of their race (Asian Indian) or skin color (brown). Instead,

the entirety of the record makes clear that the Sagars' and Pixl's dispute with the Forest Service was a contract dispute, and nothing more.

48. Before he filed the District Court Complaint, Respondent never discussed the contents of the complaint with the Sagars. Tr. 71-72 (Respondent never discussed contents of complaint or what to expect after filing) (Ajay Sagar); *id.* at 92 (Respondent never discussed any of the causes of action identified in the District Court Civil Cover Sheet that he prepared and filed, and never discussed whether to demand jury trial) (Ajay Sagar); *id.* at 204 (Respondent never discussed the theories for entitlement to relief that he proposed to assert, and never discussed whether to request a jury trial) (Archana Sagar).

49. Before Respondent filed the District Court Complaint as a class action on behalf of a putative class of "race (Asiatic, Brown, female and Asiatic couple)," DCX 1.A at 24 ¶ VII, Respondent never indicated that he planned to bring a class action on the Sagars' behalf or on Pixl's behalf, and the Sagars did not understand that a class action would be filed or what such an action involved. Tr. 78-80 (Ajay Sagar).

50. Ajay Sagar signed the District Court Complaint under the caption "Verification," verifying, under penalty of perjury, that the complaint's allegations were "true and correct to the best of [his] knowledge and belief." DCX 1.A at 35.

As noted above, it was the practice of the Sagars to read the various filings that Respondent made on their behalf before they were filed. Tr. 208 ("We normally did read things that were filed. So we would have read it [the District Court Complaint].") (Archana Sagar).

51. When he filed the District Court action, Respondent provided the e-mail address of "dbnesq1@aol.com" to the Court. DCX 1.A at 19. This is the same e-mail address that Respondent later provided to Disciplinary Counsel and the Board, and that Respondent used in communications with Disciplinary Counsel. See, e.g., DCX 1.D at 399, 403, and 407.

52. Under Rule 5.4(b)(1) of the Local Civil Rules of the United States District Court for the District of Columbia, Respondent was required to get a Case Management/ Electronic Case Filing ("CM/ECF") user name and password in order to enter his appearance in the case electronically and to receive documents filed electronically. By obtaining a CM/ECF password, Respondent consented to electronic service of all documents filed by electronic means in the case, and was "responsible for monitoring [his] e-mail accounts, and, upon receipt of notice of an electronic filing, for reviewing the noticed filing." Local Rule 5.4(b)(6).

53. Because Respondent never claimed, at any time, either in response to the Sagars or in response to Disciplinary Counsel's investigation, that he had not

received electronic notice of the Government's various filings and the Court's orders in the District Court action, we find that he received electronic notice of all of these filings in accordance with the Court's rules through the Court's electronic filing system.

54. On August 27, 2007, the Government filed a consent motion for a 30-day extension of time within which to respond to the complaint. DCX 1.A at 20 (docket entry reflecting filing of consent motion). The Court granted the motion *nunc pro tunc* by order dated October 2, 2007. DCX 1.A at 137. Respondent received electronic notice through the Court's electronic filing system of both the Government's filing and the Court's order. FOF ¶ 53. Respondent never informed the Sagars that the Government had requested an extension of time, that he had consented to the Court's granting the requested extension, or that the Court had granted the extension. Tr. 206-07 (Archana Sagar).

55. *The Government's Motion to Dismiss or Transfer.* On September 27, 2007, the Government filed a motion to dismiss, or, in the alternative, to transfer the case to the United States Court of Federal Claims. DCX 1.A at 117 *et seq*.

56. The Government's motion asserted that the Court lacked subject matter jurisdiction over the RICO, Federal Tort Claims Act, and constitutional tort claims (because of the Government's sovereign immunity defense) and also over the

remaining breach of contract claims (because the Court of Federal Claims had exclusive jurisdiction of breach of contract claims against the Government). The Government asked the Court to dismiss the complaint with prejudice, and transfer any remaining contract claims to the Court of Federal Claims. *Id.* at 134.

57. In its motion, the Government noted that it was not clear what causes of action were being alleged, and that the complaint "contains numerous allegations regarding violations of alleged contract provisions and FAR [Federal Acquisition Regulation] regulations, yet Plaintiffs fail to raise the specific claim of breach of contract." *Id.* at 119.

58. Respondent received electronic notice through the Court's electronic filing system of the filing of the Government's motion to dismiss or transfer. FOF ¶ 53 above.

59. Respondent never informed the Sagars that the Government had filed a motion to dismiss or transfer their case. Tr. 96-97 ("he never notified us") (Ajay Sagar); *id.* at 204-05 (Respondent never provided a copy of the Government's motion to dismiss, and never informed the Sagars that it had been filed) (Archana Sagar); *id.* at 207 (Sagars "were never aware" that the Government had filed papers in opposition to their complaint).

60. Under Rule 7(b) of the Local Civil Rules, the Sagars and Pixl were

required to file their response to the Government's motion to dismiss or transfer no later than October 11, 2007. Local Civil Rule 7(b) (unless Court directs another time, the party opposing motion must serve and file its opposing memorandum of points and authorities "[w]ithin 14 days of the date of service;" otherwise, "the Court may treat the motion as conceded").

61. *The Government's Notice Regarding Plaintiff's Treatment of Motion as Conceded.* On December 11, 2007, the Government filed "Defendant's Notice of Plaintiffs' Treatment of Defendant's Motion to Dismiss or, in the Alternative, to Transfer Case to the Court of Federal Claims as Conceded." DCX 1.A at 139 *et seq.*

62. The Government's Notice stated that Government counsel had contacted Respondent on October 18, 2007 to ask why no response to the Government's motion to dismiss or transfer had been filed when the response was due (on October 11, 2007), and that Respondent had stated that he needed additional time to respond and had requested an enlargement of time to October 22, 2007 within which to respond. *Id.* at 140. Government counsel agreed to Respondent's request for additional time, but Respondent never asked the Court to grant the additional time, and never filed a response to the Government's motion to dismiss or transfer. *Id.*

63. The Government's Notice also recited that, on November 21, 2007, Pixl

had filed a complaint in the United States Court of Federal Claims raising the same factual allegations and many of the same claims that it had asserted in the District Court action. *Id.* at 141; see FOF ¶¶ 73 *et seq.* below.

64. In its Notice, the Government asked the Court to treat the Government's motion to dismiss or transfer as conceded, as Local Rule 7(b) permits. *Id.*

65. Respondent received electronic notice through the Court's electronic filing system of the filing of the Government's Notice requesting that the Court treat the Government's motion to dismiss or transfer as conceded. FOF ¶ 53 above.

66. Respondent never notified the Sagars that the Government had filed a Notice requesting that the Court treat the Government's motion to dismiss or transfer as conceded. Tr. 100-01 (Ajay Sagar); *id.* at 207 (Archana Sagar). Although the Sagars had learned in June 2008 that the case had been dismissed (FOF ¶ 103 below), the first time that the Sagars saw a copy of either the Government's Notice or the Government's motion to dismiss or transfer was in 2015, the week before the hearing before the Hearing Committee and more than seven years after the Government had filed these documents with the Court. Tr. 100 (Ajay Sagar).

67. *The Court's Order Dismissing the Case with Prejudice*. On December 11, 2007, the Court entered an order granting the Government's motion to dismiss and dismissing the case with prejudice. DCX 1.A at 143. The Court's order noted

that plaintiffs had never filed an opposition or response to the Government's motion. *Id.*

68. Respondent received electronic notice through the Court's electronic filing system of the entry of the Court's order dismissing the case with prejudice. FOF ¶ 53 above.

69. Apart from filing the original District Court complaint and Civil Cover Sheet, Respondent never filed any other document or took any other action in the District Court action. DCX 1.A at 20 (docket entries).

70. Respondent never informed the Sagars that their District Court case had been dismissed and never provided a copy of the order dismissing their case. Tr. 208 (Archana Sagar); *id.* at 102 ("He never told us any of these things") (Ajay Sagar). Respondent never discussed with them the significance of the Court's dismissal of their action with prejudice. *Id.*

71. During the approximately six months during which the District Court action was pending, the Sagars repeatedly asked Respondent what was happening with their case. Respondent always responded with assurances that he had heard nothing from the Court, that these cases take time, and that it was "going to take time before we hear back anything." Tr. 103 (Ajay Sagar); *id.* at 95 (same). As Mrs. Sagar explained:

> We were waiting for a response [to the complaint]. That never came. Until the very end, until we found out that the cases had been closed, we had heard nothing back [from the other side] as far as we knew.

Tr. 204 (Archana Sagar). In order to avoid answering the Sagars' questions about the status of their case, Respondent would get "mean," "crazy," and "angry," and would "start shouting." *Id.* at 140-41 (Ajay Sagar).

72. The District Court action was filed on June 27, 2007 and dismissed on December 11, 2007. DCX 1.A at 19 (docket sheet). During the period from June 6 through December 30, 2007, Pixl paid Respondent a total of $25,200 in legal fees, plus $747.70 in filing fees and court costs (including a $250 filing fee for the Court of Federal Claims action discussed in FOF ¶¶ 73 *et seq.* below). Table 1 (Appendix 1).

9. Respondent's Complaint Filed in the U.S. Court of Federal Claims

73. On November 21, 2007, while the District Court action remained pending (and more than a month after Respondent's response to the Government's motion to dismiss or transfer was due), Respondent filed a complaint ("the CFC Complaint") on Pixl's behalf in the United States Court of Federal Claims (*Pixl, Inc. v. United States*, Docket No. 07-827C). DCX 1.B at 147 *et seq.*

74. The CFC Complaint alleged a breach of contract in violation of the

Federal Acquisition Regulation, the Contract Disputes Act, and the Competition in Contracting Act. *Id.* It alleged the same breaches as previously alleged in the District Court action (failure to pay proper invoices, *de facto* termination for convenience of Pixl's claimed 8(a) contract awards, and improper transfer of consultant positions from Pixl's contract to other contracts). *Id.* The CFC Complaint sought $10 million in damages. *Id.* at 165 ¶ 56.

75. On November 7, 2007, just two weeks before Respondent filed the CFC Complaint, the Forest Service's contracting officer had issued a final decision denying Pixl's certified contract claim submitted on December 11, 2006. See FOF ¶ 34 above. The contracting officer's decision is not in the record, but the Civilian Board of Contract Appeal's order dismissing Pixl's later appeal (see FOF ¶ 130 below) refers to this final decision. DCX 1.C at 392 (referring to contracting officer's final decision issued on November 7, 2007).

76. Even though it is well settled that a contracting officer's final decision is a fundamental prerequisite for the Court of Federal Claims to possess jurisdiction of the subject matter of a contractor's complaint (*England v. The Swanson Group*, 353 F.3d 1375, 1379 (Fed. Cir. 2004) (contracting officer's final decision on a claim is a "jurisdictional prerequisite[e)]" for any appeal)), Respondent never mentioned in his CFC Complaint that the contracting officer had issued a final decision denying

Pixl's certified claim. DCX 1.B at 150 (stating only that the contracting officer waited until November 2007 "to attempt to respond to Pixl's issues"). This omission is particularly surprising because Respondent had told the Sagars that they needed to file the CFC action after the Forest Service had denied Respondent's certified contract claim. Tr. 107 ("After we heard from the government response [to] our certified formal claim, then he [Respondent] was like hey, let's go to the federal Court of Claims and file the case.") (Ajay Sagar).

77. Before he filed the CFC Complaint, Respondent never discussed with the Sagars any aspect of the complaint other than "let's go get this filed" in the Court of Federal Claims. Tr. 107 (Ajay Sagar). He never explained how the CFC litigation related to the District Court action. *Id.* (Ajay Sagar). He never discussed the amount of damages ($10 million) that he sought in the CFC Complaint. *Id.* at 110-11. He never mentioned the available CFC alternative dispute resolution methods (settlement judges, minitrials, and third-party neutrals). *Id.* at 111-12.

78. The CFC Complaint was disorganized, rambling, and filled with reckless and irrelevant allegations. For example, paragraph 16 alleged:

> 16. In reprisal for Pixl's whistle blowing, [Contracting Officer] Jaeger denied to Pixl the accumulated sum of $500,000 in unpaid invoices . . . . Perhaps GS-14 Jaeger was only following orders from his chain of command of Ronald Wester, Ronald Hooper,

> Hank Kashdan, and Chief of the Forest Service of nearly 30,000 employees, Dale Bosworth. **Within a week to ten days of Pixl's reporting INFRA Project irregularities to both the FBI and the Criminal Division of the Justice Department, both Dale Bosworth and Daryl Herman suddenly retired! The failure to remove the apparently culpable CO Jaeger on the INFRA Project is as curious except for the USDA Forest Service need to protect higher ups, such as USDA Inspector General Phyllis Fong who has been under Integrity Office review. Around her October 18, 2007 Integrity Committee review, USDA Secretary Mike Johanns resigned to pursue elected office.**

DCX 1.B at 154 (bold typeface in original).

79. In the same vein is the following allegation:

> 32. . . . Pixl requests this Court confirms [sic] that the wife of INFRA Program Manager, Tah Yang, works for John Graney and IRM [Consulting]. Pixl requests this Court to confirm that Pixl was asked by IRS to initiate back up withholding on any funds of IRM due at least in part, to IRM's use of multiple tax identification numbers and its failure to report its "consulting income."

DCX 1.B at 160. The connection between these random requests and Pixl's asserted cause of action for the Forest Service's claimed breach of contract is never explained in the complaint.

80. Respondent's CFC Complaint referred to five appendices (Appendix A through E) that allegedly supported its allegations, including Pixl's certified claim dated December 11, 2006, but Respondent did not attach any of them to the

complaint he filed. DCX 1.B at 167; *id.* at 147 (docket entry for Nov. 21, 2007 refers to only a single Attachment (Attachment # 1 (Civil Cover Sheet)).

81. After the prayer for relief (in ¶ 60) and Respondent's signature, the CFC Complaint has additional pages under the heading "Table of Supporting Documents for ECF." These pages appear to be parts of a brief to an appellate court, including "B. Statutes and Regulations Cited" (1 page), "C. Statement of Issues" (2 pages), "D. Statement of the Case" (2 pages), "E. Points of Law" (2 pages), and "F. Conclusion" (1 page). The complaint provides no explanation for the inclusion of this extraneous material as attachments to the CFC Complaint. These attachments are entirely different from the five Appendices (A through E) that Respondent listed in the complaint. *Compare* DCX 1.B at 167 *with id.* at 168-75.

82. On the date it was filed, the Court designated the CFC action as an "Electronic Case" under the Court's Rules. DCX 1.B at 185 ("Notice of Designation" as electronic case). The Court's Notice informed Respondent that all documents in the case had to be filed electronically, and that "[c]ounsel must immediately obtain a CM/ECF [Case Management/ Electronic Case Filing] account if they do not have one already in order to receive service of electronically filed documents." *Id.* at 185-86. Finally, the Notice advised Respondent that "[c]ounsel are responsible for monitoring their e-mail accounts, and upon receipt of a notice of

an electronic filing, for retrieving the order or document electronically." *Id.*

83. The Docket Sheet reflects that Respondent provided the e-mail address "dbnesq1@aol.com" to the Court, which is the same e-mail address that Respondent provided to the U.S. District Court, to Disciplinary Counsel, and to the Board. DCX 1.B at 147.

84. Because Respondent never claimed, at any time, either in his response to the Sagars or in response to Disciplinary Counsel's investigation, that he had not received electronic notice of the Government's various filings and the Court's orders in the CFC action, we find that he received electronic notice of all of these filings and orders in accordance with the Court's rules through the Court's electronic filing system.

85. When the CFC Complaint was filed, the Clerk of Court gave notice to Respondent by electronic mail that a Notice of Assignment had been entered in the case. DCX 1.B at 183. This Notice called the attention of all counsel to the provision in the Court's Rules for "three methods of Alternative Dispute Resolution: Settlement Judges, Mini-Trials, and Third-Party Neutrals." *Id.* As noted above, Respondent never discussed any of these alternative dispute resolution options with the Sagars. Tr. 112 (Ajay Sagar).

86. *The Government's Motion to Dismiss.* On February 5, 2008, the

Government filed Defendant's Motion to Dismiss. The Government's motion asked the Court to dismiss the complaint under Rule 12(b)(6) of the Rules of the United States Court of Federal Claims for failure to state a claim upon which relief can be granted. DCX 1.B at 189-312. The motion was nine pages long, with extensive documentary attachments. It contended that the Forest Service had fully complied with all of its contractual obligations to Pixl. *Id.*

87. Respondent received electronic notice through the Court's electronic filing system of the filing of the Government's motion to dismiss. FOF ¶ 84 above. The Court's docket entry, which he received electronically, told him that his response was due on March 7, 2008. DCX 1.B at 148.

88. *The Court's Orders Extending Respondent's Time to Respond.* Pixl's response to the Government's motion to dismiss was due on March 7, 2008. DCX 1.B at 313. Respondent failed to file any response on Pixl's behalf by the due date. By order dated March 17, 2008, the Court noted Pixl's failure to file its response, and, *sua sponte*, granted Pixl leave to file its response by March 24, 2008, an extension of 17 days beyond the original deadline (March 7). *Id.*

89. Respondent received electronic notice through the Court's electronic filing system of the entry of the Court's March 17, 2008 order. FOF ¶ 84 above.

90. *The Court's Order to Show Cause.* Respondent failed to file any

response on Pixl's behalf to the Government's motion to dismiss by the March 24, 2008 extended deadline. DCX 1.B at 315. By order dated March 28, 2008, the Court gave Pixl until April 4, 2008 to "**SHOW CAUSE** why this case should not be dismissed for lack of prosecution." *Id.* (capitalization and emphasis in original).

91. Respondent received electronic notice through the Court's electronic filing system of the entry of the Court's March 28, 2008 order to show cause. FOF ¶ 84 above.

92. Respondent never filed a response to the Government's motion, nor did he ever file a response to the order to show cause why the case should not be dismissed for lack of prosecution. DCX 1.B at 317.

93. *The Court's Order Dismissing the Case.* On April 8, 2008, the Court entered an order directing the Clerk to enter judgment dismissing the complaint for failure to prosecute under RCFC 41(b). DCX 1.B at 317.

94. On April 9, 2008, as the Court had directed, the Clerk entered judgment dismissing the complaint for failure to prosecute. DCX 1.B at 319.

95. Respondent received electronic notice through the Court's electronic filing system of the entry of the Court's April 8, 2008 order directing the Clerk to enter judgment dismissing the complaint for failure to prosecute, and of the entry of the April 9, 2008 judgment dismissing the complaint for failure to prosecute. FOF

¶ 84 above.

96. Apart from filing the original CFC Complaint and Civil Cover Sheet, Respondent never filed any other document or took any other action in the CFC action. DCX 1.B at 148 (entries on docket sheet).

97. Respondent never informed the Sagars of any of these developments in the CFC action. He never informed them that the Government had filed a motion to dismiss their complaint, and never provided a copy of the Government's motion to them. Tr. 113 (Ajay Sagar); *id.* at 214 (Archana Sagar). He never informed them that they needed to file a response to the Government's motion. He never informed them about the Court's March 17 order, its March 28 order, its April 8 show cause order, or its April 9 judgment dismissing Pixl's complaint, and never provided a copy of any of these orders. Tr. 114-18 (Ajay Sagar); *id.* at 214-16 (Archana Sagar). Although the Sagars had learned in June 2008 that the CFC action had been dismissed (see FOF ¶ 108 below), the first time that they saw a copy of either the Government's motion to dismiss or any of the Court's orders was in 2015, a week before the Hearing Committee hearing, when Disciplinary Counsel showed them these documents. Tr. 113-18 (Ajay Sagar).

98. During the period in which the CFC action was pending and the Court was issuing these orders, the Sagars repeatedly asked Respondent what the status of

their cases was. Respondent never disclosed to them any of the developments in the CFC case, and did not disclose that the District Court action had previously been dismissed (on December 11, 2007). Instead, he said that "these things take time," that the Sagars should "have patience," and that they would "hear something." Tr. 118-19 (Ajay Sagar). Respondent would also tell them "there [was] corruption and all those kinds of things." *Id.*

99. The CFC action was filed on November 21, 2007, and dismissed on April 9, 2008. DCX 1.B at 147-48 (docket sheet). During the period from November 1, 2007 through May 1, 2008, Pixl paid respondent a total of $21,850 in legal fees. Table 1 (Appendix 1).

100. As reflected in FOF ¶¶ 103 *et seq.* below, when the Sagars ultimately learned that their cases had been dismissed, and demanded an explanation, Respondent never claimed that he had not received electronic notice of the various Government filings and Court orders in these cases. In his June 8, 2008 letter discussed below (FOF ¶¶ 109-12), in which he attempted to convince the Sagars to retain him to pursue various claims, he confirmed the dismissal of the CFC action, but never stated or suggested that he had not received timely notice of the Government's motion to dismiss or of the Court's later orders. Instead, his only statement about the dismissal was the following: "The Clerk of the U.S. Court of

Federal Claims confirmed on Friday afternoon the rejection of our complaint there also." DCX 1.J at 443.

10. Respondent's Appeal to the Civilian Board of Contract Appeals

101. On May 21, 2008, approximately 6 weeks after the Court of Federal Claims had dismissed the CFC action, Respondent filed a Notice of Appeal to the Civilian Board of Contract Appeals ("CBCA") from an alleged October 6, 2007 final decision by the Forest Service contracting officer refusing to pay a $43,724.63 Pixl invoice for September 2007. DCX 1.C at 325-26.

102. On May 30, 2008, the CBCA docketed this appeal as *Pixl Inc. v. Department of Agriculture*, CBCA No. 1203. *Id.* at 323. Respondent likely intended to refer in his appeal to the contracting officer's November 7, 2007 final decision, because there is no October 6, 2007 final decision in the record. See DCX 1.C at 364 n.2 (Forest Service unaware of any October 6, 2007 decision).

11. The Sagars Learn Their Cases Had Been Dismissed

103. In early June 2008, shortly after Respondent filed the CBCA Appeal, the Sagars received a copy of a letter from a Forest Service employee (Ms. Thelma Strong) stating that the District Court action and the CFC action had both been dismissed. Tr. 134-35, 144 (Ajay Sagar).

104. The Sagars initially did not believe that their cases had been dismissed. Mr. Sagar telephoned Respondent and asked him whether the cases had been dismissed. Respondent's response was "No, not really." *Id.* at 135; *id.* at 169-70 (Respondent "was like no, this is not true, nothing has happened, the cases are still going") (Ajay Sagar).

105. Mr. Sagar asked Respondent to come to Pixl's office for a meeting in person. Respondent arrived later that week wearing dark glasses over his usual glasses, which made Mr. Sagar suspicious. Respondent told Mr. Sagar that the Government "was not telling the truth, they are lying" about the cases having been dismissed. *Id.* at 135-136 (Ajay Sagar); *id.* at 230 ("Nolan's response was pretty much I don't think that's the case, they couldn't have been closed.") (Archana Sagar).

106. Respondent's denials to the Sagars, both by telephone and in person, that the cases had been dismissed were intentionally false, misleading, and deceptive.

107. The Sagars then called the District Court Clerk's Office. The Clerk's Office initially would only confirm that the District Court action was closed, but would not provide any details. Instead, the Clerk's Office directed them to contact their attorney (Respondent). After they informed the Clerk's Office that their

attorney had never informed them about the closing of the case, the Clerk's Office told them that the case had been dismissed with prejudice, and suggested that they write to the judge explaining what had happened. Tr. 136-37 (Ajay Sagar).

108. After contacting the District Court Clerk's Office, the Sagars contacted the Clerk's Office of the Court of Federal Claims, which told them that their CFC action had also been dismissed because Respondent had failed to respond. Tr. 137-38 (Ajay Sagar).

109. The record contains a copy of an unsigned letter, dated June 8, 2008, from Respondent to the Sagars. DCX 1.J at 443. This letter was produced by Respondent in response to Disciplinary Counsel's inquiries. In his letter, Respondent stated that the Court of Federal Claims Clerk had confirmed to him that the CFC had rejected Pixl's complaint.

110. Respondent suggested in his June 8 letter that Pixl retain him "or a large law firm" to pursue three separate "uphill fights." The fights that Respondent suggested were (1) to file a first amended complaint in the United States District Court asserting a claim under the False Claims Act against IRM Consulting and John Graney; (2) to appeal the dismissal of the District Court action to the United States Court of Appeals for the District of Columbia Circuit, and the dismissal of the CFC action to the United States Court of Appeals for the Federal Circuit; and (3) to "seek

judicial enforcement of one or more FOIA denials . . . ." *Id.*

111. In his letter, Respondent asked the Sagars to advise in writing which of these three courses of action, if any, they wished him to undertake, and demanded payment of his $3,600 retainer for June 2008. *Id.* He added that, unless that retainer was paid, he would assume that the Sagars did not want any further legal action taken on their behalf. *Id.*

112. In this letter, Respondent said nothing about why the District Court action and the CFC action had both been dismissed, and did not disclose that the dismissals had resulted from his failure to file any response to the Government's motions and the Court's orders in these cases. *Id.*

113. Although Respondent correctly referred to the three options he had suggested in his June 8, 2008 letter as "uphill fights," he never explained the insurmountable obstacles that prevented any possibility of success in these "fights."

114. First, the District Court action had been dismissed on December 11, 2007, almost six months before. There was no pending action in which the "first amended complaint" he suggested could be filed.

115. Second, Respondent was out of time to file an appeal to either the D. C. Circuit or the Federal Circuit. Both of these possible appeals were time-barred because Respondent had failed to file a notice of appeal within 60 days of the entry

of judgment. Rule 4(a)(1)(B), Fed. R. App. P.; Rule 4(a)(1)(B), Rules of the United States Court of Appeals for the Federal Circuit.

116. Third, there was no suggestion, in Respondent's letter or otherwise, of any legal basis to assert a False Claims Act action against IRM Consulting or Mr. Graney, nor any demonstration of how the third "uphill fight," seeking judicial enforcement of FOIA requests, would advance any of the Sagars' objectives.

117. In his letter, Respondent was attempting to entice the Sagas to agree to continue to pay him his $3,600 monthly retainer to assert claims that had no apparent legal or factual basis.

118. By letter dated June 10, 2008, Pixl informed the CBCA that Respondent no longer represented Pixl in this case. DCX 1.C at 331.

12. The Sagars Terminate Respondent's Representation

119. By letter dated August 4, 2008, the Sagars informed Respondent that the retainer agreement had expired on April 26, 2008, and his services were terminated. DCX 1 at 11. In their letter, the Sagars stated that they had themselves contacted the courts and learned that the District Court action had been dismissed "because of a lack of response from you," and the CFC action had been dismissed "due to a failure to prosecute." *Id.* The Sagars continued:

> We only found out about the closures after we contacted the courts and checked on the status. You have continuously misled us about the status of these cases, stating that you had not heard anything from the courts. Both courts contacted you via emails on more than one occasion, and even granted you extensions.

Id.

120. Respondent later produced to Disciplinary Counsel a copy of an undated, unsigned letter to the Sagars in which he apparently responded to the Sagars' August 4, 2008 letter. DCX 1.J at 441. He blamed their legal troubles on their "own poor business judgment," and their "refusal to authorize funding for all recommended legal action." *Id.* (apparently referring to the Sagars' unwillingness to fund any of his proposed "uphill fights" discussed above in FOF ¶ 110). He attacked the Sagars for numerous alleged failings, but never denied that both of the cases had been dismissed because of his failure to respond. Nor did he deny that he had received notice of all of the Government filings and Court orders, or that he had "continuously misled" them about the status of their cases, as the Sagars had stated in their August 4 letter (see FOF ¶ 119 above). *Id.*

121. In their August 4, 2008, letter, the Sagars requested that Respondent return all documents and e-mails relating to the case, and also provide an accounting

of the work he had done for them under the retainer agreement. DCX 1 at 11 ("Provide the breakdown of all the work that you did relating to the [retainer] agreement that you signed.")

122. Respondent never provided the accounting that the Sagars had requested.

123. On September 30, 2008, Ajay Sagar wrote to U.S. District Court Judge Lamberth (the judge who had dismissed the District Court action with prejudice), and explained that Respondent had misled them by telling them that he had not heard anything from the court, and that they had only learned about the dismissal of the case when they themselves had contacted the court to check on the status of their case. DCX 1.A at 145. Mr. Sagar also told the judge that Respondent had never informed them of the response deadlines or the extensions of time. *Id.* Judge Lamberth directed that their letter be filed in the record of the case, with copies to counsel and to the United States District Court Grievance Committee. *Id.*

124. On September 30, 2008, the same day as his letter to Judge Lamberth, Mr. Sagar sent a similar letter to Judge Firestone, the CFC Judge who had dismissed the CFC action. In his letter, Mr. Sagar explained:

> Our case . . . was dismissed on April 4, 2008 due to a failure to prosecute. Our attorney, David Nolan, misled us, stating that he had not heard anything from the court. We

> only found out about the closures after we contacted the court and checked on the status. Attorney Nolan never informed us about the response deadlines and the extensions.

DCX 1 at 13.

13. The Dismissal of the CBCA Appeal

125. On September 15, 2008, the Sagars, acting *pro se*, filed their complaint in the CBC Appeal. DCX 1.C. at 321 (docket entry).

126. On November 8, 2008, the Government filed the "Government's Answer and Motion to Dismiss Complaint" (DCX 1.C at 345 *et seq.*) and also filed a separate "Government's Motion to Dismiss Appeal for Lack of Jurisdiction" (DCX 1.C at 363-67). The motion to dismiss for lack of jurisdiction contended that the CBCA lacked jurisdiction of the appeal under the Contract Disputes Act, because Pixl had filed its appeal more than 90 days after it had received the final decision of the Forest Service's contracting officer. *Id.*

127. The Forest Service's contracting officer issued the final decision appealed from on November 7, 2007. The record reflects that Pixl received it the next day (November 8, 2007). DCX 1.C at 366-67. The 90-day period within which Pixl could appeal to the CBCA from the contracting officer's November 7, 2007 final decision expired on February 6, 2008 (90 days after November 8, 2007).

128. Respondent did not file Pixl's notice of appeal from the November 7, 2007 final decision until May 21, 2008 (FOF ¶ 101 above), more than three months after the jurisdictional deadline had expired.

129. As noted above (FOF ¶ 93), on April 8, 2008, the Court of Federal Claims directed the Clerk to enter judgment dismissing Pixl's complaint for lack of prosecution. DCX 1.B at 317. That same day Respondent submitted a purportedly new certified claim to the Forest Service's contracting officer. DCX 1.C at 375. This new claim simply reiterated the same claims, based on the same contracts and the same set of facts, as Pixl's previous claim (in December 2006), the claim that the Forest Service contracting officer had previously denied in his November 7, 2007 final decision. *Id.* at 376-77 (26 of 27 claims in "new" claim were identical to claims that were previously denied, except for extension of the periods of claimed damages from the same allegedly unlawful conduct). The one exception was a new claim (Claim Item 4A, for profits allegedly lost for the FY 2008 option year). *Id.*

130. On July 2, 2009, the CBCA granted the Government's motion and dismissed Pixl's appeal for lack of jurisdiction, because the appeal had been filed more than 90 days after the contracting officer's November 7, 2007 final decision. DCX 1.C at 394.

131. During the time period from November 7, 2007 (when the Forest

Service contracting officer issued his final decision denying Pixl's December 11, 2006 contract claim) until May 30, 2008 (when Respondent filed Pixl's appeal to the CBCA), Pixl paid Respondent a total of $21,600 in monthly retainers. Table 1 (Appendix 1).

132. After terminating Respondent's representation, the Sagars consulted other attorneys in an effort to find new counsel. According to Mr. Sagar, they were told that, although they previously had had "a very solid case against the government," because of the dismissals of the District Court action and the CFC action, their only remaining remedy was against Respondent, not the Government. Tr. 146 (Ajay Sagar).

14. The Sagars' Disciplinary Complaint and Respondent's Responses

133. On July 13, 2009, shortly after the CBCA had dismissed Pixl's appeal, the Sagars filed a disciplinary complaint against Respondent with the Office of Disciplinary Counsel. DCX 1; Tr. 147-48 (Ajay Sagar), 223-24 (Archana Sagar).

134. By letter dated July 15, 2009, Disciplinary Counsel wrote to Respondent to inform him that it had initiated a formal investigation based on the Sagars' complaint. DCX 1.D at 395-96. Disciplinary Counsel requested that

Respondent provide a written response to the Sagars' allegations by July 27, 2009. *Id*.

135. Disciplinary Counsel mailed the complaint with the inquiry letter to the address Respondent had most recently listed with the D.C. Bar (8310 Wagon Wheel Road, Alexandria, VA 22309) (Respondent's "Wagon Wheel Road address") but received no written response from Respondent by the due date. DCX G (Amended Declaration of Christine Chicherio, filed April 22, 2015), at 3 ¶¶ 10-11.

136. By letter dated August 13, 2009, Disciplinary Counsel again wrote to Respondent to remind him of his obligation to respond to Disciplinary Counsel's inquiries. Disciplinary Counsel's letter enclosed another copy of the Sagars' complaint and requested that Respondent respond on or before August 20, 2009. DCX 1.D at 397-98. Although Disciplinary Counsel sent her August 13, 2009 letter to the same Wagon Wheel Road address, Disciplinary Counsel received no written response from Respondent by the due date. DCX G at 3 ¶ 12.

137. On September 18, 2009, at 12:45 p.m., Disciplinary Counsel sent an e-mail message to Respondent at dbnesq1@aol.com. The message stated that Disciplinary Counsel had written two letters to Respondent about the Sagars' complaint and had not received a response, and asked Respondent to contact the

Office of Disciplinary Counsel immediately to discuss this matter. DCX 1.D at 399-400.

138. Later that same day (September 18, 2009), Respondent replied from e-mail account dbnesq1@aol.com to Disciplinary Counsel's e-mail message. Respondent's e-mail message said in its entirety: "Mr. Sajar [sic] have [sic] never been my client. Pixl, Inc. owned by Archana Sagar," and was signed "David B. Nolan, Esq." DCX 1.D at 399.

139. Disciplinary Counsel responded by e-mail to Respondent's e-mail message within 15 minutes of receipt. In her response, Disciplinary Counsel advised Respondent that he needed "to formally respond in writing to the allegations in the complaint," and asked whether Respondent had received her two letters. *Id.*

140. On October 14, 2009, a subpoena dated October 13, 2009, was personally served upon Respondent at his Wagon Wheel Road address. This subpoena commanded Respondent to produce his entire office file relating to the District Court action and the CFC action. DCX 1.D at 401-02.

141. On October 19, 2009, Disciplinary Counsel sent an e-mail message to Respondent at his e-mail address (dbnesq1@aol.com) stating her intention to file a motion to compel a response to Disciplinary Counsel's two letters if Respondent did not contact her by October 21, 2009. DCX 1.D at 404.

142. Two days later, Respondent responded by e-mail (from his dbnesq1@aol.com account) stating that he planned to provide a response by the close of business on Friday, October 23, 2009. *Id.* at 404.

143. On October 23, 2009, Respondent submitted a written response to Disciplinary Counsel by e-mail (from dbn1esq@aol.com). DCX 1.D at 403-04. Respondent's response was full of conclusory assertions regarding the "sound and vigorous representation" that he had allegedly provided to Pixl, the allegedly poor business judgment and practices of Pixl and Ajay Sagar, and the results allegedly obtained by Respondent's efforts.

144. Respondent's response, however, contained no response to the complaint's allegations regarding (1) the dismissals of the District Court action and the CFC action because of Respondent's failure to file any response whatsoever to the Government's motions to dismiss in those cases, and (2) his alleged false statements to the Sagars that he had heard nothing from either court. *Id.* Respondent also failed to produce any documents responsive to the October 13 subpoena.

145. By letters dated January 29, 2010 and March 8, 2010, sent to Respondent's Wagon Wheel Road address, Disciplinary Counsel attempted to obtain additional information from Respondent regarding the jurisdictions in which he was licensed to practice law and his compliance with the requirements of D.C.

App. R. II, § 2 (requiring notification of changes of address). DCX 1.F at 411 (Jan. 29, 2010 letter), 412 (March 8, 2010 letter).

146. In her March 8, 2010 letter, Disciplinary Counsel also provided notice of Respondent's duty to respond to Disciplinary Counsel's inquiries (and the range of potential sanctions for failure to do so). DCX 1.F at 412. Respondent failed to respond to Disciplinary Counsel's letters.

147. By March 2012, two years later, Disciplinary Counsel still had not received any response to her October 13, 2009 subpoena.

148. By letter dated March 15, 2012, Disciplinary Counsel informed Respondent that Disciplinary Counsel had never received a response to any of Disciplinary Counsel's inquiries. With her letter, Disciplinary Counsel forwarded a second, virtually identical subpoena (dated March 15, 2012) that required Respondent to produce his office files relating to the District Court action and the CFC action. DCX 1.G at 413, 415-16.

149. In her March 15, 2012 letter, Disciplinary Counsel informed Respondent that she would file a motion asking the District of Columbia Court of Appeals to enforce the subpoena if Respondent failed to comply. *Id.*

150. Disciplinary Counsel's letter and the March 15, 2012 subpoena were sent by first-class mail to Respondent at his Wagon Wheel Road address (his

personal residence) and, on March 19, 2012, both documents were personally served on Respondent at that address. DCX 1.H at 417-18.

151. By letter dated March 22, 2012 to Disciplinary Counsel "Walter [sic] Shipp, Jr." (on letterhead identifying the Wagon Wheel Road address as Respondent's address), Respondent provided a nonresponsive submission, and failed to produce the client files in question. DCX 1.I at 419 *et seq.* Respondent's letter referred to "you and your staff's false charges" in five different Bar Dockets, including Bar Docket No. 2009-D285 (the investigation of the Sagars' complaint), and complained that Disciplinary Counsel and his staff had failed to act on his December 20, 2010 complaint "regarding judicial and DC Bar Counsel misfeasance and malfeasance." *Id.* at 419.

152. Respondent attached to his response a copy of his December 20, 2010 complaint alleging that Judge Charles R. Simmons III, United States District Court for the Western District of Kentucky, was violating 28 U.S.C. § 144 (relating to conflicts of interest) by failing to recuse himself from a particular criminal case (*United States v. Sypher*) then pending in that judicial district. Respondent had apparently successfully obtained leave to appear *pro hac vice* in that case on the defendant's behalf. *Id.* at 421-22. Respondent's complaint against Judge Simmons had no relevance to any of the various disciplinary complaints against Respondent.

153. Respondent's March 22, 2012 letter alleged that Mr. Shipp and his staff "made recklessly made [sic] false representations to the *Louisville Courier Journal* and ultimately the Internet" regarding a disputed late fee for Respondent's late payment of his Bar dues. *Id.* at 419. Respondent claimed that Mr. Shipp and his staff's alleged "enterprise scheme violates 18 U.S.C. 1341 [mail fraud], 1343 [wire fraud], and 1961 *et seq.* [the "Racketeer Influenced and Corrupt Organizations" statute]." *Id.*

154. Respondent's letter added: "I am informed and believe that the purpose of these contrived aspersions and falsehoods was to delay and possibly deny my *pro haec* [sic] *vice* appointment in the Western District of Kentucky so as to deny effective legal representation to [the defendant] in violation of her 6th Amendment rights." *Id.* at 419-20. He "demand[ed] a hearing no sooner than July 3, 2012 to contest each of the above contrived false charges against me." *Id.* at 420.

155. In his letter, Respondent referred to an oral argument apparently scheduled for May 31, 2012 in the United States Court of Appeals for the Sixth Circuit in the *Sypher* case, and stated: "I direct that my May 31, 2012 argument to the 6th Circuit Court of Appeals and my present and future submissions to you and your office will be made part of my this [sic] hearing record if all charges are not dropped by June 1, 2012." *Id.*

156. Respondent attached to his March 22, 2012 response, in addition to his December 20, 2010 complaint regarding Judge Simmons, a copy of a document styled "Brief of *Amicus* in Support of Mr. MacLean Supporting Mitigation of Removal Penalty," dated March 16, 2012, which Respondent had apparently prepared for filing in the case of *MacLean v. Department of Homeland Security*, No. 2011-3231, in the United States Court of Appeals for the Federal Circuit. DCX 1.I at 423-38.

157. This brief had no relevance to any of the disciplinary allegations against Respondent. Instead, the brief complained of alleged failures by the Office of Special Counsel to meet its statutory responsibilities. Neither this brief nor the December 20, 2010 complaint regarding the *Sypher* case was responsive to Disciplinary Counsel's subpoena.

158. On April 5, 2012, Disciplinary Counsel received an undated one-page letter addressed "To: Whom it may concern" signed by Respondent relating to Ajay Sagar. DCX 1.J at 439. In this letter, Respondent failed to address any aspect of the Sagars' complaint regarding the dismissals of the District Court action and the CFC Action because of Respondent's failure to respond, or Respondent's false denials that the cases had, in fact, been dismissed.

159. Instead of responding to the allegations of the Sagars' complaint, Respondent claimed in his undated letter that he had required Mr. Sagar to pay his retainer in advance on the first day of each month, and that when Mr. Sagar failed to make this payment, he (Mr. Sagar) knew that Respondent was "under no obligation to initiate any new legal tasks for him or his business, Pixil [sic], Inc. (Pixil [sic])." *Id.* Respondent also attacked Mr. Sagar's alleged "poor reputation for propriety" regarding the Forest Service contract. *Id.*

160. In his April 5, 2012 letter, Respondent proposed four additional issues for hearing under the heading "More Proposed Hearing Issues as to the DC Bar's Erratic Investigation Policies":

> [1] Hil[l]ary Clinton is not a DC Bar member because of investigated issues relating to White Water or the death of Vincent Foster. I am informed and believe that she failed the DC Bar exam.
>
> [2] Despite the finding of Congress that the assassination of JFK was by shooters from both the grassy knoll and the school book depository, the DC Bar, upon information and belief, has failed to investigate the public's concern for cover up of the assassination by one or more DC Bar members.
>
> [3] The DC Bar has failed to investigate the public's concern as to the cover up of the "9-11 attack" irregularities by one or more DC Bar members.

> [4] I am also informed and believe that First Lady, Michelle Obama, resigned her individual bar membership (DC?) for reasons that she understands.

Id. at 439.

161. On August 16, 2012, Disciplinary Counsel received an envelope from Respondent that had no transmittal letter but contained 43 pages of documents relating to the Sagars and Pixl. DCX 1.J at 441-84. The enclosed documents included (1) the undated and unsigned letter from Respondent to the Sagars referred to in FOF ¶ 120 above, complaining that the Sagars' problems resulted from their own allegedly "poor business judgment" and "refusal to authorize funding for all recommended legal action" (*id.* at 441), (2) the letter dated June 8, 2008, from Respondent to the Sagars referred to in FOF ¶¶ 109 *et seq.* above, and (3) additional documents apparently relating to his representation of the Sagars and Pixl. *Id.*; DCX G ¶ 18.

162. On August 2, 2012, Disciplinary Counsel issued another subpoena. This subpoena required Respondent to produce all financial records relating to all payments received from the Sagars or Pixl. Disciplinary Counsel sent this subpoena by certified mail, return receipt requested, and by first-class mail to Respondent at his Wagon Wheel Road address. Neither copy of this letter was returned by the U.S.

Postal Service. DCX 1.L at 487; DCX G at 5 ¶ 20. Respondent failed to produce any of the responsive documents. DCX 1.M at 496; DCX G at 5-6 ¶¶ 21, 23.

163. On April 22, 2013, Disciplinary Counsel filed a motion in the District of Columbia Court of Appeals for leave to file under seal a motion asking the Court to enforce the subpoenas dated October 13, 2009, March 15, 2012, and August 2, 2012. DCX 1.M at 489. The motion also sought enforcement of Disciplinary Counsel subpoenas issued in the other Disciplinary Counsel investigations of Respondent discussed below. *Id.*

164. By order dated June 6, 2013, the Court of Appeals granted Disciplinary Counsel's motion and ordered Respondent to produce all documents responsive to Disciplinary Counsel's various subpoenas within ten days. DCX 1.N at 503. A copy of this order was sent to Respondent. *Id.* at 504.

165. Respondent has never provided a substantive response to Disciplinary Counsel's inquiries or produced the documents sought in Disciplinary Counsel's three subpoenas. *Id*. Respondent has never complied with the Court of Appeals' order. DCX G at 5 ¶ 23.

C. The July 1 Specification, Count II (Turley, Bar Docket No. 2011-D295)

166. By letter dated July 26, 2011, Disciplinary Counsel wrote to Respondent to inform him that Disciplinary Counsel had initiated a formal investigation (Bar Docket No. 2011-D295) into his handling of an appeal to the United States Court of Appeals for the District of Columbia Circuit on behalf of Herbert Travis. DCX 2 at 1-2. The Department of Labor had ruled against Mr. Travis in a workers' compensation administrative action, and Mr. Travis had retained Respondent to handle further litigation. *Id*. DOL's counsel in that appeal, Sheldon Turley, Esquire, filed a disciplinary complaint alleging that Respondent had failed to protect Mr. Travis's interests by, *inter alia*, letting important deadlines lapse. *Id*.

167. Disciplinary Counsel enclosed with her July 26, 2011 letter a copy of Mr. Turley's complaint, a chronology prepared by him, and the Court of Appeals' docket sheet and relevant orders, and requested that Respondent provide a written response. *Id.* at 4-15. Disciplinary Counsel also enclosed with her letter a subpoena for Respondent's office file relating to the complaint. *Id.* at 17-18.

168. Disciplinary Counsel mailed the complaint package to Respondent at his Wagon Wheel Road address. DCX 2 at 1. Disciplinary Counsel received no

written response from Respondent although Disciplinary Counsel received no returned mail in the case. DCX G at 6 ¶ 25.

169. By letter dated March 15, 2012, Disciplinary Counsel wrote Respondent informing him, *inter alia*, that she had not received either his response to the previous inquiry or the subpoenaed documents. She enclosed with her letter copies of her letter and subpoena. She told Respondent that she would move to enforce the subpoena if he refused to produce the documents that she had sought. DCX 2.A at 19. Respondent was served personally with Disciplinary Counsel's letter and enclosures at his Wagon Wheel Road address on March 19, 2012. *Id*. at 21.

170. By letter dated March 22, 2012 (which also purported to respond to Disciplinary Counsel inquiries in other Bar Dockets), Respondent provided a nonresponsive submission and failed to produce the subpoenaed client file. DCX 1.I at 419 *et seq.* See FOF ¶ 151 above.

171. As previously noted (FOF ¶ 163), on April 22, 2013, Disciplinary Counsel filed a motion in the Court of Appeals asking the Court to enforce the Disciplinary Counsel subpoenas in the Sagars investigation. That motion also sought a similar order compelling Respondent to comply with Disciplinary Counsel's subpoena in the Turley matter. DCX 1.M at 494 *et seq.*

172. By order dated June 6, 2013, the District of Columbia Court of Appeals granted Disciplinary Counsel's motion, and directed Respondent to comply with Disciplinary Counsel's outstanding subpoenas (including the subpoena relating to this matter (Bar Docket No. 2011-D295)) within 10 days of the Court's order. DCX 1.N at 503. A copy of this order was sent to Respondent. *Id.* at 504. Respondent failed to comply with the Court of Appeals' order. DCX G at 6 ¶ 27.

173. Respondent has never provided a substantive response to Disciplinary Counsel's inquiry or produced the client file in question, even though none of the correspondence from Disciplinary Counsel was returned. *Id.* at 6 ¶¶ 25, 27. Respondent has never complied with the Court of Appeals' order.

D. The July 1 Specification, Count III (SunTrust, Bar Docket No. 2011-D422)

174. On or about October 4, 2011, Disciplinary Counsel received a notice from SunTrust Bank that Respondent had overdrawn his Interest on Lawyers Trust Account (IOLTA) account (the "0852 account"), an account set up to preserve entrusted funds. DCX 3 at 8.

175. On October 6, 2011, Disciplinary Counsel forwarded to Respondent (at his Wagon Wheel Road address) a copy of Disciplinary Counsel's subpoena to

SunTrust Bank seeking the relevant bank records for Respondent's IOLTA account. *Id.* at 7.

176. After a preliminary investigation, Disciplinary Counsel docketed the matter for formal investigation and sent Respondent a package under cover of an inquiry letter dated December 1, 2011, enclosing a copy of her October 6, 2011 letter, the SunTrust Bank notice, and other documents and correspondence reflecting the pre-docketing inquiries she had made. DCX 3 at 1 *et seq*.

177. In her inquiry letter, Disciplinary Counsel asked Respondent to provide specific information within ten days about the activity in his IOLTA account between June 1, 2010 and October 31, 2010. *Id.* at 2. Disciplinary Counsel enclosed a subpoena for records verifying Respondent's responses to Disciplinary Counsel's information requests. *Id.* at 35-36.

178. On December 12, 2011, Disciplinary Counsel received Respondent's written response dated December 8, 2011 (entitled "Response to Christmas Harrassment [sic] of December 1, 2011"). DCX 3.A at 39-43. In his response, Respondent claimed to have had no activity in his IOLTA account (the 0852 account) during the time period referred to in Disciplinary Counsel's letter. *Id.* at 41. He produced no records confirming his claimed lack of activity in this account during this time period. *Id*. at 44. The only record he produced was a copy of a

SunTrust client summary dated December 7, 2011, that referred to various accounts but nowhere referred to the IOLTA account (the 0852 account) that Disciplinary Counsel had inquired about. *Id.*

179. On January 6, 2012, Charles Anderson, an employee of the Office of Disciplinary Counsel who was assisting Disciplinary Counsel in the SunTrust IOLTA investigation, sent an e-mail message to Respondent at Respondent's e-mail address (dbnesq1@aol.com). DCX 3.B at 45.

180. In his message, Mr. Anderson:

a. Advised that Disciplinary Counsel was mailing Respondent a revised version of Disciplinary Counsel's December 1, 2011 letter that would ask Respondent to identify transactions in his IOLTA account for the time period June 1 through October 31, **2011** (rather than June 1 through October 31, **2010**, as Disciplinary Counsel had previously requested);

b. Described records provided by SunTrust Bank for Respondent's IOLTA account that reflected an August 23, 2011 deposit into the account of four counterfeit money orders. According to these records, on August 29, 2011, three of these money orders were returned to SunTrust, and the amounts were debited from the account. On September 27, 2011, the fourth money order was returned and the

account was debited, apparently resulting in the overdraft notice that had generated Disciplinary Counsel's investigation; and

c. Requested that Respondent advise Disciplinary Counsel who had provided Respondent with the fraudulent money orders (including all contact information), as well as the nature of the funds that were initially deposited to Respondent's IOLTA account through these money orders. *Id.*

181. On January 9, 2012, Disciplinary Counsel sent Respondent a corrected letter that was identical to her previous December 1, 2011 letter, except for the correction of the relevant time period inquired about (which, as noted, was changed to June 1-October 31, 2011). DCX 3.C at 48-50. Disciplinary Counsel's letter stated that a reissued subpoena was enclosed with that letter. *Id.* at 49 ("We enclose a subpoena for the items we seek"). Disciplinary Counsel has been unable to locate a copy of this subpoena, however. DCX G at 7 ¶ 32.

182. Disciplinary Counsel's letter was sent by first-class mail and by certified mail, return receipt requested, to Respondent at his Wagon Wheel Road address. *Id.* Respondent signed the certified mail receipt on January 23, 2012 (*id.* at 51), but failed to respond or produce any of the records sought by Disciplinary Counsel. *Id.*

183. By letter dated March 15, 2012, Disciplinary Counsel advised Respondent that she was concluding her investigation into the SunTrust IOLTA matter. DCX 3.D at 53. She told Respondent in her letter that she intended to ask the Court of Appeals to enforce the corrected subpoena (dated January 9, 2012). *Id.* This letter was personally served upon Respondent at his Wagon Wheel Road address on March 19, 2012. *Id.* at 55.

184. In his March 22, 2012 letter and submission (DCX 1.I) previously referred to in FOF ¶¶ 151 *et seq.* above, Respondent had referred in the Subject line to "You and your staff's false charges in . . . [Bar Docket] 2011-D422 . . ." (the SunTrust IOLTA investigation), but never provided any of the information that Disciplinary Counsel had requested in her January 9, 2012 letter relating to the SunTrust IOLTA investigation. DCX G at 7-8 ¶¶ 32-33.

185. By letter dated July 3, 2012, sent by first-class mail and certified mail to Respondent's Wagon Wheel Road address, Disciplinary Counsel noted that Respondent had never responded to her letters dated January 9 and March 15, 2012, and requested a response within ten days. DCX 3.D at 57.

186. Disciplinary Counsel enclosed with her July 3 letter a subpoena requiring the production of records verifying Respondent's responses to Disciplinary

Counsel's January 9, 2012 information requests. *Id.* at 59-60. Respondent signed the certified mail receipt for this letter and subpoena on July 17, 2012. *Id.* at 61.

187. Respondent failed to produce any documents responsive to Disciplinary Counsel's July 3, 2012 subpoena. DCX G at 7-8 ¶¶ 32-33.

188. In the same April 22, 2013 motion previously referred to in FOF ¶¶ 163, 171 above, Disciplinary Counsel asked the Court of Appeals to enforce the subpoena dated July 3, 2012 relating to the SunTrust IOLTA matter. DCX 1.M at 498-99.

189. In the same June 6, 2013 order previously referred to in FOF ¶¶ 164, 172 above, the Court of Appeals ordered Respondent to produce "all documents and files described in" Disciplinary Counsel's July 3, 2012 subpoena relating to the SunTrust IOLTA matter. DCX 1.N at 503.

190. Respondent has never complied with the Court of Appeals' order to produce documents responsive to the July 3, 2012 subpoena, nor has Respondent ever provided any of the information requested in Disciplinary Counsel's information requests relating to the SunTrust IOLTA matter.

191. Respondent has never provided a substantive response to Disciplinary Counsel's inquiries about his handling of his IOLTA account from June 1, 2011 through October 31, 2011, including the nature of the funds contained in the account, the reason for their deposit, and the sources of the funds. DCX G at 8 ¶ 33.

Respondent has never produced financial records responsive to Disciplinary Counsel's subpoena. *Id*.

E. The July 1 Specification, Count IV (Currie, Bar Docket No. 2011-D434)

192. Robert D. Currie was an inmate services counselor with the Arlington County, Virginia Sheriff's Office from September 2002 until July 2011. DCX 4.E at 73; DCX 4.I (Transcript of April 18, 2015 Deposition of Robert D. Currie) at 5-7. Mr. Currie, an African-American, was a civilian employee of the Sheriff's Office. DCX 4.I at 10.

193. Mr. Currie first met Respondent in 2009 when Respondent was incarcerated in the Arlington County Detention Center.[7] Mr. Currie processed Respondent into the Detention Center. DCX 4.I at 6. Respondent informed Mr. Currie that he was a civil rights attorney (and a former White House attorney in the Reagan Administration) and described his various exploits as a civil rights attorney. *Id.* at 7, 11. Mr. Currie told Respondent that he might seek representation from him in the future, when Respondent was no longer on probation or parole and had no connection with the Arlington County Sheriff's Office. *Id.* at 11-12.

[7] Respondent was arrested on multiple occasions in 2009 and 2010 in connection with his failure to appear at trial concerning a traffic violation. See FOF ¶¶ 252 *et seq.* below.

194. On September 10, 2009, Mr. Currie filed a Charge of Discrimination with the Equal Employment Opportunity Commission ("EEOC") (Charge No. 570-2009-02297). DCX 4.G at 143. Mr. Currie alleged racial discrimination by his employer based on incidents in which (1) a watermelon was left on his desk; and (2) a co-worker referred to him as "boy" several times. *Id*. Mr. Currie also charged he had been subjected to retaliation (in the form of a negative August 2009 performance evaluation) because of his previous pursuit of racial discrimination concerns. *Id*.

195. On January 26, 2011, Mr. Currie filed a second Charge of Discrimination with the EEOC (Charge No. 570-2011-00587). DCX 4.G at 148. Mr. Currie alleged racial and gender discrimination, as well as retaliation, based on further incidents since the filing of his September 2009 Charge. *Id*. At some point before filing his second Charge of Discrimination, Mr. Currie had a telephone discussion with Respondent in which Respondent had suggested that he include a claim of gender discrimination in the charge. DCX 4.I at 20-21.

196. On or about May 28, 2011, Mr. Currie received from the Washington Field Office of the EEOC a right to sue letter dated May 26, 2011, based on his first discrimination claim (see FOF ¶ 194 above). DCX 4.G at 141 (right to sue letter); DCX 4.F at 106. Mr. Currie had 90 days from May 28, 2011, the date he received the right to sue letter to file his discrimination complaint in federal court. DCX 4.G

at 141 ("Your lawsuit **must be filed <u>WITHIN 90 DAYS</u> of your receipt of this notice;** or your right to sue based on this charge will be lost") (capitalization and emphasis in original).[8] August 26, 2011 is 90 days after May 28, 2011.

197. On July 7, 2011, the Arlington County Sheriff's Office placed Mr. Currie under administrative investigation, directed him to submit to a polygraph examination, and requested that he resign or be terminated. The Sheriff's Office later placed him on administrative leave. DCX 4.G at 152; DCX 4.I at 16-17. Sometime thereafter, Mr. Currie telephoned Respondent to inform him that he wished to file a federal employment discrimination complaint in Virginia immediately. DCX 4.I at 13, 16-17.

198. *Mr. Currie's July 22, 2011 Meeting with Respondent.* On Friday, July 22, 2011, Mr. Currie met with Respondent at Respondent's residence (the Wagon Wheel Road address) to discuss preparing a federal complaint. DCX 4.I at 13-18. At that meeting, Mr. Currie told Respondent that he believed that he was going to be fired from his job with the Arlington County Sheriff's Office in the immediate future and wanted his discrimination complaint filed in federal court before the Sheriff's

[8] Disciplinary Counsel originally alleged that Mr. Currie had until August 24, 2011 to file his federal discrimination complaint, based on the date the right to sue notice was mailed by the EEOC (May 26, 2011), instead of the date Mr. Currie received it (May 28, 2011).

Office could take any further negative action against him. *Id.* at 16-18, 42-43. Respondent told Mr. Currie that he did not believe that his employment was in danger, but Mr. Currie insisted he wanted to file a federal complaint immediately. *Id*. at 42-43.

199. Mr. Currie hired Respondent at the July 22 meeting to draft an employment discrimination complaint for filing in federal court because he did not believe he could draft the complaint himself and Respondent had claimed that "he had a long history of civil rights type experience." DCX 4.I at 13. Mr. Currie also felt that Respondent "put forth a good profile of himself and his abilities . . . ." *Id.* at 14. Finally, Mr. Currie understood that Respondent would be willing to do the work for a discounted rate due to Respondent's apparent animus towards the Sheriff's Office. *Id*. at 14-15.

200. At his Friday July 22, 2011 meeting with Mr. Currie, Respondent agreed that he would prepare the federal complaint over the weekend and provide by the following Monday, July 25, 2011, a finished product for Mr. Currie to promptly file in court. *Id*. at 17-18 ("It would be late Monday, wouldn't be Monday morning, but he said he could have it done by Monday . . . ."); *id.* at 27-28 (Respondent stated the "time frame . . . would be Monday").

201. Respondent told Mr. Currie that he (Mr. Currie) would have to file the complaint *pro se* or obtain other counsel to file the complaint on his behalf, because Respondent was not licensed in Virginia and was not admitted to practice before the Alexandria federal court. DCX 4.I at 15-16.

202. At the July 22 meeting, Mr. Currie emphasized to Respondent that time was of the essence and that it was very important that Respondent provide the complaint by the Monday, July 25, 2011 date that Respondent had promised, so that the complaint could be filed before the Sheriff's Office terminated Mr. Currie's employment. DCX 4.I at 16-17 (it was clear during the July 22 meeting that "time was of the essence to get [the complaint] submitted before the Sheriff's Office could take any further action against [Mr. Currie]").

203. At the July 22 meeting, Mr. Currie gave Respondent a check dated July 22, 2011, in the amount of $900 payable to Respondent as payment of a flat fee for drafting and providing the ready-to-file federal discrimination complaint by Monday, July 25, 2011, as Respondent had agreed. DCX 4 at 19 (canceled check); DCX 4.I at 13-18, 26-27. Respondent promptly deposited the check, which was paid on the next business day (July 25, 2011). DCX 4 at 19 (listing July 25, 2011 as the "Posted Date" and the "Transaction Date").

204. Respondent had not regularly represented Mr. Currie before Respondent undertook at the July 22 meeting to represent him. Respondent did not provide any writing to Mr. Currie at that meeting or at any later time that communicated to Mr. Currie the basis or rate of the fee Respondent charged (a flat fee of $900), the scope of Respondent's representation, or the expenses for which Mr. Currie would be responsible. DCX 4.I at 23 (no written agreement presented at July 22 meeting).

205. There is no evidence that Mr. Currie ever gave his consent to allow Respondent to treat the fee that Mr. Currie paid as anything other than Mr. Currie's property until such time as Respondent had earned the fee by performing the promised legal services.

206. Respondent failed to provide the promised federal complaint on Monday, July 25, 2011, as he had agreed. DCX 4.I at 25. In the following days, Mr. Currie made repeated but unsuccessful efforts to reach Respondent to obtain the promised complaint, calling him every day or every other day on Respondent's home telephone number and his cell phone, leaving telephone messages for him, and also sending him e-mail messages. *Id.* at 25-29.

207. On July 28, 2011 Mr. Currie's employment was terminated as he had feared. DCX 4.G at 151 (terminated July 28, 2011); DCX 4.I at 28 (same).

Respondent had not provided the complaint by that date (three days after the promised July 25 date). *Id.*

208. After Mr. Currie's termination, on August 4, 2011, he filed a third Charge of Discrimination with the EEOC (Charge No. 570-2011-01541). DCX 4.G at 152; DCX 4.I at 21-22. In this Charge of Discrimination, Mr. Currie alleged racial, gender, and age discrimination, as well as retaliation, based on further incidents, including his termination from employment. DCX 4.G at 152. Respondent gave Mr. Currie advice about how this third EEOC Charge should be written, specifically advising Mr. Currie to add the claim of age discrimination. DCX 4.I at 21-22.

209. After several weeks, Respondent finally responded to Mr. Currie's telephone messages and e-mails, and told him the promised complaint was ready and he should come to Respondent's house on August 15, 2011, to pick it up. DCX 4.I at 28-29.

210. But when Mr. Currie arrived at Respondent's house on August 15, 2011, Respondent told him that the complaint was not ready, contrary to Respondent's previous representations to him. DCX 4.I at 28. Respondent asked Mr. Currie to agree to a written retainer agreement under which Mr. Currie would pay Respondent an additional $1,800 for representation relating to Mr. Currie's termination. DCX 4.I at 24; DCX 4 at 21-22 ("Fee Agreement for Legal Services").

211. This proposed retainer agreement confirmed Respondent's obligation to prepare the federal court discrimination complaint for the sum of $900, but attempted to change the completion date to August 26, 2011. It provided in part that "For the sum of $900 received, [Respondent] will prepare *before August 26, 2011* a pro se federal court complaint for Client's first two EEO complaints against Arlington County Sheriff, Beth Arthur[]." DCX 4 at 21 (emphasis added). August 26, 2011 was the last possible day on which Mr. Currie could file his discrimination complaint in federal court. See FOF ¶ 196 above.

212. Respondent tried to convince Mr. Currie to sign the retainer agreement and agree to the additional fee even though Respondent still had not prepared the federal court complaint he had promised would be ready on July 25, 2011, three weeks before. DCX 4.I at 23-25, 29-30.

213. Mr. Currie declined to agree to the retainer agreement because Respondent had still not met his obligations under the July 22, 2011 oral agreement to provide the discrimination complaint for filing in federal court. DCX 4.I at 24, 29-30.

214. Respondent became upset at Mr. Currie's refusal to agree to his proposed retainer agreement, and told him "[Y]ou people are all alike, you don't

want to pay anybody, you want to get something for free all the time." DCX 4.I at 29.

215. On or about August 15, 2011, Mr. Currie signed two written requests asking the EEOC's Washington Area Field Office to discontinue its processing of the two more recent EEOC Charges (Nos. 570-2011-00587 and 570-2011-01541) and issue him "right to sue" letters relating to these Charges. DCX 4.G at 149, 153.

216. On August 19, 2011, Mr. Currie filed a *pro se* discrimination complaint, which he himself had prepared, in the Alexandria Division of the United States District Court for the Eastern District of Virginia. DCX 4.F at 105 *et seq.*; DCX 4.G at 123 *et seq.*; DCX 4.I at 37-38. He filed his own complaint because he did not believe that Respondent would provide the complaint that Respondent had promised to provide. DCX 4.I at 35; *id.* at 30 ("I had no faith in [Respondent's] actually providing the complaint to me in time").

217. At 2:14 p.m. on August 25, 2011, one day before the August 26, 2011 deadline and 31 days after July 25, 2011, the date upon which Respondent had agreed to provide the complaint, and after Mr. Currie had already filed his own complaint in federal district court, Respondent sent Mr. Currie a draft complaint by e-mail. DCX 4 at 5 (e-mail message); DCX 4 at 7-17 (Respondent's draft complaint); DCX 4.I at 34-35.

218. Respondent's complaint had numerous deficiencies, including the following:

a. Respondent's complaint included claims he had never discussed with Mr. Currie and for which Mr. Currie was not seeking relief. *See generally* DCX 4 at 2-3; DCX 4.I at 35-37. For example, Respondent cited "the Rehabilitation Act of 1973 as amended (29) [*sic*] U.S.C. 791" as the basis for his claim that Mr. Currie had not been provided reasonable accommodation for his diabetes. DCX 4 at 12 ¶ 34; see also *id.* at 15 ¶ 47 ("Defendant's discriminatory treatment has also caused Plaintiff to experience greater variations in blood sugar and resulting fatigue"). Mr. Currie had never discussed diabetes with Respondent, however, and believed the draft complaint's reference to diabetes was a "copy and paste" from someone else's complaint. DCX 4.I at 36.

b. In his complaint, Respondent alleged discrimination based on "[Mr. Currie's] disability (PTSD) [Post-Traumatic Stress Disorder]," but Mr. Currie had never suffered from PTSD. *Compare* DCX 4 at 14 ¶ 40 (PTSD allegation) *with* DCX 4.I at 49-50 (Mr. Currie never suffered from PTSD and never discussed PTSD with Respondent).

c. Respondent's complaint erroneously referred to the defendant not as the Sheriff's Office or Sheriff Beth Arthur, but as the "United States

Department of Army." DCX 4 at 8 ¶ 3. At another point, Respondent referred to "The Arlington County U. S. Army." DCX 4 at 13 ¶ 41.

d. At numerous points, Respondent's complaint erroneously alleged that the defendant had unlawfully threatened and terminated Mr. Currie's employment with the *federal* government. DCX 4 at 14-15 ¶ 47 (defendant's actions caused a "negative overall impact on his physical and mental health that has undermined his economic future and *employability in the federal government* and the private sector") (emphasis added); *id.* at 16 (the prayer for relief asked the court to declare that the agency's conduct violated plaintiff's "property interest in his *federal* employment") (emphasis added); *id.* (alleging that the defendant had discriminated against the plaintiff by "compelling his *federal* retirement, threatening his *federal* career because of his protected EEO activity, [and] removing him from *federal* service" illegally) (emphasis added). Mr. Currie was an employee of Arlington County, not the federal government.

e. Respondent's complaint erroneously asserted that Mr. Currie was seeking certification of a class of "Blacks at the Arlington County Sheriff's Office" and Mr. Currie's "appointment as class agent [sic] for all Blacks at the Arlington County Sheriff's Office in accordance with FRCP 27 [sic]." DCX 4 at 13 ¶ 39. Federal Rule of Civil Procedure 27 relates to "Depositions to Perpetuate

Testimony," and has nothing to do with class actions or the appointment of class representatives, a subject that is covered by Rule 23. Mr. Currie was not pursuing a class action. DCX 4.I at 35-36 (Respondent's complaint mistakenly referred to the complaint as a class action); and

f. Although Respondent styled his complaint as a "Verified Complaint," he failed to provide any language in the complaint by which Mr. Currie, who would be filing *pro se*, would verify the allegations of the complaint.

219. Respondent never refunded any part of the $900 fee that Mr. Currie paid. DCX 4.I at 44.

220. On or about October 28, 2011, Mr. Currie filed a complaint with the Office of Disciplinary Counsel, alleging that Respondent had failed to provide in a timely and competent manner the legal services that Mr. Currie had paid for and that Respondent had agreed to provide. DCX 4.

221. On or about November 11, 2011, the Office of Disciplinary Counsel initiated an investigation of Mr. Currie's complaint. DCX 4.A.

222. By letter dated November 30, 2011, Disciplinary Counsel forwarded to Respondent a copy of Mr. Currie's complaint and supporting documents (the "complaint package") and requested that Respondent provide certain information relating to the complaint. DCX 4.A at 23-25. Disciplinary Counsel enclosed with her

letter a subpoena requiring Respondent to produce a copy of his entire office file relating to his representation of Mr. Currie. *Id.* at 27-28. Disciplinary Counsel sent her letter and enclosures by first-class mail and by certified mail to Respondent at his Wagon Wheel Road address, the address Respondent had listed with the D.C. Bar. *Id*. The complaint package was not returned in the mail. DCX G at 9 ¶ 36.

223. On February 28, 2012, Disciplinary Counsel received from Respondent an envelope, with no transmittal letter or other explanation, that contained a copy of a letter dated February 23, 2012, from Respondent to the Clerk of the U.S. Supreme Court complaining that the Supreme Court's order dated February 21, 2012 denying a petition for rehearing in an unrelated case pending in the Supreme Court (*Carson v. United States Office of Special Counsel*, No. 11-575), was "flawed." Respondent's envelope also contained an undated draft of an "Amicus Curiae Brief of Lori A. Saxon et al." DCX 4.B at 31. These materials related solely to the *Carson* case (a case involving the statutory authority of the United States Office of Special Counsel) and had no relevance to Disciplinary Counsel's investigation of Mr. Currie's complaint or any other Office of Disciplinary Counsel investigation of Respondent.

224. By letter dated March 15, 2012, Disciplinary Counsel wrote to Respondent informing him, *inter alia,* that Disciplinary Counsel had not received either his substantive response to the disciplinary complaint or the subpoenaed

documents, and that Disciplinary Counsel would move to enforce the subpoena if he did not produce the documents sought. DCX 4.C at 54-55. Disciplinary Counsel's letter was sent by first-class mail and a copy was personally served upon Respondent on March 19, 2012 at his Wagon Wheel Road address. *Id*. at 55.

225. In the same March 22, 2012 letter previously referred to (see FOF ¶ 151 above), Respondent referred to Mr. Shipp's allegedly "false charges" in a series of investigations, including Bar Docket 2011-D434, the docket number assigned to the Currie investigation. DCX 1.I at 419. Nothing in Respondent's March 22 letter or its attachments was responsive either to Disciplinary Counsel's inquiries regarding Mr. Currie's complaint or to Disciplinary Counsel's subpoena, however. *Id.* at 419 *et seq.*

226. By undated letter received by Disciplinary Counsel on April 2, 2012 addressed "To whom it may concern," but referring to Mr. Currie's complaint, Respondent accused Mr. Currie of misconduct, claimed that he was fired because of his "ongoing lack of credibility, including failing one or more lie detector tests," that he was "mentally unstable" and "under psychiatric treatment for diagnosed paranoia." DCX 4.D at 58. Respondent claimed that he had prepared a draft complaint that Mr. Currie could file *in propria persona* (*i.e.*, *pro se*) at a later date only after Mr. Currie had refused to sign and return a retainer agreement. *Id.*

227. Respondent made no response in his undated letter to the allegations of Mr. Currie's disciplinary complaint that Respondent had failed to provide the draft complaint by the agreed-upon date, or that the draft that he ultimately did provide was unsuitable for filing because of numerous significant errors. *Id.*

228. Respondent closed his March 22, 2012 letter as follows: "In my opinion, he [Mr. Currie] is as unstable as [a third party],[9] whom the DC Bar is informed is on a State of Tennessee website as a warning to the public for her duplicitous and extortive schemes." *Id.* Respondent provided no explanation for his bizarre reference to this third party who had no involvement in any of the relevant matters.

229. Respondent enclosed with his March 22 letter a copy of the same draft complaint that he had finally provided to Mr. Currie and that Disciplinary Counsel had previously provided to Respondent with her November 30, 2011 letter. DCX 4.D at 59-69. He did not produce his office file or any other document responsive to the subpoena.

[9] The Hearing Committee Report does not disclose the name of the third party Respondent referred to because the name is not relevant to these proceedings.

230. Disciplinary Counsel filed a motion asking the Court of Appeals to enforce the November 30, 2011 subpoena. By order dated July 23, 2012, the Court granted Disciplinary Counsel's motion and directed Respondent to comply with Disciplinary Counsel's outstanding subpoena within 10 days of the Court's order. DCX 4.H at 155. The Court of Appeals sent a copy of its order to Respondent (to "Confidential (DBN)") at his Wagon Wheel Road address. *Id.* Respondent failed to comply with the Court of Appeals' order.

231. Respondent has never complied with the Court of Appeals' order, has never produced his office file as required by the Court's order and Disciplinary Counsel's subpoena, and has never provided a substantive response to Disciplinary Counsel's inquiry.

F. The July 1 Specification, Count V (Khoury and Baker, Bar Docket No. 2012-D183)

232. By letter dated May 21, 2012, Disciplinary Counsel wrote to Respondent to inform him that Disciplinary Counsel had initiated a formal investigation based on a disciplinary complaint filed by opposing counsel (Jane Fisher Khoury, Esquire and Olivia Baker, Esquire) in a domestic relations matter. DCX 5 at 1-2. Ms. Fisher Khoury and Ms. Baker complained that Respondent had engaged in improper conduct as counsel for his client (Lori Saxon) in the domestic

relations matter and related matters, and, based upon their research, had violated disciplinary rules in a number of other, unrelated matters in which they were not involved. *Id.* at 5-38.

233. In her letter, Disciplinary Counsel forwarded the complainants' detailed complaint and attachments to Respondent, and requested that he provide a written response to the allegations of the complaint within ten days (by May 31, 2012). *Id*. at 2.

234. Disciplinary Counsel mailed the inquiry letter and complaint package for the Fisher Khoury and Baker complaint to Respondent at his Wagon Wheel Road address, the address he had most recently listed with the D.C. Bar. *Id*. Disciplinary Counsel's May 21, 2012 letter was not returned by the U.S. Postal Service. DCX G at 10 ¶ 42. Respondent failed to provide any response by the May 31, 2012 deadline. *Id.* ¶ 43.

235. By letter dated July 6, 2012, Disciplinary Counsel sent another copy of her May 21, 2012 letter and complaint package to Respondent, again at his Wagon Wheel Road address. DCX 5.A at 39-40. Disciplinary Counsel requested that Respondent provide his response by July 20, 2012. *Id.* at 39. This letter was not returned by the U.S. Postal Service, but Respondent again failed to provide any response by July 20, 2012 as requested. DCX G at 10 ¶ 43.

236. On February 13, 2013, Disciplinary Counsel filed with the Board on Professional Responsibility a motion to compel Respondent to respond to Disciplinary Counsel's inquiries. DCX 5.B at 41-45. Disciplinary Counsel served a copy of her motion on Respondent by mail at a new address (97 Willow Run Drive, Centerville, MA 02632) (the "Willow Run Drive address")) that Respondent had apparently provided to another complainant (but not to the D.C. Bar) in October 2012. *Id.* at 45 (certificate of service); *id.* at 43 (Respondent's providing new address to complainant). See DCX 6 at 33 (Respondent's October 15, 2012 letter advising another complainant (Lori Saxon) of changes in his address).

237. Respondent failed to respond to Disciplinary Counsel's motion. DCX 5.C at 49.

238. By order dated March 4, 2013, the Board granted Disciplinary Counsel's motion and directed Respondent to respond to Disciplinary Counsel's inquiry within ten days. DCX 5.C at 49-50. A copy of the Board's order was sent to Respondent at his Willow Run Drive address. *Id.* at 47.

239. Respondent never responded to Disciplinary Counsel's inquiry regarding the Fisher Khoury and Baker complaint. DCX G ¶ 46.

240. Respondent has never provided any response to Disciplinary Counsel's inquiry, even though none of the correspondence from Disciplinary Counsel was returned. DCX G at 10 ¶ 46.

G. The July 1 Specification, Count VI (Saxon, Bar Docket No. 2012-D397)

241. By letter dated November 16, 2012, Disciplinary Counsel wrote to Respondent to inform him that Disciplinary Counsel had initiated a formal investigation based on a disciplinary complaint filed by a former client (Ms. Lori Saxon) in a domestic relations matter. DCX 6 at 1-69. Ms. Saxon was Respondent's client in the domestic relations matter that led to the complaint by Ms. Fisher Khoury and Ms. Baker referred to in FOF ¶ 232 above.

242. Ms. Saxon asserted in her complaint that Respondent had filed a brief on her behalf in the District of Columbia Court of Appeals without her review or consent, and had failed to respond or communicate with her in any way in response to numerous requests that she had made by telephone message, electronic message, facsimile, and mail for information and action in her pending cases. *Id.*

243. Disciplinary Counsel mailed the inquiry letter and the complaint package to Respondent at both his Wagon Wheel Road address and his Willow Run Drive address (the address that Respondent had previously provided to the

complainant (Ms. Saxon) by letter dated October 15, 2102). DCX 6 at 1, 33. Disciplinary Counsel requested that Respondent provide his response to Ms. Saxon's complaint within ten days. *Id.* at 2. Disciplinary Counsel received no written response from Respondent by the due date. DCX G ¶ 48.

244. By letter dated January 15, 2013, Disciplinary Counsel wrote to Respondent at his Willow Run Drive address, reminding him of his obligation to respond to Disciplinary Counsel's inquiry and requesting a response by January 21, 2013. DCX 6.A at 71-72. Disciplinary Counsel's January 15, 2013 letter was not returned by the U.S. Postal Service. DCX G at 11 ¶ 48. Again, Disciplinary Counsel received no written response from Respondent by the due date. *Id.* ¶49.

245. On February 13, 2013, Disciplinary Counsel filed with the Board a motion to compel Respondent's response and served Respondent by mail at his Willow Run Drive address. DCX 5.B at 42-43. Disciplinary Counsel's motion also addressed Respondent's failure to respond to Disciplinary Counsel's investigation regarding the Fisher Khoury and Baker complaint. *Id.*; see FOF ¶ 236 above.

246. Respondent never responded to Disciplinary Counsel's motion. DCX 5.C at 49.

247. By order dated March 4, 2013, the Board directed Respondent to respond to Disciplinary Counsel's inquiry within ten days. DCX 5.C at 49. A copy

of the Board's March 4, 2013 order was sent to Respondent at his Willow Run Drive address.

248. Respondent never complied with the Board's order, and never provided any response to Disciplinary Counsel's inquiry even though none of the correspondence from Disciplinary Counsel or the Board was returned. DCX G at 11 ¶ 49.

H. The June 30 Specification, Counts I and II (Bar Docket No. 2011-D295)

249. In December 2010, Respondent was convicted in the Commonwealth of Virginia of three counts of failure to appear in violation of Virginia Code § 19.2-128(C), following a traffic stop in May 2009.

250. On May 13, 2009, Respondent was stopped for driving on a suspended license in violation of Va. Code § 46.2-301, and signed a Virginia Uniform Summons promising to appear for trial before the Arlington County General District Court (Traffic) on June 23, 2009. DCX 7.A at 1 (Respondent's signature under language stating: "I promise to appear at the time and place shown above.")

251. *Respondent's First Failure to Appear.* On June 23, 2009, Respondent failed to appear for trial. DCX 7.A at 2. This was Respondent's first failure to appear.

The Arlington County District Court issued a writ of "C*apias*: Attachment of the Body" ordering Respondent's arrest for failure to appear. *Id*.

252. Respondent was arrested on August 5, 2009. DCX 7.A at 2 (*Capias* reflecting Respondent's arrest at 12:40 a.m. on August 5, 2009). He was released from custody on his own recognizance based upon his promise, confirmed by his signing the Recognizance form, to appear in court for a hearing on September 22, 2009. DCX 7.A at 4.

253. *Respondent's Second Failure to Appear*. On September 22, 2009, Respondent again failed to appear. DCX 7.A at 5. This was Respondent's second failure to appear. On September 23, 2009, the District Court issued another *Capias* again ordering his arrest for failure to appear. *Id*.

254. Respondent was arrested for the second time at 3:05 a.m. on October 19, 2009. DCX 7.A at 5. The District Court ordered that Respondent be held without bail pending a hearing scheduled for October 21, 2009. *Id*.

255. On October 21, 2009, Respondent was released after posting a $2,500 surety bond (DCX 7.A at 11-13), and was placed in the Sheriff's Supervised Release Program as a condition of his release (*id.* at 9). The District Court set Respondent's hearing for December 14, 2009. *Id.* at 12 (Recognizance signed by Respondent).

Respondent signed a court document stating that he intended to hire his own attorney to represent him at his December 14, 2009 hearing. *Id.* at 8.

256. On December 14, 2009, Respondent appeared before the Arlington County General District Court ("Arlington District Court"), and signed another statement stating that he intended to hire counsel. DCX 7.A at 14.[10] The Arlington District Court continued Respondent's matter to March 12, 2010. *Id*.

257. On March 12, 2010, Respondent appeared before the Arlington District Court and signed another statement stating that he intended to hire counsel. DCX 7.A at 15. On March 12, 2010, the Arlington District Court continued Respondent's matter to April 27, 2010. *Id*.

258. On April 27, 2010, the Arlington District Court continued Respondent's matter to July 29, 2010. DCX 7.A at 16 (C*apias* states Respondent failed to appear on July 29, 2010).

259. *Respondent's Third Failure to Appear*. On July 29, 2010, Respondent again failed to appear for the scheduled hearing. DCX 7.A at 16. This was Respondent's third failure to appear for his hearing as scheduled. The Arlington

[10] By mistake, the presiding judge dated the form December 14, 2010, instead of December 14, 2009.

District Court issued a *Capias* ordering Respondent's arrest and revoked his bond. *Id*. ("PER JUDGE KELLEY BOND IS REVOKED").

260. On August 2, 2010, Respondent was arrested for the third time. DCX 7.A at 16 (handwritten notation that *Capias* was executed on 8/2/10).

261. On August 2, 2010, Respondent completed a "Financial Statement – Eligibility Determination for Indigent Defense Services." DCX 7.A at 18. Respondent listed over $2 million in assets and requested court-appointed counsel. *Id*. at 19. The Arlington District Court held that Respondent was not indigent and rejected his request. *Id.* That same day, Respondent signed a form acknowledging that his hearing was scheduled for August 26, 2010 and waiving his right to be represented by counsel. *Id.* at 22.

262. On August 3, 2010, the Arlington District Court ordered Respondent released from custody and again placed in the Sheriff's Supervised Release Program. DCX 7.A at 23-24 (release orders); *id.* at 25 (supervised release program).

263. On August 24, 2010 Respondent signed a waiver of his right to be represented by a lawyer. DCX 7.A at 26.

264. On August 26, 2010, Respondent appeared before the Arlington District Court for trial. DCX 7.A at 27. The court found Respondent guilty of driving on a suspended license and three counts of failure to appear. *Id*. at 28 (noting that

Respondent was present, denied guilt, was tried and found guilty as charged). The court ordered Respondent to serve 10 days in jail (with five days suspended) and pay a fine of $100. *Id.*

265. On September 9, 2010, Respondent filed a Notice of Appeal in order to appeal to the Circuit Court for Arlington County ("Circuit Court") from his Arlington District Court convictions. DCX 7.B at 29-30. Respondent signed a statement in the Notice of Appeal promising to appear before the Circuit Court on September 23, 2010 to set a trial date. *Id.* at 29 ("I promise to appear before the Circuit Court of this jurisdiction at the date and time shown."). The Notice warned that "[f]ailure to appear for your trial shall be deemed a waiver of your right to trial by jury in this case. Failure to appear may also constitute a separate criminal offense." *Id*.

266. On September 23, 2010, the Circuit Court set a trial date of November 9, 2010. DCX 7.C at 32-35 (9/23/10 docket notation in each of Respondent's four cases).

267. *Respondent's Fourth Failure to Appear*. On November 9, 2010, Respondent again failed to appear for trial. DCX 7.D at 36. This was Respondent's first failure to appear in Circuit Court, and his fourth failure to appear overall. On November 22, 2010, the Circuit Court issued a warrant for Respondent's arrest. *Id*.

268. Respondent never sought a postponement of his November 9, 2010 trial in Circuit Court based on any alleged inability to travel or on any other basis.

269. In addition, even though Respondent filed two lengthy motions in the Circuit Court (discussed below at FOF ¶¶ 270, 273 *et seq.*), he never claimed that his failure to appear for his Circuit Court trial was due to any alleged inability to travel. In fact, in one of his Circuit Court motions, he claimed that, after his conviction in Arlington District Court (on August 26, 2010), he had personally appeared every two weeks at the Arlington County Detention Center for pretrial check-in, including on November 8, 2010, the day before his scheduled Circuit Court trial. DCX 7.E at 38 ¶ 9.

270. On November 24, 2010, while the arrest warrant was still outstanding, Respondent filed two motions in the Circuit Court: (1) "Motion to Quash Initiated Warrants and Dismiss Complaint," and (2) "Motion to Strike Traffic Court and Suppress Circuit Court Testimony of Officer Maplethorpe of Arlington Sheriff's Office"). DCX 7.E at 37-45.

271. In his motions, Respondent alleged various acts of misconduct by Arlington County officials, and claimed, *inter alia*, that his original arrest was improper because Respondent's vanity license plate "was pre-targeted for pullover and driver harassment," and "was listed by the Virginia Division of Motor Vehicles

on a harass computer check list . . . ." *Id.* at 37 ¶ 5, 39 ¶ 15. Respondent requested "a protective order regarding both the Arlington Sheriff and the Arlington Police." *Id.* at 42.

272. On or about November 30, 2010, the Sheriff's Office sent Respondent a letter (a "Warrant Notice") informing him that the Sheriff's Office had a warrant for his arrest and requesting that he report in person to the Sheriff's Office to avoid the potential embarrassment of an arrest at his home or place of employment. DCX 7.F at 46.

273. On December 21, 2010, Respondent filed a lengthy additional motion in the Circuit Court, again alleging various misconduct by Arlington County officials and seeking various forms of relief. DCX 7.G. The title of Respondent's motion was: "[1] Renewed Motions and Trial Notice for December 23, 2010; [2] Motion to Quash Fraudulent Warrant Notice of November 30, 2010; [3] Motion to Dismiss for Illegal May 23, 2009 Pullover and Search; [4] Motion to Strike Testimony of Office Maplethorpe as Untrustworthy; [and 5] Motion for Production of Witnesses." *Id.*

274. In his motion, Respondent claimed that the Sheriff's Office's Warrant Notice (see FOF ¶ 272 above) was "a fraudulent mailing within the meaning of 18 U.S.C. § 1341 [the mail fraud statute] with the intent falsely to inflict duress within the meaning of 18 U.S.C. § 1961 et seq. [the RICO statute]." *Id.* at 47.

275. In paragraph 34 of his motion, Respondent stated:

> At this time [October 21, 2009], Officer Robert Curry [sic] of the Sheriff's Office witnessed four Sheriff thugs beat a transferee from Dinwiddie County to the floor of the Arlington Detention Center when the latter [the transferee] complained about the denial of water and medical attention to the [Respondent].

DCX 7.G at 51 ¶ 34.

276. Respondent's statement in paragraph 34 of his motion was knowingly false. The statement referred to "Officer Robert Curry," which apparently was intended to refer to Mr. Robert Currie, who was a civilian employee of the Arlington County Sheriff's Office, not an officer. Mr. Currie testified: "I never witnessed four sheriff's officers or thugs as it's stated here beat any inmates from any county. I have never – I have no recognition of paragraph 34 [of Respondent's motion] at all." DCX 4.I at 10 (April 18, 2015 Deposition of Currie).

277. We find Mr. Currie's testimony on this point is credible. He would have no reason to lie to protect the Arlington County Sheriff's Office, the agency that he had sued for allegedly discriminating against him and unlawfully firing him.

278. There is further evidence that Respondent's statement was knowingly false, a fact invented for purposes of persuading the Circuit Court to grant Respondent's motions. Respondent was unable to keep his story straight. In April

2012, when Respondent finally responded to Disciplinary Counsel's inquiries regarding Mr. Currie's disciplinary complaint against him, Respondent stated: "I believe that Ms. Arthur [the Arlington County Sheriff] is able to share a police camera video and jail grievance records that confirm *Mr. Currie assaulting a transferee from Dinwiddie County jail.*" DCX 4.D at 48 (emphasis added).

279. Thus, after Mr. Currie had filed a disciplinary complaint against Respondent, Respondent changed his story to charge that it was Mr. Currie, and not "four Sheriff's Office thugs" who had assaulted the Dinwiddie County transferee. Clearly, both of Respondent's versions of this alleged incident were fictions, invented and asserted by Respondent for tactical reasons in his criminal case.

280. In his December 21 motions, Respondent also requested that Arlington County "produce" Mr. Currie at a hearing in support of Respondent's claims of misconduct by county officials. DCX 7.G at 54 ¶ 57. Respondent never spoke with Mr. Currie about involving him in Respondent's defense of his criminal charges. DCX 4.I at 10-11 (Currie).

281. On December 22, 2010, Respondent appeared before the Circuit Court and counsel was appointed to represent him. DCX 7.C at 32 (12/22/10 docket entry). The Circuit Court continued the trial to December 29, 2010. *Id*.

282. *Respondent's No Contest Pleas.* On December 29, 2010, the Circuit Court held a hearing. DCX 7.C at 32-25 (docket entries); DCX 7.H (transcript of Dec. 29, 2010 proceeding in Circuit Court). The Assistant Commonwealth Attorney moved to amend the charge of driving on a suspended license to operating a vehicle without a valid operator's license. DCX 7.H at 59. The motion was granted without objection. *Id*.

283. Respondent, through his court-appointed attorney, then moved to withdraw his Not Guilty plea as to all charges and entered a plea of No Contest to the amended traffic charge and to three counts of failure to appear. *Id.* at 59-63. (The fourth failure to appear (Respondent's failure to appear for trial in the Circuit Court) was not charged.) The court accepted Respondent's plea and found him guilty on all charges. *Id*.; DCX 7.I at 65-72.

284. On December 29, 2010, the Circuit Court sentenced Respondent to ten days' incarceration for each of Respondent's three failures to appear (a total of 30 days' incarceration), with all but 7 days suspended). DCX 7.I at 65-70. Because Respondent had previously served a total of seven days' incarceration after his various arrests for failure to appear, no further incarceration was required.

285. On January 6, 2011, the Circuit Court entered judgments against Respondent requiring him to pay a total of $1,841 in fines and costs. DCX 7.I at 65-72.

286. Respondent satisfied the judgments on or about July 14, 2011. DCX 7.J at 72.

287. Respondent did not provide any explanation, justification, or excuse for his failures to appear when he pleaded No Contest to the three charges in the Circuit Court. Respondent did not provide any explanation, justification, or excuse for his failures to appear in testimony before the Hearing Committee because, as noted above, he did not participate in the hearing in any way.

288. In response to the Court of Appeals' December 17, 2012 order suspending Respondent from the practice of law because of his convictions (for misdemeanor Failure to Appear and one count of "No Operator's License)" (*supra* at 2 & n.3), Respondent filed a motion to vacate the order. In his motion, Respondent asserted that he was hospitalized for a week in 2010, and that because of a medical condition, he was unable "to drive personally to any court appearance in Washington, D.C. or elsewhere." Respondent's Motion to Vacate December 17, 2012 Order, dated December 31, 2012, DCX 7.K at 74-75.

289. In his motion, Respondent also stated that, if the United States Supreme Court granted a petition for certiorari and request for oral argument that he had filed in an unrelated case, he would "need to find carriers for [his] appearance," since he was a Massachusetts resident. *Id.* at 75.

290. Respondent's claimed hospitalization in 2010 can provide no justification or excuse for two of his failures to appear, however, because they were the year before (on June 23 and September 22, 2009). See FOF ¶¶ 251, 253.

291. Nor can Respondent's claimed inability to drive "personally" provide a justification or excuse for any of his failures to appear. As Respondent himself recognized in his motion (in referring to his possible Supreme Court argument), there are "carriers," such as taxis and various other forms of public transportation, that he could have used to travel to court on the required court dates.

III. CONCLUSIONS OF LAW: JULY 1 SPECIFICATION

A. Respondent's Motion to Dismiss Charges and Grant Reinstatement Should Be Denied

As required by Board Rule 7.16(a), the Hearing Committee now considers Respondent's motion to dismiss charges and grant reinstatement. There is no legal or factual support for Respondent's motion in the record, and Respondent provided none for his bare assertion in a single sentence that he was "improperly denied substantive and procedural process in [his] December 2012 suspension." Motion to Dismiss Charges and Grant Reinstatement, received November 24, 2014. See pp. 6-7 above.

Contrary to Respondent's assertion, nothing in the record suggests that Respondent was denied either substantive or procedural due process when the Court of Appeals suspended him from the practice of law as required by D.C. Bar Rule XI, § 10(c) because of Respondent's conviction of "serious crime[s]" as defined in Rule XI, § 10(b). Further, as set forth in this Report, the evidence heard by the Hearing Committee makes clear that Respondent violated numerous provisions of the District of Columbia Rules of Professional Conduct as well as D.C. Bar Rule XI, § 2(b)(3). Respondent's motion should therefore be denied.

B. Respondent Violated Rules 1.1(a) and 1.1(b) in Counts I (Sagars) and IV (Currie)

Disciplinary Counsel contends that Respondent violated Rules 1.1(a) and 1,1(b) in the Sagars and Currie matters by failing to "devise coherent legal strategies," failing to "prepare and adequately respond to the immediacy of his client's needs," and making "repeated inept filings." [Disciplinary Counsel's] Proposed Findings of Fact, Conclusions of Law, and Recommended Sanction, dated June 11, 2015 ("ODC Br.") at 33-34.

We find that Disciplinary Counsel has proved by clear and convincing evidence that Respondent violated both Rule 1.1(a) and Rule 1.1(b) in his representation of the Sagars (Count I) and Mr. Currie (Count IV).

Rule 1.1 provides that:

> (a) A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness, and preparation reasonably necessary for the representation.
>
> (b) A lawyer shall serve a client with skill and care commensurate with that generally afforded to clients by other lawyers in similar matters.

The Court has made clear that competent representation requires the "legal knowledge, skill, thoroughness, and preparation reasonably necessary for the representation." *In re Drew*, 693 A.2d 1127, 1132 (D.C. 1997) *(per curiam)*

(appended Board Report) (lawyer who has requisite skill and knowledge, but who does not apply it for particular client, violates obligations under Rule 1.1(a)). The comments to Rule 1.1 state that competent representation includes "adequate preparation and continuing attention to the needs of the representation to assure that there is no neglect of such needs." Rule 1.1, cmt. [5].

In its Report and Recommendation in *In re Evans,* the Board explained that

> To prove a violation [of Rule 1.1(a)], [Disciplinary Counsel] must not only show that the attorney failed to apply his or her skill and knowledge, but that this failure constituted a serious deficiency in the representation. *Id.* [*In re Nwadike*, BDN 371-00 (BPR July 30, 2004)]; *see also In re Ford*, 797 A.2d 1231, 1231 (D.C. 2002) (per curiam) (Rule 1.1(a) violation requires proof of "serious deficiency" in attorney's competence). The determination of what constitutes a "serious deficiency" is fact specific. It has generally been found in cases where the attorney makes an error that prejudices or could have prejudiced a client and the error was caused by a lack of competence . . . . Mere careless errors do not rise to the level of incompetence. *See Ford*, 797 A.2d at 1231.

In re Evans, 902 A.2d 56, 69-70 (D.C. 2006) (*per curiam*) (appended Board Report) (citation omitted). Although *Evans* referred to Rule 1.1(a) only, the "serious deficiency" requirement applies equally to Rule 1.1(b). *See In re Yelverton*, 105 A.3d 413, 421-22 (D.C. 2014). To prove a "serious deficiency," Disciplinary Counsel must prove that the conduct "prejudices or could have prejudiced the client." *Id.* at

422.

With respect to Rule 1.1(b), expert testimony is not required to establish a violation. In some cases, the "conduct is so obviously lacking that expert testimony showing what other lawyers generally would do is unnecessary." *In re Nwadike*, Bar Docket No. 371-00 at 28 (BPR July 30, 2004), *aff'd*, 905 A.2d 221 (D.C. 2006) (determining, without expert testimony, that the respondent violated Rule 1.1(b) where she placed her clients' case in jeopardy by failing to adhere to a court-imposed deadline for filing a Rule 26(b)(4) statement); *see also In re Ontell*, Bar Docket No. 228-96, at 6 (BPR June 11, 1998), *aff'd*, 724 A.2d 1204 (D.C. 1999) ("While there are some types of cases in which the lapses of a respondent might not be apparent to a hearing committee without expert testimony, this is not one of them."); *In re Schlemmer*, Bar Docket Nos. 444-99 & 66-00 at 12-13 (BPR Dec. 27, 2002), *remanded on other grounds*, 840 A.2d 657, *reprimand ordered*, Bar Docket Nos. 444-99 & 66-00 (June 16, 2004) (expressly rejecting Hearing Committee suggestion that Disciplinary Counsel must necessarily provide evidence of the practice of other attorneys in order to establish a Rule 1.1(b) violation).

1. Respondent's Rule 1.1(a) Violations

We find that Disciplinary Counsel has proved by clear and convincing evidence that Respondent violated Rule 1.1(a) by failing to provide competent

representation either to the Sagars (Count I) or to Mr. Currie (Count IV).

a. The Sagars (Count I)

The dispute between the Sagars (Pixl) and the Forest Service was a contract dispute, and nothing more. The Sagars told Respondent they had three concerns: (1) that the Forest Service had violated its obligations under its contract with Pixl when consultants formerly employed by Pixl left Pixl's employ to work for another contractor (IRM Consulting) that was working on the same project as Pixl (so that IRM Consulting (and not Pixl) could bill the Forest Service for the services of the former Pixl consultants), (2) that the Forest Service had illegally converted Pixl's Section 8(a) contract to a GSA Schedule contract, and (3) that the Forest Service was failing to pay numerous overdue invoices. FOF ¶¶ 14-15.

Instead of pursuing Pixl's breach of contract claims, however, Respondent spent many months pursuing a strategy of "making a lot of noise" (FOF ¶ 17) by writing letters to various USDA officials and members of Congress, and pursuing baseless civil rights claims against the Forest Service, even though there was no evidence suggesting that the Forest Service's contractual actions complained of had resulted from discrimination against the Sagars because of their race ("Asiatic Indian") or skin color (brown). FOF ¶ 47.

Respondent wasted a substantial amount of time and the Sagars' funds

pursuing the civil rights claim. In August 2006, Respondent submitted his baseless civil rights claim to the USDA Office of Civil Rights (and also the Small Business Administration), but did not file the District Court action until June 2007, almost a year later. FOF ¶¶ 26 (civil rights claim filed August 14, 2006), 38 (District Court action filed June 27, 2007). Although Respondent finally submitted a certified contract claim to the Forest Service (on December 11, 2006), an essential prerequisite for the Court of Federal Claims to have jurisdiction of the subject matter of any contract claim (see FOF ¶ 76), he did not file the CFC action until almost 11 months later (in November 2007) (FOF ¶ 73), almost two years after he was retained by the Sagars.

Under the Contract Disputes Act, Respondent was not required to wait until the Forest Service's contracting officer had denied Pixl's certified contract claim before filing the CFC action. He could have filed it 60 days after he submitted the certified contract claim, *i.e.,* any time after February 9, 2007 (60 days after December 11, 2006). 41 U.S.C. § 605(c)(5) (2006) (contract claim "deemed" denied if contracting officer does not issue a decision on claim within 60 days), *recodified at* 41 U.S.C. § 7103(f)(5) (2011).

Instead of pursuing the Sagars' contract claims, however, Respondent pursued baseless claims of unlawful discrimination (couched in terms of tortious breach of

contract and tortious interference with contract) by filing the complaint in the District Court action and then abandoning the representation. Wholly apart from Respondent's abandonment of the Sagars' representation in the District Court action (which we discuss below), Respondent's District Court Complaint was seriously flawed, and lacked the "legal knowledge, skill, thoroughness, and preparation reasonably necessary for the representation" that Rule 1.1(a) requires.

The District Court Complaint claimed that the defendant Secretary of Agriculture had "tortiously interfered" with Pixl's contract in violation of District of Columbia law. FOF ¶ 41. But Pixl's contract was between Pixl and the USDA, not between Pixl and a third party. Under District of Columbia law, a party to a contract cannot assert a claim of tortious interference with contract against another party to the same contract. *Press v. Howard University*, 540 A.2d 733 (D.C. 1988) (claim that University tortiously interfered with its own contract with faculty member "borders on the frivolous"). The party's remedy lies in a claim for breach of contract.

As the Court explained, the tort of tortious interference with a contract is limited: it is only the party "who intentionally and improperly interferes with the performance of a contract between another *and a third person* . . . [that] is subject to liability to the other for the pecuniary loss resulting to the other from the *failure of the third person* to perform the contract." *Murray v. Wells Fargo Home Mortgage*,

953 A.2d 308, 325-26 (D.C. 2008) (citing Restatement (Second) of Torts §766 (Am. Law Inst. 1975), and *Cooke v. Griffiths-Garcia Corp.*, 612 A.2d 1251, 1256 (D.C. 1992) (emphasis added)). As a result, Respondent's claim in the District Court Complaint that the USDA had tortiously interfered with the USDA's contract with Pixl has no legal basis.

The other claims in Respondent's garbled and incoherent District Court Complaint fare no better. The complaint asserted a due process claim under the Fifth Amendment (for alleged breach of contractual obligations), a claim under the Thirteenth Amendment (which abolished "slavery and involuntary servitude"), and a RICO claim against the United States Secretary of Agriculture in his official capacity (based on the Forest Service's responses to Congressional inquiries in which it denied Respondent's various claims of breach of contract and other illegality). As previously noted (FOF ¶¶ 45-46), there is no legal basis for any of these claims. There is also no evidence that the Forest Service discriminated against Pixl or the Sagars based on their race or color.

In short, Respondent's District Court Complaint was frivolous and without any legal basis. It cannot have been the product of the "legal knowledge, skill, thoroughness, and preparation" that Rule 1.1(a) requires.

Respondent's frivolous District Court Complaint injured the Sagars, because

it delayed any effort to address and resolve their claims in accordance with the law and facts as claims for breach of contract. He wasted the Sagars' money by spending almost a year (at $3,600 per month) pursuing these frivolous claims. See Table 1 (Appendix 1).

Respondent's failure to pursue the District Court action once he had filed it also violated Rule 1.1(a). After Respondent filed the District Court Complaint, he did nothing further in the case. FOF ¶ 69. As a result, the court dismissed the District Court action with prejudice. Similarly, because Respondent did nothing further in the CFC action after he filed it, the court dismissed that case as well. FOF ¶ 96.

It is not clear whether Respondent's failure to make any response whatsoever to the Government's filings in the District Court action and the CFC action resulted from his lack of the "legal knowledge and skill" that Rule 1.1(a) requires, or from his failure to apply the necessary knowledge and skill with the thoroughness and preparation that the Rule also requires. In either case, the result of his failures was that the Sagars' cases were dismissed. This is a most "serious deficiency in the representation." *In re Evans*, *supra*, 902 A.2d at 69. Either Respondent possessed the necessary "legal knowledge and skill" and failed to apply it with the required thoroughness and preparation, or he lacked the necessary "legal knowledge and skill" to begin with. In either case, he violated Rule 1.1(a). *In re Nwadike*, BDN 371-

00 (BPR July 30, 2014), at 25.

The Board's decision in *Nwadike* distinguishes between (1) attorneys who have the requisite skill and knowledge to provide competent representation but, *while actively continuing the representation*, fail to provide competent representation because they fail to apply that skill and knowledge with the thoroughness and preparation reasonably necessary for the representation, and (2) attorneys who, although they also have the requisite skill and knowledge, fail to provide competent representation because they have effectively abandoned the client or the case. *Id.* at 23-24 (citations omitted). The Board has held that, where the failure to provide competent representation is caused by the attorney's abandonment rather than by the attorney's lack of skill and knowledge, the violation should be addressed under Rules 1.1(b) and 1.3. *In re Nwadike*, *supra*, at 25 (citing *In re Lewis*, 689 A.2d 561, 564 (D.C. 1997), and *In re Schlemmer*, BDN 444-99 & 66-00 (BPR Dec. 27, 2002), *remanded on other grounds*, 840 A.2d 657, *reprimand ordered*, BDN 444-99 & 66-00 (BPR June 26, 2004)).

This is not a case of complete abandonment, however. Respondent did not entirely abandon this representation. At most the facts establish a pattern of *seriatim* neglect. Respondent first filed the District Court action, but never made any further filing in the case. Then, when the District Court action was on the point of dismissal

because of Respondent's failure to respond, he filed another action in a different court (the CFC action), and proceeded to neglect that case as well. When his second case was dismissed, he filed an untimely appeal to the CBCA. Thus, Respondent never completely abandoned his representation of the Sagars. Instead, he simply neglected and ignored the two actions he had filed once he had filed them (and failed to file a timely appeal to the CBCA).

For this reason, it is appropriate to consider whether Respondent's conduct violated Rule 1.1(a) as well as Rules 1.1(b) and 1.3. Respondent's bizarre, inept, and incompetent filings in the District Court and the Court of Federal Claims constitute a violation of Rule 1.1(a) in and of themselves. Respondent's failures to respond to the Government's motions to dismiss the District Court action and the CFC action constitute an additional violation of Rule 1.1(a). Respondent plainly failed to provide the "competent representation" that Rule 1.1(a) requires, either because he lacked the requisite "legal knowledge" and "skill" that Rule 1.1(a) requires or because he failed to act with the "thoroughness" and "preparation" that the Rule also requires.

b. Mr. Currie (Count IV)

In his representation of Mr. Currie, Respondent also violated Rule 1.1(a). As described above, Respondent agreed to prepare by a date certain (July 25, 2011) an

employment discrimination complaint in finished, final form for Mr. Currie himself to file *pro se* in the United States District Court for the Eastern District of Virginia in Alexandria. FOF ¶¶ 198-200. Respondent understood that time was of the essence, because Mr. Currie wanted to file the complaint before the Arlington County Sheriff's Office could terminate his employment. *Id.* ¶ 202. Although Respondent had promised to provide the finished complaint by July 25, he failed to provide any complaint by that date. *Id.* ¶ 206. Mr. Currie was terminated on July 28, just as he had feared. *Id.* ¶ 207. Respondent did not provide any complaint until August 25, 2011, 31 days after the July 25 deadline. *Id.* ¶ 217.

Further, the complaint that Respondent finally provided was a wholly inadequate, "cut-and-paste" draft that contained numerous errors and mistakes. Respondent's draft asserted claims that Mr. Currie had never discussed with Respondent and had no legal or factual basis. For example, the draft complaint asserted a claim under the Rehabilitation Act of 1973 alleging that Mr. Currie had not been provided reasonable accommodation for diabetes, which Mr. Currie had never discussed with Respondent. FOF ¶ 218. The complaint alleged that the defendants had discriminated against Mr. Currie based upon his alleged post-traumatic stress disorder (PTSD), even though Mr. Currie had never suffered from PTSD and had never discussed it with Respondent. *Id.* The draft complaint even

sought certification as a class action, which Mr. Currie had never authorized. It also contained numerous other errors, mistakenly referring to the defendant as a federal agency (the U.S. Army) and erroneously complaining that the defendant had terminated Mr. Currie's employment with the federal government. *Id.*

Respondent violated Rule 1.1(a) because he plainly did not provide competent representation to Mr. Currie. Because of Respondent's delay in providing the promised complaint until 31 days after the date upon which he had agreed to provide it, Mr. Currie was forced to prepare and file his own *pro se* complaint. Because of Respondent's delays, Mr. Currie did not believe that Respondent would ever provide the promised complaint before the statute of limitations would run on Mr. Currie's claims. The complaint that Respondent provided, a month after the agreed-upon date and after Mr. Currie's employment had already been terminated, was virtually worthless and of no value to Mr. Currie.

Respondent failed to serve Mr. Currie with the "legal knowledge, skill, thoroughness, and preparation" that Rule 1.1(a) requires. These failures were not "mere careless errors," but, instead, constituted a "serious deficiency" in Respondent's representation of Mr. Currie, because of their potential to prejudice his interests. *In re Evans*, 902 A.2d 56, 69-70 (D.C. 2006).

Respondent's delays and ultimate provision of a virtually worthless complaint

prejudiced Mr. Currie's legal position.

For these reasons, Respondent violated Rule 1.1(a) in his representation of Mr. Currie.

2. Respondent's Rule 1.1(b) Violations

The above discussion demonstrates that Disciplinary Counsel has proved by clear and convincing evidence that Respondent also violated Rule 1.1(b) in his representation of the Sagars (Count I) and Mr. Currie (Count IV). Rule 1.1(b) requires a lawyer to serve the client with a level of skill and care that is "commensurate with that generally afforded to clients by other lawyers in similar matters." Rule 1.1(b).

Competent lawyers do not default on their obligations to their clients as Respondent did here. Competent lawyers do not file a lawsuit and then ignore all subsequent deadlines, dispositive motions, and court orders, as Respondent did here, not once, but twice. Competent lawyers do not conceal their inaction and resulting adverse court actions from their clients, and then deny that the cases have been dismissed, as Respondent did here. Competent lawyers do not waste their clients' funds pursuing baseless discrimination claims and wait for almost a year before filing the only potentially meritorious claim (for breach of contract), as Respondent did here.

Similarly, competent lawyers do not agree to provide a finished discrimination complaint ready to file in federal court by a date certain when time is of the essence, and wait until the day before the statute of limitations would run on the client's claim (a full month after the promised date) before providing a demonstrably deficient complaint, as Respondent did in the Currie representation.

Like the lawyer's conduct in *In re Nwadike*, *supra*, Respondent's conduct here is "so obviously lacking" and deficient that expert testimony is not required to demonstrate that his conduct fails to meet the standard of skill and care generally afforded by other lawyers to their clients. *In re Nwadike*, Bar Docket No. 371-00 (BPR July 30, 2004), *aff'd*, 905 A.2d 221 (D.C. 2006).

Therefore, we find that Disciplinary Counsel has proved by clear and convincing evidence that Respondent violated Rule 1.1(b) in his representation of the Sagars (Count I) and Mr. Currie (Count IV).

C. Respondent Violated Rule 1.2(a) in Counts I (Sagars) and IV (Currie)

Disciplinary Counsel contends that Respondent violated Rule 1.2(a) by failing to consult with the Sagars and Mr. Currie about the means to pursue their objectives and by failing to abide by their objectives. ODC Br. at 35-36.

Rule 1.2(a) obligates a lawyer to "abide by a client's decisions concerning the

objectives of the representation and . . . consult with the client as to the means by which they are to be pursued."

We find that Disciplinary Counsel has proved by clear and convincing evidence that Respondent violated Rule 1.2(a) in his failure to consult with the Sagars and with Mr. Currie as the Rule requires.

1. The Sagars (Count I)

Before he filed the District Court Complaint on the Sagars' behalf, Respondent never discussed with them the contents of the complaint, whether to request a jury trial, or the theories for entitlement to relief that he planned to assert. Most significantly, he never told them that he intended to assert their claims as a class action or that they would be undertaking the legal obligations of designated representatives of a class. FOF ¶ 49.

Similarly, before filing the CFC action, Respondent never discussed any aspect of the CFC Complaint, and never explained how the CFC action related to the District Court action. *Id.* ¶ 77. Although the Sagars normally read Respondent's proposed filings before the filings were submitted to the Court (*id.* ¶ 20), given their lack of sophisticated understanding of legal matters (*id.* ¶ 5), their reading of the filings before the filings were submitted to the court was no substitute for the client consultation that Rule 1.2(a) required Respondent to provide.

2. Mr. Currie (Count IV)

The complaint that Respondent prepared for Mr. Currie contained numerous claims that Respondent had never discussed with him. These claims included the claim Mr. Currie was pursuing his claim as a "class agent" (Respondent apparently meant a "class representative") for a class consisting of "all Blacks at the Arlington County Sheriff's Office." FOF ¶ 218.e. The class action claim would have imposed on Mr. Currie the duties and obligations of a class representative under Rule 23, Fed. R. Civ. P, a role that he had not sought. *Id.*

Respondent's failures to consult with the Sagars and Mr. Currie denied them their right to consult with Respondent about the means to be used in pursuing their objectives. These failures violated Respondent's obligations under Rule 1.2(a).

3. Other Claimed Rule 1.2(a) Violations

We do not find that Disciplinary Counsel has proved by clear and convincing evidence that Respondent violated Rule 1.2(a) in the other respects alleged, however. In addition to the failures to consult we have identified above, Disciplinary Counsel contends that Respondent violated this Rule because he "failed to consult with [the Sagars] to develop a coherent strategy to achieve their goals" and "utterly failed to accomplish [their goals]." ODC Br. at 36-37. Similarly, Disciplinary Counsel contends that Respondent failed to consult with the Sagars about appealing the

dismissals of their cases that the Sagars did not know had occurred. *Id.*

These failures are violations of other Rules of Professional Conduct, however, not of Rule 1.2(a). As noted above, Respondent's failure to develop a coherent legal strategy to accomplish a client's goals violated Rule 1.1(a) (Competence). But, contrary to Disciplinary Counsel's contention (ODC Br. at 36), it is not a violation of Rule 1.2(a) to fail to consult with the client to develop a coherent strategy to achieve the client's goals. Respondent's failure here was his failure to develop a coherent legal strategy at all. This is a failure of competence, not of consultation. Thus, Rule 1.2(a) does not require a lawyer to develop a coherent legal strategy.

In the same way, Rule 1.2(a) does not require a lawyer to accomplish the client's goals. It requires consultation about means to achieve the client's objectives, but does not require the lawyer to accomplish the goals. Respondent's failure to accomplish the Sagars' goals due to his serial abandonment of their cases violates Rule 1.3 (Diligence and Zeal), not Rule 1.2(a). See pp. 127 *et seq.* below. And Respondent's failure to inform the Sagars about the dismissals of their cases, or consult with them about possible appeals from such dismissals, violated Rule 1.4 (Communication). See pp. 139 *et seq.* below.

Disciplinary Counsel also contends that Respondent violated Rule 1.2(a) in his representation of Mr. Currie because Respondent failed to "abide by [Mr.

Currie's] objective" for Respondent to prepare a federal court complaint for Mr. Currie to file before the Sheriff's Office terminated his employment. ODC Br. at 36. This failure was not a failure to abide by Mr. Currie's objective, however. Respondent did not ignore Mr. Currie's objective and take action to pursue some other objective; instead, he failed to produce the promised legal product (a finished complaint ready for filing in federal court) by the agreed-upon date. *Id.* Respondent's failure to provide the promised legal services violates other Rules, such as Rule 1.3 (Diligence and Zeal), not Rule 1.2(a).

Rule 1.2(a) addresses the allocation of responsibility between the lawyer and client. It provides that the client decides what the objectives of the representation are to be, and the lawyer must abide by the client's decisions on objectives. Thus, a lawyer must "abide by a client's decision whether to accept an offer of settlement of a matter." Rule 1.2(a). The lawyer is also required to consult with the client regarding the means to pursue the client's objectives. Violations of Rule 1.2(a) are found when the lawyer takes action in defiance of the client's objectives or without consulting the client, not when the lawyer fails to take action to accomplish the client's objectives or fails to communicate with the client during the course of the representation. See, *e.g.*, *In re Elgin*, 918 A.2d 362, 375 (D.C. 2007) (attorney violated Rule 1.2(a) by settling case against client without client's knowledge or

consent). Those failures (the failure to act to accomplish the client's objectives and to communicate with the client) are addressed by other Rules, such as Rule 1.3 (failure to pursue client's objectives) or Rule 1.4 (failure to communicate).

D. Respondent Violated Rules 1.3(a) and 1.3(c) in Counts I (Sagars) and IV (Currie)

Disciplinary Counsel contends without elaboration that Respondent violated Rules 1.3(a) and 1.3(c) in the Sagars and Currie matters for the same reasons that he violated Rules 1.1(a), 1.1(b), and 1.2(a) in these matters. ODC Br. at 37 (Respondent violated Rules 1.3(a) and 1.3(c) "based on the same set of operative facts as set forth above" relating to Rules 1.1 and 1.2(a)).

We find that Disciplinary Counsel has proved by clear and convincing evidence that Respondent violated Rules 1.3(a) and 1.3(c) in his representation of the Sagars and Mr. Currie.

Rule 1.3(a) states that an attorney "shall represent a client zealously and diligently within the bounds of the law." "Neglect has been defined as indifference and a consistent failure to carry out the obligations that the lawyer has assumed to the client or a conscious disregard of the responsibilities owed to the client." *In re Wright*, 702 A.2d 1251, 1254 (D.C. 1997) (appended Board report) (quoting *In re Reback*, 487 A.2d 235, 238 (D.C. 1985), *adopted in relevant part*, 513 A.2d 226

(D.C. 1986) (*en banc*) ("*Reback II*")). Rule 1.3(a) "does not require proof of intent, but only that the attorney has not taken action necessary to further the client's interests, whether or not legal prejudice arises from such inaction." *In re Bradley*, Bar Docket Nos. 2004-D240 & 2004-D302 at 17 (BPR July 31, 2012), *adopted in relevant part*, 70 A.3d 1189, 1191 (D.C. 2013) (*per curiam*).

Rule 1.3(c) provides that an attorney "shall act with reasonable promptness in representing a client." The Comment to this Rule notes: "Perhaps no professional shortcoming is more widely resented by clients than procrastination," and "in extreme instances, as when a lawyer overlooks a statute of limitations, the client's legal position may be destroyed." Rule 1.3, cmt. [7].

Respondent violated both Rule 1.3(a) and Rule 1.3(c) in his representation of the Sagars and Mr. Currie. We address each of these representations separately.

1. The Sagars (Count I)

The evidence of Respondent's violation of Rule 1.3(a) in the Sagars' representation is beyond clear and convincing. It is overwhelming. Respondent initiated litigation on the Sagars' behalf in two separate courts (the U.S. District Court and the U.S. Court of Federal Claims), and then effectively abandoned each case. In each case, Respondent filed an initial complaint on the Sagars' behalf and then took no further action of any kind to prosecute any of the claims that he had

asserted. Each case was dismissed because of Respondent's failure to respond in any way to the Government's motion to dismiss.

Respondent's failure in the CFC action was particularly disturbing, because, before dismissing the case, the court *sua sponte* granted Respondent an additional 17 days within which to respond to the Government's motion to dismiss, and then gave Respondent an additional 11 days after that to show cause why the case should not be dismissed after Respondent had missed the court's deadline and avoid dismissal. FOF ¶¶ 88, 90. Respondent never responded despite the court's bending over backwards to excuse his disregard of the court's deadlines.

In addition to Respondent's causing both court actions to be dismissed because of his failure to respond, Respondent failed to file a timely appeal to the CBCA. FOF ¶¶ 101, 125-28. Because Respondent filed the CBCA appeal more than three months after the statutory deadline, the CBCA dismissed the appeal for lack of jurisdiction. FOF ¶ 130.

In short, because of Respondent's failure to represent the Sagars with diligence and zeal, both court actions and the CBCA appeal were all dismissed. And, even though the chances of a successful appeal from these dismissals were remote at best, Respondent never even gave the Sagars the chance to appeal or move for reconsideration, because he never told them about the dismissals or their possible

rights to appeal or seek reconsideration.

As a result, all of the Sagars' claims were forever lost and could not be reasserted, because the claims were either dismissed with prejudice (in the District Court action), dismissed without prejudice but never timely reasserted (the contract claims asserted in the CFC action), or never timely asserted at all (the CBCA appeal). FOF ¶¶ 67 (District Court action dismissal), 115 (appeal from dismissal of CFC action time-barred), 130 (dismissal of CBCA appeal).

This is the most serious prejudice that a lawyer's negligence can inflict on a client: the total and irremediable loss of the client's legal claims. Respondent's conduct is the very antithesis of diligent and zealous representation, and a clear and unmistakable violation of Rule 1.3(a). The essence of a diligence and zeal violation under Rule 1.3(a) is the lawyer's "fail[ure] to take the necessary steps to preserve the client's interests." *In re Bernstein*, 707 A.2d 371, 376 (D.C. 1998) (citing *In re Lyles*, 680 A.2d 408 (D.C. 1996)). That is exactly what Respondent did here.

Respondent's failures also violated Rule 1.3(c). Because Respondent took no action at all in either the District Court action or the CFC action after filing the complaints, he plainly failed to act with the "reasonable promptness" that the Rule requires. Respondent never took any action needed to preserve his client's claims, and the clients were prejudiced by the forfeiture of their claims that clearly and

unmistakably resulted from Respondent's failures to act. This is a clear violation of Rule 1.3(c).

2. Mr. Currie (Count IV)

Respondent also violated Rules 1.3(a) and 1.3(c) in his representation of Mr. Currie. Mr. Currie paid him $900 to prepare and provide three days later a federal discrimination complaint that Mr. Currie could file *pro se*. Respondent was 31 days late in providing the promised complaint. He finally provided it the day before the statute of limitations would have run on Mr. Currie's discrimination claims. Respondent failed to respond to Mr. Currie's repeated efforts to contact him to find out about the status of the complaint, with one exception. Respondent engaged in a classic "bait and switch" by telling Mr. Currie that the promised complaint was ready, and then, when Mr. Currie arrived to pick it up, telling him the complaint was still not ready, and attempting to persuade him to agree to extend the date for the delivery of the promised complaint by a month and to pay a higher fee. FOF ¶¶ 209-12.

Respondent's delays prejudiced Mr. Currie. Because of Respondent's delays, Mr. Currie was forced to draft his own complaint, even though he had paid Respondent to prepare a complaint, because he did not believe that Respondent would ever provide the complaint that he had paid Respondent to provide. FOF

¶ 216.

Because Respondent delayed for a full month before providing the complaint he had promised to provide in three days, he necessarily failed to represent Mr. Currie with zeal and diligence, and violated Rule 1.3(a). For the same reasons, he failed to act with reasonable promptness, and thus violated Rule 1.3(c) as well.

E. Respondent Violated Rule 1.3(b)(1) in Counts I (Sagars) and IV (Currie)

Disciplinary Counsel contends that Respondent violated Rule 1.3(b)(1) in the Sagars and Currie matters by failing to respond to requests for information and by accepting payment for services he had not performed. ODC Br. at 37-38.

We find that there is clear and convincing evidence that Respondent violated Rule 1.3(b)(1) but not on the same grounds that Disciplinary Counsel contends.

Rule 1.3(b)(1) provides that a lawyer shall not intentionally "[f]ail to seek the lawful objectives of a client through reasonably available means permitted by law and the disciplinary rules." A violation of Rule 1.3(b)(1) requires proof of intentional neglect. Intentional neglect is established where the evidence shows that the respondent was (1) "demonstrably aware of [the] neglect," or (2) the "neglect was so pervasive that [the respondent] must have been aware of it." *In re Reback*, 487 A.2d 235, 240 (D.C. 1985) (*per curiam*), *incorporated in relevant part,* 513

A.2d 226 (D.C. 1986) (*en banc*); *see In re Ukwu*, 926 A.2d 1106, 1116 (D.C. 2007). The knowing abandonment of a client constitutes intentional neglect. *See In re Lewis*, 689 A.2d 561, 564 (D.C. 1997) (*per curiam*) (appended Board Report). The Court has adopted the Board's approach that ordinary neglect of a client matter "can 'ripen into . . . intentional' neglect in violation of Rule 1.3(b) 'when the lawyer is aware of his neglect' but nonetheless continues to neglect the client's matter." *In re Vohra*, 68 A.3d 766, 781 (D.C. 2013) (appended Board Report) (quoting *In re Mance*, 869 A.2d 339, 341 n.2 (D.C. 2005) (*per curiam*)).

1. The Sagars (Count I)

There is clear and convincing evidence that Respondent violated Rule 1.3(b)(1) by his failure to prosecute the claims that he had filed on the Sagars' behalf in the District Court action and the CFC action. See pp. 132 *et seq.* above. The evidence of Respondent's intentional neglect is compelling. This was not a case of mere negligence or oversight. Respondent received at least seven separate notices from the electronic filing systems used by the District Court and the Court of Federal Claims (FOF ¶¶ 54, 58, 65 (District Court), ¶¶ 87, 89, 91, 95 (Court of Federal Claims)) notifying him that he needed to respond to the Government's motions to dismiss or face dismissal of each complaint. Wholly apart from the numerous official notices that Respondent received electronically from the two courts, the Sagars

repeatedly asked Respondent for information about the status of their cases. FOF ¶¶ 71, 98. Like the court's electronic notices, the Sagars' requests also reminded Respondent of his need to act.

Through these two separate types of notices, Respondent was repeatedly made aware of his neglect of these cases. As a result, Respondent's neglect "ripen[ed] into an intentional violation." *In re Starnes*, 829 A.2d 488, 504 (D.C. 2003) (appended Board report). In addition, by failing to file any response whatsoever to the Government's motions to dismiss in these cases, Respondent knowingly abandoned his clients in these cases. His knowing abandonment of his clients is a "classic case of a Rule 1.3(b)(1) violation." *In re Ukwu*, 926 A.2d 1106, 1116 (D.C. 2007) (citing *In re Lewis*, *supra*, 689 A.2d at 564).

We do not find a violation of Rule 1.3(b)(1) in Respondent's receiving payments from the Sagars (and requesting additional payments) while failing to take action to protect their interests. ODC Br. at 38. Respondent violated Rule 1.3(b)(1) by intentionally failing to act to protect the Sagars' interests, not by accepting fee payments while he was failing to act. Rule 1.3(b)(1) addresses Respondent's failures to act, not the receipt of client fee payments without performing the necessary work. As we discuss below, this latter conduct is a violation of Rule 8.4(c) (Dishonesty), not Rule 1.3(b)(1).

2. Mr. Currie (Count IV)

Respondent also violated Rule 1.3(b)(1) in his representation of Mr. Currie. Respondent agreed to provide, by a date certain (July 25, 2011), a complaint in final form ready to file in Federal court so that Mr. Currie could file it before his employment was terminated. FOF ¶ 200. Respondent failed to provide the promised complaint by the agreed-upon date. Mr. Currie's employment was terminated on July 28, 2011, just as he had feared, three days after the date on which Respondent had agreed to provide the finished federal court complaint. FOF ¶ 207. After weeks of delay, Respondent finally provided an inadequate and deficient complaint to Mr. Currie on August 25, 2011. FOF ¶¶ 217-18.

Respondent violated Rule 1.3(b)(1) by intentionally failing to provide the promised complaint by the agreed-upon date, and then delaying it for almost a month in order to attempt to secure Mr. Currie's agreement to an amendment of his oral understanding with Respondent. Mr. Currie's lawful objectives were to have a complaint in final form ready to file in federal court to challenge the imminent, and later actual, termination of his employment with the Sheriff's Office.

Respondent's failure to act to achieve Mr. Currie's objectives was unmistakably intentional. Through numerous telephone messages and e-mails, Mr. Currie reminded Respondent almost daily of Respondent's obligation to prepare the

complaint and his continuing failure to meet that obligation. This is precisely the kind of inaction coexisting with the lawyer's awareness of his obligations that takes Respondent's failures from mere negligence to an intentional violation. *In re Ukwu*, *supra*, 926 A.2d at 1116 (neglect "ripens into an intentional violation . . . when a lawyer's inaction coexists with an awareness of his obligations to his client") (citing *In re O'Donnell*. 517 A.2d 1069, 1072 (D.C. 1986) (adopting appended Board Report)).

F. Respondent Violated Rule 1.3(b)(2) in Count IV (Currie)

Disciplinary Counsel contends that Respondent violated Rule 1.3(b)(2) in Count IV when he failed to prepare and file a civil complaint in federal court,[11] despite recognizing the need to do so. ODC Br. at 40.

For the reasons set out below, although we believe it is a close question on the issue of the necessary prejudice, we find that Disciplinary Counsel has proved by clear and convincing evidence that Respondent violated this Rule.

[11] Disciplinary Counsel mistakenly contends that Respondent violated this rule by failing to file the promised complaint with the court. ODC Br. at 40 ("Respondent nevertheless failed to prepare *and file* the complaint as promised . . . .") (emphasis added). In fact, Respondent never agreed to file the complaint. Respondent's arrangement with Mr. Currie was that he would prepare the complaint in final form for Mr. Currie to file either *pro se* or using other counsel, because, as he explained to Mr. Currie, he was not licensed in Virginia and was not admitted to practice before the Alexandria federal court. FOF ¶ 201.

Rule 1.3(b)(2) provides that a lawyer shall not intentionally "prejudice or damage a client during the course of the professional relationship." "Proof of actual intent to harm . . . is not necessary to establish a violation of Rule 1.3(b)(2); but [Disciplinary Counsel] must establish that the attorney 'knowingly created a grave risk' that the client would be financially harmed and understood that financial damage was 'substantially certain to follow from his conduct.'" *In re Wright*, Bar Docket Nos. 377-99. 10-00, 294-00 & 20-01 at 24-25 (BPR Apr. 14, 2004) (quoting *In re Robertson*, 612 A.2d 1236, 1250 (D.C. 1992) (appended Board Report)), *findings and recommendation adopted*, 885 A.2d 315, 316 (D.C. 2005) (*per curiam*). A violation of Rule 1.3(b)(2) cannot be sustained "unless there is actual prejudice or damage to the client." *In re Cohen*, 847 A.2d 1162, 1165 n.1 (D.C. 2004) (*per curiam*); *see, e.g.*, *In re Robertson*, 612 A.2d 1236, 1250 (D.C. 1992) (appended Board Report) (finding intentional damage to a client where the respondent failed to file a client's tax returns before the deadline, thus forfeiting the client's requests for tax refunds).

The cases finding a Rule 1.3(b)(2) violation have involved actual damage or prejudice to the client's legal position. Where inaction is the basis of the claimed Rule 1.3(b)(2) violation, the key requirement to support a finding of actual prejudice or damage is that the attorney's inaction worsened the client's legal position. Actual

prejudice has been found, for example, when the attorney's inaction (1) precluded the client's claims for income tax refunds that lawyer failed to timely file (*In re Robertson*, 612 A.2d 1236, 1250 (D.C. 1992) (appended Board report)); (2) prolonged his client's incarceration by failing to appear for status conferences (*In re Samad*, 51 A.3d 486, 498 (D.C. 2012) (because of lawyer's inaction, client "was imprisoned unnecessarily for a prolonged period of time")); (3) caused the forfeiture of more than $47,500 in clients' deposits on tax sale properties by failing to timely file required complaints (*In re Stewart*, 953 A.2d 1034, 1035 (D.C. 2008)); or (4) caused the dismissal of a client's appeal from the denial of her asylum application by failing to file a brief in support of her appeal (*In re Ukwu*, 926 A.2d 1106, 1138-39 (D.C. 2007) (appended Board report)).

Here, Respondent's failure to provide the promised "ready-to-file" federal court complaint when promised caused actual prejudice to Mr. Currie's legal position. Respondent's inaction forced Mr. Currie, who had no legal training, either to incur the additional cost of retaining other counsel, or to spend his time preparing and filing his own complaint *pro se*. Mr. Currie had paid Respondent to render a legal service that was absolutely essential to protect Mr. Currie's interests: provide a proper complaint for filing before the statute of limitations would run and forever bar Mr. Currie's discrimination claims. If Mr. Currie had not acted to mitigate the

prejudice from Respondent's failure to provide the promised complaint, either the statute of limitations would have run, or Mr. Currie would have been forced to file the defective, inadequate complaint that Respondent provided the day before the statute of limitations would have run. In either case, but for Mr. Currie's mitigation efforts, his legal position would have suffered actual prejudice.

While this actual prejudice may not ultimately have been as severe as the prejudice suffered in the previously cited cases, we believe that it is sufficient to support a finding that Respondent violated Rule 1.3(b)(2). As in *In re Wright*, *supra*, Respondent by his inaction "knowingly created a grave risk" that Mr. Currie would suffer actual prejudice, and necessarily understood that such prejudice was "substantially certain to follow from his conduct." *In re Wright*, *supra*, Bar Docket Nos. 377-99, 10-00, 294-00 & 20-01, at 24-25 (citations omitted).

Therefore, we find that Disciplinary Counsel has proved by clear and convincing evidence that Respondent violated Rule 1.3(b)(2).

G. Respondent Violated Rules 1.4(a) and 1.4(b) in Count I (Sagars) and Rule 1.4(a) in Count IV (Currie)

Disciplinary Counsel contends that Respondent violated Rules 1.4(a) and 1.4(b) by failing to provide "meaningful, complete, and accurate information" to the Sagars and Mr. Currie about the status of their cases. ODC Br. at 42.

We find that Disciplinary Counsel has proved by clear and convincing evidence that Respondent violated both Rule 1.4(a) and Rule 1.4(b) in his representation of the Sagars (Count I), but violated Rule 1.4(a) only (and not Rule 1.4(b)) in his representation of Mr. Currie (Count IV).

Rule 1.4(a) requires that "[a] lawyer shall keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information." Under Rule 1.4(a), an attorney must not only respond to client inquiries, but must also initiate communications to provide information when necessary. *In re Hallmark*, 831 A.2d 366, 374 (D.C. 2003) (citing Rule 1.4(a), cmt [1]); *In re Bernstein*, 707 A.2d 371, 376 (D.C. 1998). The purpose of this Rule is to enable clients to "participate intelligently in decisions concerning the objectives of the representation and the means by which they are to be pursued." Rule 1.4(a), cmt. [1]. In determining whether Disciplinary Counsel has established a violation of Rules 1.4(a) and 1.4(b), the question is whether Respondent fulfilled his clients' reasonable expectations for information. See *In re Schoeneman*, 777 A.2d 259, 264 (D.C. 2001).

Similarly, Rule 1.4(b) states than an attorney "shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation." This Rule provides that the attorney "must be

particularly careful to ensure that decisions of the client are made only after the client has been informed of all relevant considerations." Rule 1.4(b), cmt. [2]. The Rule places the burden on the attorney to "initiate and maintain the consultative and decision-making process if the client does not do so and [to] ensure that the ongoing process is thorough and complete." *Id*.

1. The Sagars (Count I)

In both of the cases that Respondent filed on the Sagars' behalf, he failed to inform them that the Government had filed dispositive motions to dismiss their case, that they were required by the court's rules or court order, or both, to file a response to the Government's motion, that he did not intend to prepare or file a response, that he did not file a response, or that, as a result of his failure to respond on their behalf, the Court had dismissed their case. See FOF ¶¶ 59, 66, 70 (District Court action); *id.* ¶ 97 (CFC action).

In addition, in response to repeated questions from the Sagars about what was happening in their cases, Respondent gave them false reassurances to the effect that he had not heard anything, that they should have patience, and that it would take time before they heard from the Court. FOF ¶¶ 71 (District Court action), 98 (CFC action).

In short, his violation was not simply failing to inform them of the adverse

developments in their case, but also affirmatively acting to conceal his inaction. During the period that Respondent was making false representations to conceal his own inaction and the resulting jeopardy for the Sagars' legal claims, Respondent received a total of $43,947.70 in retainer payments and court filing fees from Pixl. Table 1 (Appendix 1); FOF ¶¶ 72 (District Court action), 99 (CFC action).

Respondent's violation of Rule 1.4(a)'s requirements to keep the Sagars "reasonably informed about the status" of their matter, and to "promptly comply" with their reasonable requests for information is clear and unmistakable. Respondent's violation of Rule 1.4(b) is equally clear. He failed to explain to the Sagars either that their claims were in jeopardy of being dismissed or that they had in fact been dismissed, and thus denied them any opportunity to take action to preserve their claims (for example, by discharging him and finding new legal representation, by moving for reconsideration of the dismissals, or by challenging the dismissals by timely appeals). In this way, he denied them the opportunity that Rule 1.4(b) expressly guarantees: the opportunity "to make informed decisions regarding the representation."

2. Mr. Currie (Count IV)

Respondent also violated Rule 1.4(a) in his representation of Mr. Currie. Respondent agreed to prepare and provide a federal court discrimination complaint

in final form by a date certain (July 25, 2011) for Mr. Currie to file in federal court. Although Respondent stated he did not believe that Mr. Currie's employment was in jeopardy, he knew that Mr. Currie believed his firing was imminent and wanted to file the complaint before he could be fired. FOF ¶¶ 198, 202.

Although Respondent knew that time was of the essence, he did not provide the complaint on the agreed-upon date (July 25, 2011). As previously noted, Mr. Currie made repeated efforts to contact Respondent, calling and leaving telephone messages for him every other day and sending him e-mail messages. FOF ¶ 206. For almost three weeks, Respondent never responded to Mr. Currie's efforts to contact him. See p. 135 above. He then told Mr. Currie the complaint was ready, and then failed to provide it when they met at Respondent's house. Mr. Currie ultimately had to prepare and file his own complaint.

Respondent violated Rule 1.4(a) because he failed to keep Mr. Currie reasonably informed about the preparation of the promised complaint, and, for almost three weeks, failed to respond to any of Mr. Currie's requests for information even though both he and Mr. Currie knew that the statute of limitations would forever bar Mr. Currie's claims in a matter of days.

We do not find clear and convincing evidence, however, that Respondent violated Rule 1.4(b) in his representation of Mr. Currie. Disciplinary Counsel

contends that Respondent violated this rule by failing to explain Mr. Currie's matter to him "sufficiently clearly to permit [him] to make informed decisions." ODC Br. at 43. Respondent's failure of communication regarding Mr. Currie was not his lack of clarity in any explanation about Mr. Currie's legal matter, but his failure to respond at all, which is a violation of Rule 1.4(a), not Rule 1.4(b). Mr. Currie was not deprived of any explanation he might have needed in order to make an informed decision regarding the representation. The only informed decision he was required to make was whether to rely on Respondent to produce the agreed-upon complaint. Respondent's failure to inform Mr. Currie of his progress (or lack of progress) in preparing the complaint violated Rule 1.4(a), not Rule 1.4(b).

H. Respondent Violated Rule 1.5(a) in Counts I (Sagars) and IV (Currie)

Disciplinary Counsel contends that Respondent violated Rule 1.5(a) by charging the Sagars and Mr. Currie unreasonable fees, and by failing to provide information that would have provided a basis for charging those amounts. ODC Br. at 44.

We find that Disciplinary Counsel has proved by clear and convincing evidence that Respondent violated Rule 1.5(a) in his representation of the Sagars and Mr. Currie.

Rule 1.5(a) provides:

> A lawyer's fee shall be reasonable. The factors to be considered in determining the reasonableness of a fee include the following:
>
> (1) The time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;
>
> (2) The likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer;
>
> (3) The fee customarily charged in the locality for similar legal services;
>
> (4) The amount involved and the results obtained;
>
> (5) The limitations imposed by the client or by the circumstances;
>
> (6) The nature and length of the professional relationship with the client;
>
> (7) The experience, reputation, and ability of the lawyer or lawyers performing the services; and
>
> (8) Whether the fee is fixed or contingent.

"The prototypical circumstance of charging an unreasonable fee is undoubtedly one in which an attorney did the work that he or she claimed to have done, but charged the client too much for doing it." *In re Cleaver-Bascombe*, 892 A.2d 396, 403 (D.C. 2006). However, "[i]t cannot be reasonable to demand payment for work that an

attorney has not in fact done." *Id.* Moreover, as the Court of Appeals has noted, "an attorney earns fees only by conferring a benefit on or performing a legal service for the client." *In re Mance*, 980 A.2d 1196, 1202 (D.C. 2009) (quoting *In re Sather*, 3 P.3d 403, 410 (Colo. 2000)).

1. The Sagars (Count I)

The fee that Respondent charged to the Sagars was clearly unreasonable. Respondent's representation of the Sagars and Pixl lasted approximately two and a half years (from December 2005 through May 2008). Table 1 (Appendix 1). Respondent's fee for this representation was almost $90,000 ($88,887.70). FOF ¶ 13 & Table 1 (Appendix 1).

Respondent's efforts did not promote or advance the Sagars' legal interests or claims in any respect. To the contrary, Respondent's filing and neglecting two lawsuits (one in the U.S. District Court and the other in the U.S. Court of Federal Claims), and his filing of an untimely appeal to the CBCA, destroyed the Sagars' claims without any possibility of revival. For Respondent to charge any fee at all for his wholesale destruction of the Sagars' claims would be unreasonable on its face and a violation of Rule 1.5(a).

We do not suggest that no fee can be reasonable if a lawyer's efforts are ultimately unsuccessful. In this case, however, due to Respondent's failure to

respond, the Sagars' legal rights were forfeited in their entirety. No client should be required to pay a fee for such a failed representation due to the attorney's misconduct.

2. Mr. Currie (Count IV)

As set forth above, Mr. Currie paid Respondent $900 to draft and provide an employment discrimination complaint in final form three days later that would be ready for Mr. Currie to file in federal court in Virginia.

Respondent was paid $900 to provide a federal court discrimination complaint that was timely and ready to file. He did neither. He provided no complaint at all for more than 30 days and then provided a deficient complaint that was a far cry from the ready-to-file complaint he had promised to provide. Respondent failed to provide any benefit to Mr. Currie. The fee Respondent charged was plainly unreasonable for the deficient legal services that Respondent provided to Mr. Currie.

We find that Disciplinary Counsel has proved by clear and convincing evidence that Respondent violated Rule 1.5(a) in his representation of the Sagars and Mr. Currie.

I. Respondent Violated Rule 1.5(b) in Count IV (Currie)

Disciplinary Counsel contends that Respondent violated Rule 1.5(b) by failing to provide to Mr. Currie within a reasonable time a retainer agreement or other writing setting forth the basis or rate of his fee. ODC Br. at 49.

We find that Disciplinary Counsel has proved by clear and convincing evidence that Respondent violated Rule 1.5(b) in his representation of Mr. Currie.

Rule 1.5(b) provides that "[w]hen the lawyer has not regularly represented the client, the basis or rate of the fee, the scope of the lawyer's representation, and the expenses for which the client will be responsible shall be communicated to the client, in writing, before or within a reasonable time after commencing the representation." Comment [1] explains that "[i]n a new client-lawyer relationship . . . an understanding as to the fee should be promptly established, together with the scope of the lawyer's representation and the expenses for which the client will be responsible." Rule 1.5, cmt. [1]. While "[i]t is not necessary to recite all the factors that underlie the basis of the fee," the written communication should include the factors "that are directly involved in its computation." *Id.* Thus, "[i]t is sufficient . . . to state that the basic rate is an hourly charge or a fixed amount or an estimated amount, or to identify the factors that may be taken into account in finally fixing the fee." *Id.* But, if "developments occur during the representation that render an earlier

estimate substantially inaccurate, a revised estimate should be provided to the client." *Id.*

While a writing is required, "[u]nless there are unique aspects of the fee arrangement, the lawyer may utilize a standardized letter, memorandum, or pamphlet explaining the lawyer's fee practices, and indicating those practices applicable to the specific representation." Rule 1.5, cmt. [2]. For example, a lawyer's hourly rate publication should "explain applicable hourly billing rates . . . and indicate what charges (such as filing fees, transcript costs, duplicating costs, long-distance telephone charges) are imposed in addition to hourly rate charges." *Id.*

There is no dispute that Respondent had not regularly represented Mr. Currie, or that Respondent failed to provide any communication in writing to him, either at the July 22, 2011 meeting or at any other time, regarding the basis or rate of the fee Respondent was charging, the scope of his representation of Mr. Currie, or the expenses for which Mr. Currie would be responsible. FOF ¶ 204. As previously noted, on August 15, 2011, three weeks after the July 22 meeting, Respondent attempted to persuade Mr. Currie to agree to a written agreement that would have modified the fee amount and scope of the representation (increasing the fee by $1,800 (from $900 to $2,700)) and would have extended the deadline that

Respondent had agreed to (but had already missed) for the delivery of the promised complaint (from July 25, 2011 to August 26, 2011). *Id.* ¶¶ 210-13. Mr. Currie declined to agree to change the existing agreement. *Id.* ¶ 213.

As a result, the oral agreement reached at the July 22 meeting remained in effect, without Respondent's ever providing a writing that communicated the essential terms of that unmodified representation agreement to Mr. Currie.

Because Respondent had not regularly represented Mr. Currie before, Rule 1.5(b) by its terms required Respondent to provide the written communication regarding the basic terms of the representation either "before, or within a reasonable time after commencing" the representation. Rule 1.5(b). Respondent did neither: he never provided the required written communication at any time. Respondent's proposing a written revision to the previous oral agreement, almost three weeks after Respondent had previously agreed to complete the representation (by providing the promised federal court discrimination complaint), a revision that Mr. Currie rejected, could not reasonably relieve Respondent of his obligation to provide the required written communication regarding the original agreement.

Therefore, we find that Disciplinary Counsel has proved by clear and convincing evidence that Respondent violated Rule 1.5(b) in his representation of Mr. Currie.

J. Respondent Violated Rule 1.15(b) in Count I (Sagars)

Disciplinary Counsel contends that Respondent violated Rule 1.15(b) by failing to provide an accounting of fees to the Sagars upon request. ODC Br. at 46.

We find that Disciplinary Counsel has proved by clear and convincing evidence that Respondent violated Rule 1.15(b) in the Sagars representation.

Rule 1.15(b) provides, in relevant part: "Except as stated in this rule or otherwise permitted by law or by agreement with the client, [1] a lawyer shall promptly deliver to the client . . . any funds or other property that the client . . . is entitled to receive and, [2] upon request by a client . . . , a lawyer shall promptly render a full accounting regarding such property, subject to Rule 1.6." Rule 1.15(b).[12]

In the Sagars' August 4, 2008 letter terminating Respondent's representation, they made a written request for an accounting. They asked him to "provide the breakdown of all the work that you did relating to the [retainer] agreement that you signed." FOF ¶ 121. Under the terms of the retainer agreement, the monthly payments to Respondent ($3,600 per month) were an "Advance Payment."

[12] As previously noted, Rule 1.15(b) was recodified as Rule 1.15(c) on February 1, 2007. For ease of reference and because the Rule 1.15(b) amendment did not make a substantive change, we refer to the Rule as charged by Disciplinary Counsel

FOF ¶ 22. Respondent never provided any accounting to the Sagars regarding the work he had done, for which the Sagars had paid him almost $89,000. FOF ¶¶ 122, 13 (total amount of fees paid was $88,870.70).

As a result, we find that Disciplinary Counsel has proved by clear and convincing evidence that Respondent violated Rule 1.15(b). The Sagars requested an accounting of the almost $89,000 they paid him as advance payments of fees. Respondent never provided any accounting of any sort. FOF ¶ 122.

K. Disciplinary Counsel Failed to Prove by Clear and Convincing Evidence That Respondent Violated Rule 1.15(e) in Count IV (Currie) by Failing to Maintain in Trust the Unearned Fee That Mr. Currie Had Paid

In its brief, Disciplinary Counsel contends that Respondent violated Rule 1.15(e) by failing to refund to Mr. Currie fees that Respondent had not earned. ODC Br. at 46-47.

But that is not the violation that Disciplinary Counsel charged in this case. In the Amended Specification, Disciplinary Counsel never alleged that Respondent had failed to refund unearned fees to Mr. Currie. Instead, the only violation alleged in the Amended Specification was that Respondent had violated Rule 1.15(e) "in that Respondent failed to maintain in trust the unearned fee that Mr. Currie paid." Amended Specification at 19 ¶ 74.J. Even in its brief, Disciplinary Counsel

continued to contend that Respondent violated Rule 1.15(e) by "fail[ing] to maintain Mr. Currie's unearned fees in trust until he had performed the services for which he had been paid." ODC Br. at 45 ¶ III.A (initial capitalization omitted); *id.* at 32 (in "Overview," Disciplinary Counsel contends that Respondent's violation was his "failure to maintain unearned fee in trust (Rule 1.15(e)) (Currie)").

An attorney charged with a disciplinary violation is "entitled to procedural due process, which includes fair notice of the charges against him [or her]." *In re Winstead*, 69 A.3d 390, 397 (D.C. 2013) (quoting *In re Bialec*, 755 A.2d 1018, 1024 (D.C. 2000)). This requires notice of "the specific rules [the attorney] allegedly violated, as well as *notice of the conduct underlying the alleged violations*." *Winstead*, *supra*, 69 A.3d at 397 (emphasis added).

We recognize that Disciplinary Counsel is permitted to make minor changes in the legal theory of violation asserted. For example, a change in the legal theory of violation asserted (from "theft by trick" to "theft by conversion") did not deprive the attorney of due process, because the specification alleged "theft" without elaboration, and the violation was based on the same underlying conduct. *In re Slattery*, 767 A.2d 203, 211-12 (D.C. 2001). But changing the underlying conduct that allegedly constitutes the violation is not permitted, even where, as here,

Disciplinary Counsel alleges that the different underlying conduct violated the same disciplinary rule.

In *In re Thorup*, 432 A.2d 1221 (D.C. 1981), the attorney was charged with neglecting a client matter based on allegations in the specification of charges that he had failed to prepare a defense for his client in a criminal matter. The charge was sustained based upon the attorney's inadequate notes and memory of the particular criminal case. The Court dismissed the petition against the respondent attorney for several reasons, including that the "gravamen of the charge" against the attorney had impermissibly changed to "an assumed misconduct neither charged nor founded in the Disciplinary Rules." *Id.* at 1225.

Therefore, it would violate Respondent's due process rights to sustain the violation of Rule 1.15(e) that Disciplinary Counsel alleges here. There was no proof that Respondent had failed to maintain in trust the unearned fee that Mr. Currie paid, the only violation alleged in the Amended Specification. Although the record contains a photocopy of Mr. Currie's $900 check that reflects that it was deposited and paid (DCX 4 at 19-20), there is no evidence demonstrating that the account into which it was deposited was not a trust account.

The only proof proffered by Disciplinary Counsel to support the alleged violation of Rule 1.15(e) was that Respondent failed to refund the $900 fee that Mr.

Currie paid. ODC Br. at 47. That was not the conduct that Disciplinary Counsel had claimed violated this Rule, however. Respondent had the right to fair notice that this was the violation alleged (*i.e.*, a failure to refund), but no such notice was provided.

Consequently, we find that Disciplinary Counsel failed to prove by clear and convincing evidence that Respondent violated Rule 1.15(e) by failing to maintain in trust the unearned fee that Mr. Currie paid.[13]

L. Disciplinary Counsel Failed to Prove by Clear and Convincing Evidence That Respondent Violated Rule 7.1(a) in Count IV (Currie)

In the Amended Specification, Disciplinary Counsel had charged that Respondent had made false or misleading communications about his services in

[13] In the interests of completeness, we note that, if Disciplinary Counsel had alleged that Respondent violated Rule 1.15(e) by failing to refund unearned fees to Mr. Currie, we would have found that Disciplinary Counsel had proved that violation by clear and convincing evidence. The $900 fee that Mr. Currie paid was a flat fee. FOF ¶ 203. The payment of a flat fee at the beginning of a representation is an "advance of unearned fees," and must be held in trust as property of the client unless the client consents to a different arrangement. *In re Mance*, 980 A.2d 1196, 1202 (D.C. 2009). Mr. Currie never consented to a different arrangement. FOF ¶ 205. Because Respondent failed to render timely and adequate legal services to earn the flat fee that Mr. Currie paid, Respondent's failure to return the unearned portion of the fee to Mr. Currie violated Rule 1.15(e). *In re Brown*, 912 A.2d 568, 570 (D.C. 2006) (violation found in failure to perform anticipated work and return unearned fee).

violation of Rule 7.1(a) because he (1) made a material representation of fact (that he was able to provide the services Mr. Currie sought within the short time frame that Mr. Currie required), and (2) made statements that could not be substantiated (that he could provide the federal court discrimination complaint to Mr. Currie within that same required time frame). Amended Specification at 19 ¶ 74.K. In its brief, Disciplinary Counsel stated that it had not adduced clear and convincing evidence to prove the violation. ODC Br. at 31 n.8.[14]

Rule 7.1(a) provides that:

> A lawyer shall not make a false or misleading communication about the lawyer or the lawyer's services. A communication is false or misleading if it:
>
> (1) Contains a material misrepresentation of fact or law, or omits a fact necessary to make the statement considered as a whole not materially misleading; or
>
> (2) Contains an assertion about the lawyer or the lawyer's services that cannot be substantiated.

[14] Disciplinary Counsel does not have the authority to unilaterally drop allegations of misconduct approved by a Contact Member. *See In re Drew*, 693 A.2d 1127, 1132-33 (D.C. 1997) (*per curiam*) (appended Board Report) ("it is incumbent upon the Board to determine" whether all charged Rule violations are proved by clear and convincing evidence); *In re Reilly*, Bar Docket No. 102-94 at 4 (BPR July 17, 2003) (concluding that Disciplinary Counsel did not have the authority to dismiss charges approved by a Contact Member). Thus, we have reviewed the record to determine whether there is clear and convincing evidence to support a finding that Respondent violated Rule 7.1(a).

Rule 7.1(a).

We agree with Disciplinary Counsel that it failed to prove by clear and convincing evidence that Respondent violated Rule 7.1(a) in his communications with Mr. Currie. There was no evidence that it would have been impossible for Respondent to have provided the promised federal court discrimination complaint in ready to file form within three days as Respondent had promised. For the same reason, there was no evidence that Respondent's statement (that he could provide the complaint within this short time frame) could not be "substantiated."

Therefore, we find that Disciplinary Counsel has failed to prove by clear and convincing evidence that Respondent violated Rule 7.1(a).

M. Respondent Violated Rule 8.1(b) in Counts I-VI

Disciplinary Counsel contends that Respondent's "prolonged refusals to cooperate with Disciplinary Counsel's investigations" in each of the six counts in the July 1 Amended Specification 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 an ethical complaint

constitutes a violation of Rule 8.1(b). *See, e.g.*, *In re Beller*, 802 A.2d 340 (D.C. 2002) (*per curiam*) (failure to respond to Disciplinary Counsel inquiries and Board orders violated Rule 8.1(b)). Failure to comply with Board orders also violates Rule 8.1(b). *In re Edwards*, 990 A.2d 501, 525 (D.C. 2010) (citing *In re Cater*, 887 A.2d 1, 17 (D.C. 2005), and *In re Beller*, *supra*) (amended Board report)). As the Board has noted, "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 38 n.20 (BPR Oct. 28, 2002).

We find that Disciplinary Counsel has proved by clear and convincing evidence that Respondent repeatedly violated Rule 8.1(b). In Table 2: Summary of Respondent's Failures to Respond (attached as Appendix 2), we summarize our previous findings of fact regarding Respondent's many failures to respond reasonably to Disciplinary Counsel inquiries, subpoenas, Board orders, and Court of Appeals orders. It is not a pretty sight.

As reflected in Table 2, Respondent failed to respond reasonably to a total of seven separate Disciplinary Counsel inquiries (Counts I (2 inquiries), II, III, IV, V, and VI), five subpoenas (Counts I (2 separate subpoenas), II, III, and IV), and an order issued by the Board in two separate investigations (Counts V and VI). See Table 2. Each of these inquiries, subpoenas, and the Board order was a legitimate

inquiry and a lawful demand for information from a disciplinary authority.

Respondent never provided any substantive response to most of these inquiries. He never responded at all to the inquiries and Board order in Counts V (Khoury and Baker) and VI (Saxon). Respondent's only response to the inquiries relating to Counts II (Turley) and III (SunTrust IOLTA) was a reference in the "Re" line of his March 22, 2012 letter to the allegedly "false charges" in these two docket numbers (2011-D295 (Turley) and 2011-D422 (SunTrust IOLTA)). FOF ¶¶ 170 (Turley), 184 (SunTrust IOLTA). The rest of his March 22 letter made no mention of these two investigations, but instead, made the bizarre claim that Disciplinary Counsel had engaged in a criminal enterprise racketeering scheme (involving mail fraud, wire fraud, and a RICO violation) by allegedly interfering two years before with Respondent's application to appear *pro hac vice* in a criminal case in the United States District Court for the Western District of Kentucky. FOF ¶ 153.

In the two remaining counts (Count I (Sagars) and IV (Currie)), his response consisted solely of attacks on the complainants without either any substantive response to the specific inquiries or the production of the documents required by the subpoenas. FOF ¶¶ 152, 156, 158-59, 161 (Sagars); *id.* ¶¶ 223, 226-29 (Currie).

Accordingly, we find that Disciplinary Counsel has proved by clear and convincing evidence that Respondent violated Rule 8.1(b) in Counts I-VI.

N. Respondent Violated Rule 8.4(c) in Count I (Sagars), but Not in Count IV (Currie)

Disciplinary Counsel contends that Respondent violated Rule 8.4(c) because he was dishonest in misleading the Sagars and Mr. Currie into believing that he was working on their cases without performing any meaningful work on them. ODC Br. at 47-48.

Rule 8.4(c) provides: "It is professional misconduct for a lawyer to . . . [e]ngage in conduct involving dishonesty, fraud, deceit, or misrepresentation . . . ." Dishonesty is the most general category in Rule 8.4(c), defined as:

> . . . fraudulent, deceitful or misrepresentative behavior [and] conduct evincing a lack of honesty, probity or integrity in principle; [a] lack of fairness and straightforwardness . . . . Thus, what may not legally be characterized as an act of fraud, deceit or misrepresentation may still evince dishonesty.

In re Shorter, 570 A.2d 760, 767-68 (D.C. 1990) (*per curiam*) (internal quotation marks and citation omitted); *see also In re Scanio*, 919 A.2d 1137, 1142-43 (D.C. 2007) (quoting *In re Shorter*, *supra*).

Dishonesty in violation of Rule 8.4(c) does not require proof of deceptive or fraudulent intent. *In re Romansky*, 825 A.2d 311, 315 (D.C. 2003). Thus, when the dishonest conduct is "obviously wrongful and intentionally done, the performing of the act itself is sufficient to show the requisite intent for a violation." *Id.* at 315. But,

"when the act itself is not of a kind that is clearly wrongful, or not intentional, [Disciplinary Counsel] has the additional burden of showing the requisite dishonest intent." *Id*. (citations omitted)

A violation of Rule 8.4(c) may also be established by sufficient proof of recklessness. *See id*. at 317. To prove recklessness, Disciplinary Counsel must prove by clear and convincing evidence that the respondent "consciously disregarded the risk" created by his actions. *Id.*

We find that Disciplinary Counsel has proved by clear and convincing evidence that Respondent violated Rule 8.4(c) in his representation of the Sagars, but not in his representation of Mr. Currie.

1. The Sagars (Count I)

The clear and convincing evidence shows that Respondent continued to collect his monthly retainer ($3,600 per month after May 2007) while he took no action to advance the Sagars' interests in the District Court action or the CFC action. Instead, while continuing to receive the Sagars' monthly retainer payments, he made no effort in either case to respond to the Government's motions to dismiss, or, in the CFC action, to respond to repeated court orders that first granted him an extension of time to respond and then ordered him to show cause why the case should not be dismissed for lack of prosecution. Instead, he did nothing, and never told the Sagars

that their claims were about to be forfeited due to his inaction. As a result, both cases were dismissed.

Respondent engaged in conduct involving dishonesty in violation of Rule 8.4(c). His conduct plainly "evince[d] a lack of honesty, probity or integrity in principle; a lack of fairness and straightforwardness." *In re Shorter*, *supra*, 570 A.2d at 767. Respondent continued to accept his $3,600 retainer each month without doing any work and without communicating to his clients the most basic information about his representation of their interests: that their claims were subject to dismissal because of his own inaction. Respondent's lack of honesty, probity, integrity, fairness, and straightforwardness could not be clearer. Respondent's continuing to receive payments for legal services that Respondent was knowingly and intentionally not providing while knowingly and intentionally concealing his inaction from his clients constituted dishonesty in violation of Rule 8.4(c).

Respondent was well aware of what needed to be done to prosecute the Sagars' claims in both the District Court action and the CFC action. In the District Court action, he asked Government counsel to agree to an extension of time within which to respond to the Government's motion to dismiss or transfer. FOF ¶ 62. Even though Government counsel agreed to the extension, Respondent never asked the Court for additional time. *Id.* In the CFC action, the Court's own docket entry told

Respondent when his response to the Government's motion to dismiss was due. *Id.* ¶ 87. Consequently, there can be no question that Respondent's dishonesty was knowing and intentional.

We recognize that, as noted above, when the acts constituting the dishonest conduct are not "clearly wrongful or not intentional," a showing of dishonest intent is required for the conduct to constitute "dishonesty" in violation of Rule 8.4(c). *In re Romansky*, *supra*, 825 A.2d at 315. On the facts here, Respondent's dishonest conduct was clearly intentional: he knew what had to be done to preserve the Sagars' claims, he knew that he was not doing what was required, he knew that he was receiving a monthly retainer to do what was required, he knew that, if he disclosed his failures, the retainer would stop, and he made the conscious choice to tell the Sagars nothing. This is intentional dishonesty, plain and simple.

2. **Respondent's False Statements Denying the Dismissal of the Sagars' Case**

Respondent's proven misconduct was not limited to silence, however. Instead, he affirmatively and repeatedly misled the Sagars about the status of their cases. In response to their repeated questions, Respondent falsely told them that he had not heard anything from the court (FOF ¶¶ 71 (District Court action), 98 (CFC action)), when, in fact, he had received electronic notification of every development in each case: every motion, every notice, every filing by the Government, every court order, and both dismissals. See pp. 133-34 above. And when the Sagars ultimately learned that both of their cases had been dismissed, and asked Respondent if this was true, Respondent falsely denied that the cases had been dismissed. FOF ¶¶ 104-05 (Respondent said "no, this is not true, nothing has happened, the cases are still

going," and that the Government was "lying" about the cases having been closed).

Although the Amended Specification charged Respondent with "dishonesty, fraud, deceit, and/or misrepresentation" in violation of Rule 8.4(c) (Amended Specification at 8 ¶ 29.J), and specifically mentioned Respondent's failure to tell the Sagars that he had not made the necessary filings to keep their cases from being dismissed (*id.* at 4 ¶ 10), Disciplinary Counsel states these false statements by Respondent were not charged as a violation of Rule 8.4(c) in the Amended Specification. ODC Br. at 48. Thus, we consider this misconduct only in aggravation of sanction pursuant to *In re Martin*, 67 A.3d 1032, 1050 n.21 (D.C. 2013) (considering false statements on a bar application only as an aggravating factor in sanction determination because Disciplinary Counsel failed to include the charge in the specification of charges).

3. Mr. Currie (Count IV)

We find that Disciplinary Counsel failed to prove by clear and convincing evidence that Respondent's conduct in his representation of Mr. Currie was dishonest in violation of Rule 8.4(c).

According to Disciplinary Counsel, Respondent's dishonest conduct consisted of "deceptively" promising that Mr. Currie could pick up the finished complaint that Respondent had not yet drafted and attempting "retroactively to change" the deadline for the completion of the complaint from the three days initially

agreed upon to approximately a month later. ODC Br. at 48. But there is nothing inherently dishonest in a lawyer's attempting to reach agreement with a client on a new deadline after missing a deadline. Similarly, a lawyer's telling a client that work had been completed but failing to produce the completed work, without more, is insufficient evidence of dishonesty without a showing of a dishonest intent.

To sustain a violation of Rule 8.4(c) on these facts, Disciplinary Counsel would have to demonstrate the "requisite dishonest intent" by clear and convincing evidence. *In re Romansky*, *supra*, 825 A.2d at 315. Respondent may have changed his mind, and decided that he needed to do some additional work on the complaint before he provided it to Mr. Currie. Respondent's telling Mr. Currie the complaint was ready, but later stating it was not ready, is not conduct "of a kind that is clearly wrongful," *In re Romansky*, *supra*, nor is there any evidence that Respondent's conduct was intentionally dishonest in this respect.

Consequently, we find that Disciplinary Counsel has failed to prove by clear and convincing evidence that Respondent engaged in dishonest conduct in violation of Rule 8.4(c) in his representation of Mr. Currie.

O. Respondent Violated Rule 8.4(d) in Counts I-VI

Disciplinary Counsel contends that Respondent's "prolonged refusals to cooperate with Disciplinary Counsel's investigations" in each of the six counts in

the July 1 Specification violated Rule 8.4(d). ODC Br. at 54.

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 establish three separate elements. Disciplinary Counsel "must prove by clear and convincing evidence that (1) the attorney took improper action or failed to take required action; (2) the conduct involved bears directly on the judicial process in an identifiable case or tribunal; and (3) the conduct 'taint[s] the judicial process in more than a *de minimis* way' – it must at least 'potentially impact' the process 'to a serious and adverse degree.'" *In re Edwards*, 990 A.2d 501, 524 (D.C. 2010) (quoting *In re Hopkins*, 677 A.2d 55, 61 (D.C. 1996) (other citations omitted)).

Rule 8.4(d) is violated if the attorney's misconduct 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 Board constitutes a violation of Rule 8.4(d). Rule 8.4, cmt. [2] (Rule 8.4(d) prohibits "failure to cooperate with Disciplinary Counsel; failure to respond to Disciplinary Counsel's inquiries or subpoenas"). The rule also prohibits failure to comply with Board orders. *In re Edwards*, 990 A.2d 501, 525 (D.C. 2010) (citing *In re Cater*, *supra*, 887 A.2d at 17, and *In re Beller*, *supra*, 802 A.2d at 340).

We find that Disciplinary Counsel has proved by clear and convincing evidence that Respondent violated Rule 8.4(d) as alleged. As discussed above, Respondent repeatedly failed to respond to numerous Disciplinary Counsel inquiries, subpoenas, and Board orders. See pp. 157 *et seq.* above. Each of the Disciplinary Counsel letters, e-mails, subpoenas, and Board orders described above (see FOF ¶¶ 135, 136, 139, 140, 141, 145, 148, 162 (Count I), 166, 169 (Count II), 176, 181, 183, 185-86 (Count III), 222, 224 (Count IV), 232, 235 (Count V), and 241, 247 (Count VI)) was a legitimate inquiry by Disciplinary Counsel or the Board and a lawful demand for information from a disciplinary authority. Respondent's deliberate and persistent refusal to respond to Disciplinary Counsel's inquiries involved failing to respond in whole or in part to a total of at least 18 letters or e-mails from Disciplinary Counsel, 6 subpoenas, a Board order (in two matters), and 2 Court of Appeals orders. See Table 2 (Appendix 2).

Each of the three *Hopkins* factors is present here. The first two factors are easily satisfied, because Respondent was required to respond to these inquiries, and the inquiries bore directly on lawful disciplinary investigations that Disciplinary Counsel was conducting. The third *Hopkins* factor is also clearly present. Because of Respondent's intransigence, Disciplinary Counsel's lawful investigations into Respondent's handing of entrusted funds (in Counts I (Sagars), III (SunTrust

IOLTA), and IV (Currie)) and Respondent's representation of three other clients (in Counts II (Turley), V (Khoury and Baker), and VI (Saxon)) were wholly thwarted. Respondent's failures to respond brought the disciplinary process to a complete halt and prevented timely investigation of other, potentially more serious misconduct by Respondent. Unmistakably, Respondent's failures to respond had a "serious and adverse" effect upon the disciplinary process.

Accordingly, we find that Disciplinary Counsel has proved by clear and convincing evidence that Respondent violated Rule 8.4(d) by his failures to respond to Disciplinary Counsel letters, subpoenas, and Board and Court orders.

P. Respondent Violated D.C. Bar Rule XI, § 2(b)(3) in Counts I-V

Disciplinary Counsel contends that, by ignoring Court orders to comply with Disciplinary Counsel's subpoenas and a Board order directing him to respond to Disciplinary Counsel's inquiries, Respondent violated D.C. Bar R. XI, § 2(b)(3) in Counts I-V.[15] ODC Br. at 55. We find that Disciplinary Counsel has proved

[15] By inadvertence Disciplinary Counsel failed to charge Respondent with a Rule XI, § 2(b)(3) violation in Count VI (Saxon). ODC Br. at 32 n.10; *id.* at 55. Therefore, even though Respondent failed to comply with the Board's order to comply with the subpoenas in both Counts V and VI, we find a violation only as to Count V, the only Rule XI, § 2(b)(3) violation that Disciplinary Counsel charged. But, as permitted by *In re Martin*, *supra*, 67 A.3d at 1050 n. 21, we consider the failure to comply with the Board's order in Count VI as an aggravating circumstance in the determination of the appropriate sanction. See p. 197 below.

Respondent's violations of this Rule by clear and convincing evidence.

D.C. Bar R. XI, § 2(b)(3) provides that "[f]ailure to comply with any order of the Court or the Board pursuant to [Rule XI]" shall be a "groun[d] for discipline." Failure to comply with a Board order requiring an attorney to respond to Disciplinary Counsel inquiries constitutes a violation of Rule XI, § 2(b)(3). *In re Edwards*, *supra*, 990 A.2d at 525 (citations omitted) (appended Board report).

Respondent unmistakably violated Rule XI, § 2(b)(3) in Counts I – V. In Counts I (Sagars), II (Turley), and III (SunTrust IOLTA), he violated the Court of Appeals' order dated June 6, 2013, that required him to comply with Disciplinary Counsel's outstanding subpoenas in these Counts. FOF ¶¶ 164-65 (Count I), 172-73 (Count II), 189-91 (Count III). Similarly, in Count IV (Currie), he violated the Court of Appeals' order dated July 23, 2012 requiring him to comply with Disciplinary Counsel's subpoena. FOF ¶¶ 230-31. And in Count V (Khoury and Baker), he failed to comply with the Board's order dated March 4, 2013. FOF ¶ 248.

As a result, we find that Disciplinary Counsel has proved by clear and convincing evidence that Respondent violated D.C. Bar Rule XI, § 2(b)(3) in Counts I – V.

IV. CONCLUSIONS OF LAW: JUNE 30 SPECIFICATION

Respondent was convicted of three separate counts of misdemeanor failure to appear in violation of Va. Code § 19.2-128(C). FOF ¶¶ 249, 284. Respondent's criminal convictions resulted from his failure to appear for trial in Arlington County District Court on three separate occasions. In fact, Respondent also failed to appear for trial on a fourth occasion, in Arlington County Circuit Court (FOF ¶ 267), but he was never charged with, or convicted of, that offense.

These convictions raise a number of separate but related issues.

First, the Board referred this matter to a Hearing Committee "to determine: (1) whether Respondent's conviction involves moral turpitude under D.C. Code § 11-2503(a) on the facts in light of any aggravating or mitigating circumstances; and (2) what final discipline is appropriate in light of Respondent's conviction of a 'serious crime.'" Order, *In re Nolan*, Board Docket No. 12-BD-084 (Jan. 15, 2013), at 2. After considering all the facts relating to Respondent's multiple convictions, we recommend that the Board find that Respondent's convictions were for offenses that did not involve "moral turpitude" under D.C. Code § 11-2503(a). See pp. 171 *et seq.* below.

Second, we recommend that the Board determine that the offense committed by Respondent (misdemeanor failure to appear in violation of Va. Code § 19.2-

128(C)) constitutes a "serious crime" for purposes of D.C. Bar Rule XI, § 10(b). See pp. 178 *et seq.* below.

Finally, we find that Disciplinary Counsel has proved, by clear and convincing evidence, that the misconduct underlying Respondent's three convictions for violating Va. Code § 19.2-128(C) (and Respondent's fourth failure to appear that was not the subject of a criminal conviction) violated Rules 8.4(b) and 8.4(d). See pp. 185 *et seq.* below.

A. Respondent Did Not Commit a Crime Involving Moral Turpitude

Disciplinary Counsel has not charged that Respondent's convictions on three counts of misdemeanor failure to appear under Va. Code § 19.2-128(C) are convictions of a crime involving moral turpitude that would require disbarment under D.C. Code § 11-2503(a). But, because the Board referred this matter to this Hearing Committee to make a recommendation as to whether Respondent was convicted of a crime involving moral turpitude on the facts, we have considered this issue and recommend that the Board find that this offense did not constitute a crime involving moral turpitude on the facts.

The Court has defined moral turpitude as an "act denounced by the statute [that] offends the generally accepted moral code of mankind[,]" an act involving "baseness, vileness or depravity in the private and social duties which a man owes

to his fellow men or to society in general, contrary to the accepted and customary rule of right and duty between man and man," or an act "contrary to justice, honesty, modesty, or good morals." *In re Colson*, 412 A.2d 1160, 1168 (D.C. 1979) (*en banc*) (citations omitted).

Thus, in determining whether a given crime is one involving moral turpitude, we must "examine whether the prohibited conduct is base, vile or depraved, or whether society manifests a revulsion toward such conduct because it offends generally accepted morals." *In re Sims*, 844 A.2d 353, 361-62 (D.C. 2004). Ultimately, the question is "whether respondent's conduct 'offends the generally accepted moral code.'" *In re Spiridon*, 755 A.2d 463, 468 (D.C. 2000) (quoting *Colson*, *supra*, 412 A.2d at 1168). Disciplinary Counsel bears the burden of proving the existence of moral turpitude by clear and convincing evidence. *In re Allen*, 27 A.3d 1178, 1184 (D.C. 2011). Under this standard, Disciplinary Counsel must show that Respondent's conduct "[rose] to such a level that the legislature would have intended as a consequence the automatic disbarment of the attorney in question." *Id*. at 1185 (quoting *In re Spiridon*, *supra*, 755 A.2d at 468).

Although misdemeanor offenses "may not be denoted crimes of moral turpitude *per se*, they may constitute crimes of moral turpitude under 'the circumstances of the transgression,'" *i.e.*, on the facts. *In re Rehberger*, 891 A.2d

249, 252 (D.C. 2006) (quoting *In re Sims*, *supra*, 844 A.2d at 360 (citing *In re McBride*, 602 A.2d 626, 635 (D.C. 1992) (*en banc*))). In accordance with the procedures set forth in *Colson*, *supra*, 412 A.2d at 1168, the Hearing Committee must determine whether Respondent acted with moral turpitude when he committed the criminal act of misdemeanor failure to appear under Va. Code § 19.2-128(C). We must consider "evidence as to the circumstances of the crime including [Respondent's] knowledge and intention." *Colson*, *supra*, 412 A.2d at 1168; *see also Allen*, *supra*, 27 A.3d at 1184 (holding that a moral turpitude inquiry should include "a broader examination of circumstances surrounding commission of the misdemeanor which fairly bear on the question of moral turpitude in its actual commission, such as motive or mental condition"); *Spiridon*, *supra*, 755 A.2d at 467 (evidence of motive or mental condition "bear[s] on the question of moral turpitude in its actual commission").

We know very little about the circumstances surrounding Respondent's three failures to appear for trial, or about his "motive or mental condition" (*Allen*, 27 A.3d at 1184) in committing these crimes. All that we know is that, because of Respondent's convictions on his pleas of "No Contest," Respondent's failures to appear were "willful." The statute in question provides that "Any person (i) charged with a misdemeanor offense . . . who *willfully* fails to appear before any court as

required shall be guilty of a Class 1 misdemeanor." Va. Code § 19.2-128(C) (emphasis added). The Virginia courts have held that "willfully" as used in the previous subsection of Va. Code § 19.2-128 "has the customary meaning that the act must have been done 'purposely, intentionally, or designedly.'" *Williams v. Commonwealth*, 57 Va. App. 750, 763, 706 S.E.2d 530, 536 (Va. Ct. App. 2011) (quoting *Hunter v. Commonwealth*, 15 Va. App. 717, 721-22, 427 S.E. 2d 197, 200 (Va. Ct. App. 1993) (*en banc*)).

Thus, his three convictions establish that Respondent repeatedly failed to appear for trial, and that his failures were willful, *i.e.*, they were purposeful, intentional, and deliberate, and not the result of accident, mistake, or circumstances beyond his control. Without more, there is no clear and convincing evidence that Respondent's misdemeanor convictions involved "moral turpitude" under the Court's decisions. Intentional failures to appear in court for trial are improper. As we discuss below, we find that Respondent's various failures to appear violated Rules 8.4(b) and 8.4(d). They are not the stuff of moral turpitude, however.

Moral turpitude requires considerably more. Although the Court has recognized that moral turpitude "has less than a finite definition," *In re Colson*, 412 A.2d at 1167, it is clear that a finding of moral turpitude requires substantially more offensive and aggravated conduct than Respondent's three failures to appear. As

noted, the Court has adopted "three overlapping, but essentially consistent definitions" of moral turpitude:

> (1) [C]onduct which offends the generally accepted moral code of mankind;
>
> (2) [A]n act of baseness, vileness, or depravity in the private and social duties which everyone owes to one's fellow human beings or to society in general, contrary to the accepted and customary rule of right and duty between one person and another; and
>
> (3) [C]onduct contrary to justice, honesty, modesty, or good morals.

In re Sneed, *supra*, 673 A.2d at 594 ("[s]lightly paraphras[ing]" from *In re Colson*, *supra*, 412 A.2d at 1168)). Many of the cases finding moral turpitude in misdemeanor offenses have involved "intentional dishonesty for personal gain," or "theft or fraud." *In re Sneed*, *supra*, 412 A.2d at 594 (citations omitted). There is no evidence that Respondent's failures to appear involved any intentional dishonesty for personal gain, or theft or fraud.

As a result, we must consider whether Respondent's misdemeanor offenses meet any of the three "overlapping" definitions of moral turpitude. Plainly they do not. One who intentionally fails to appear for trial cannot reasonably be regarded as "base," "vile," or "depraved," nor can such an offender be reasonably said to have offended "the generally accepted code of mankind." *In re Sneed*, *supra.* Such

conduct is properly sanctioned as a criminal violation and a violation of the rules of professional conduct (see pp. 185 *et seq.*) below, but it cannot properly be regarded as "contrary to justice, honesty, modesty, or good morals." *In re Sneed*, *supra.* There is nothing on these facts to meet the Court's requirement for a finding of moral turpitude: that the conduct was such "that the legislature would have intended as a consequence the automatic disbarment of the attorney in question." *In re Allen*, 27 A.3d at 1185 (quoting *Spiridon*, *supra*, 755 A.2d at 468).

Respondent's offenses are more analogous to the tax offenses involved in *In re Shorter*, *supra*. In that case, the attorney had been convicted of six counts of willful failure to pay taxes (a misdemeanor violation of 26 U.S.C. § 7203) and a single count of willful tax evasion (a felony violation of 26 U.S.C. § 7201). The Court held that neither conviction involved moral turpitude, even the felony tax evasion conviction, because, as the Court stated, it could not "be said that such an evasion offends basic moral precepts common to humanity." *Id.*, 570 A.2d at 766 (quoting *United States v. Carrollo*, 30 F. Supp. 3, 7 (W.D. Mo. 1939) ("wrong as it is, unlawful as it is," tax evasion is not "an act evidencing baseness, vileness, or depravity of moral character")).

There is nothing in the facts relating to Respondent's convictions that is in any way similar to the misdemeanor offenses that have been held to involve moral

turpitude even though they do not involve intentional dishonesty for personal gain, theft, or fraud. For example, an attorney's convictions for misdemeanor sexual battery and misdemeanor battery against his female client were held to be conduct involving moral turpitude. *In re Rehberger*, *supra*, 891 A.2d at 252. In that case, the Court held that the attorney's "sordid sexual contact with and abuse of a female client who sought his advice" in a divorce matter "'offended the generally accepted moral code of conduct of mankind,'" and was also base, vile, depraved, and contrary to good morals. *Id.* at 252 (quoting *In re Colson*, *supra*, 412 A.2d at 1168).

As a result, we agree with Disciplinary Counsel that Respondent's three convictions for misdemeanor failure to appear in violation of Va. Code § 19.2-128(C) do not involve moral turpitude. We recommend that the Board reach the same conclusion.[16]

[16] Disciplinary Counsel contends that the manner in which the Virginia court handled the criminal matter – accepting Respondent's plea without further comment or inquiry about the nature of Respondent's conduct and refraining from referring the matter to Disciplinary Counsel – indicates that the underlying conduct did not "offend[] the generally accepted moral code of mankind." Statement Regarding Moral Turpitude Investigation and Charging Decision, filed March 16, 2015, at 6-7 (quoting *Colson*, *supra*, 412 A.2d at 1168). Disciplinary Counsel also notes that, in cases in which respondent attorneys have failed to appear in court on behalf of their clients, the Court has generally imposed brief suspensions. *See, e.g.*, *In re Robinson*, 635 A.2d 352 (D.C. 1993) (*per curiam*) (30-day suspension where the respondent, who had prior discipline, failed to appear for a status hearing and was held in contempt, then failed to timely pay her fine). We agree with Disciplinary Counsel's

B. Respondent's Three Convictions for Misdemeanor Failure to Appear in Violation of Va. Code § 19.2-128(C) Constitute Convictions of "Serious Crimes" under D.C. Bar Rule XI, § 10(b)

Disciplinary Counsel contends that Respondent's three convictions for misdemeanor failure to appear under Va. Code § 19.2-128(C) constituted "serious crime[s]" under D.C. Bar Rule XI, §10(b). ODC Br. at 49-50. We agree.

D.C. Bar Rule XI, § 10(b) provides that:

> The term "serious crime" shall include (1) any felony, and (2) any other crime a necessary element of which, as determined by the statutory or common law definition of such crime, involves improper conduct as an attorney, interference with the administration of justice, false swearing, misrepresentation, fraud, willful failure to file income tax returns, deceit, bribery, extortion, misappropriation, theft, or an attempt or a conspiracy or solicitation of another to commit a "serious crime."

Conviction of a "serious crime" is a ground for discipline pursuant to D.C. Bar R. XI, § 2(b)(1).

Respondent was convicted of the offense of failure to appear under Va. Code § 19.2-128(C), a misdemeanor. This statute provides that "Any person (i) charged with a misdemeanor offense . . . who willfully fails to appear before any court as required shall be guilty of a Class 1 misdemeanor." Va. Code § 19.2-128(C). Under

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conclusion on the moral turpitude issue and appreciate the thoroughness of its investigation of this issue as described in its Statement.

the Virginia Code, the allowable punishment for a Class 1 misdemeanor is a maximum of 12 months in jail, a $2,500 fine, or both. Va. Code § 18.2-11(a).

Unlike our analysis of the moral turpitude issue set forth above, the issue under Rule XI, § 10(b) is limited exclusively to the statutory or common law definition of the offense of which Respondent was convicted. More precisely, the issue is whether, based on the statutory or common law definition of the offense of misdemeanor failure to appear under Va. Code §19.2-128(C), a "necessary element" of that offense "involves improper conduct as an attorney, interference with the administration of justice, false swearing, misrepresentation, fraud, willful failure to file income tax returns, deceit, bribery, extortion, misappropriation, theft, or an attempt or a conspiracy or solicitation of another to commit a 'serious crime.'" Rule XI, § 10(b).

The only form of "improper conduct" that could necessarily be involved in Respondent's failure to appear is "interference with the administration of justice." Disciplinary Counsel argues that Respondent's offenses also involved "improper conduct as an attorney," because the knowing failure of an attorney to appear for trial was held a violation of Rule 8.4(d) (serious interference with the administration of justice). ODC Br. at 50 (citing *In re Ukwu*, 926 A.2d 1143-44 (D.C. 2007) (appended Board Report)).

We are not persuaded by Disciplinary Counsel's argument regarding "improper conduct as an attorney," however. Respondent was a party to the criminal proceeding, and was not acting as an attorney in any capacity in that proceeding when, as a criminal defendant, he failed to appear for trial. The failure to appear statute is directed at the defendant's failure to appear, not his or her attorney's failure. As a result, a "necessary element" of the offense of failure to appear does not involve "improper conduct as an attorney."

We conclude, however, that a necessary element of Respondent's misdemeanor failure to appear convictions involved "interference with the administration of justice." Rule XI, §10(b). A necessary element of the failure to appear offense is that the defendant "fail[ed] to appear before any court as required." Va. Code § 19.2-128(C). Such a failure would necessarily involve "interference with the administration of justice," Rule XI, § 10(b), at least to some extent. Where, as here, Respondent failed to appear when required, the administration of justice was necessarily delayed by the necessity to put his criminal matter over to a future date. Nothing in Rule XI, §10(b) requires that the "interference with the administration of justice" be grave or serious.[17] As a result, Respondent's convictions for

[17] We recognize that, in this case, Respondent's three failures to appear no doubt caused significant interference with the administration of justice. Respondent

misdemeanor failure to appear under Va. Code § 19.2-128(C) were for "serious crimes" under Rule XI, §10(b).

As required by Rule XI, §10(d) and the Board's January 25, 2013 Order, we determine below what final discipline is appropriate in light of Respondent's conviction of a "serious crime" under Rule XI, §10(b).

We must also address one other issue relating to the "serious crime" issue. In its Specification of Charges, Disciplinary Counsel contended that the "District of Columbia Court of Appeals found" Respondent's criminal offenses "to be 'serious crimes' as defined in D.C. Bar R. XI, §10(b)." Specification of Charges, filed June 30, 2014, at 2 ¶ 2. Disciplinary Counsel was apparently referring to the Court of Appeals' December 17, 2012 order suspending Respondent and directing the Board to institute a formal proceeding relating to whether Respondent's offenses involved moral turpitude. Order, *In re Nolan*, D.C. App. No. 12-BG-1892 (Dec. 17, 2012

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failed to appear for two separate trial settings (on June 23, 2009 and July 29, 2010) and one hearing (on September 22, 2009). See pp. 188-89 below. As a result of Respondent's failures to appear, his trial in Arlington County District Court that was initially set for June 23, 2009 was delayed by over a year (until August 26, 2010). FOF ¶ 264. By its terms, however, Rule XI, §10(b) does not allow our determination on the "serious crime" issue to be "determined by" anything other than the "statutory or common law definition" of the crime. As a result, we are not permitted to weigh the actual circumstances of Respondent's three failures to appear in our determination of the "serious crime" issue.

(amended Dec. 26, 2012)) (reciting that "it appearing that the latter offenses [the three counts of misdemeanor failure to appear] constitute 'serious crimes' as defined in D.C. Bar Rule XI, § 10(b)"). In its discussion of the "serious crime" issue in its brief, however, Disciplinary Counsel did not mention the Court's December 17, 2012 order, and did not contend that the Court had already made a binding determination that Respondent's offenses involved "serious crimes" under Rule XI, §10(b). ODC Br. at 49-50.

Disciplinary Counsel's reticence is understandable and justified. In its order, the Court of Appeals found only that it "appear[ed]" that Respondent's offenses were "serious crimes" under Rule XI, §10(b), and not that the offenses were "serious crimes." Therefore, we reject Disciplinary Counsel's contention in the June 30 Specification that the Court of Appeals has already determined the "serious crime" issue. See *In re Wilde*, Bar Docket 244-09, at 9 (BPR June 14, 2011) (Court of Appeals' order suspending attorney for apparent "serious crime" should not preclude Board determination and recommendation on that issue).

C. Respondent Violated Rules 3.3(a)(1) and 8.4(c) in Count II

In Count II of the June 30 Specification, Disciplinary Counsel contends that Respondent violated Rules 3.3(a)(1) and 8.4(c) by making a false statement in a motion he filed in Circuit Court in connection with his criminal case. ODC Br. at 50.

Respondent stated in his motion that Mr. Currie, an employee of the Arlington County Sheriff's Office, had "witnessed four Sheriff thugs beat a transferee from Dinwiddie County to the floor of the Arlington County Detention Center when [the transferee] complained about the denial of water and medical attention to the [Respondent]." FOF ¶¶ 275-79.

This statement was false. It was contradicted by Mr. Currie's sworn testimony at deposition and even by Respondent himself (when he later claimed that it was Mr. Currie himself who had beaten the transferee from Dinwiddie County). *Id.*

We find that Disciplinary Counsel has established by clear and convincing evidence that Respondent violated Rules 3.3(a)(1) and 8.4(c).

Rule 3.3(a)(1) provides that "[a] lawyer shall not knowingly . . . [m]ake a false statement of fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer . . . ." The Board has described the Rule 3.3 obligation to speak truthfully to a tribunal as one of a lawyer's "fundamental obligations." *In re Ukwu*, *supra*, 926 A.2d at 1140 (D.C. 2007) (appended Board report). Unlike Rule 8.4(c), which can be violated based on reckless conduct, Rule 3.3 requires that Respondent "knowingly" make a false statement. As the Board noted in *Ukwu*, it is important for the Hearing Committee to determine (1) whether Respondent's statements or evidence were false, and (2)

whether Respondent knew that they were false. *Id.* at 1140 (appended Board Report). The term "knowingly" "denotes actual knowledge of the fact in question" and this knowledge may be inferred from circumstances. Rule 1.0(f).

Respondent's dramatic statement in his motion regarding Mr. Currie's allegedly witnessing Sheriff's Office "thugs" viciously assaulting another inmate was a knowing falsehood, and Respondent's actual knowledge of its falsity can reasonably be inferred from the circumstances. Mr. Currie denied witnessing any such assault in his sworn deposition testimony in connection with this disciplinary proceeding. FOF ¶¶ 276-77. Further, less than two years after filing the motion in which he made this statement, when Respondent finally responded to Mr. Currie's disciplinary complaint against him, Respondent changed his story and accused Mr. Currie himself of committing the alleged assault on the inmate (the transferee from Dinwiddie County). FOF ¶ 277.

The only reasonable conclusion from these facts is that Respondent invented the story of the alleged assault, and then knowingly asserted this falsehood as a fact in his motion in Circuit Court. Therefore, Respondent violated Rule 3.3(a)(1) by knowingly making this false statement of fact to a tribunal (the Circuit Court).

As discussed above, Rule 8.4(c) prohibits a lawyer's "engag[ing] in conduct involving dishonesty, fraud, deceit, or misrepresentation . . . ." Rule 8.4(c). Because

we have found that Respondent violated Rule 3.3(a)(1) when he knowingly made this false statement of fact to a tribunal, Respondent necessarily violated Rule 8.4(c) as well by engaging in "dishonesty."

For these reasons, we find that Disciplinary Counsel has proved by clear and convincing evidence that Respondent violated Rules 3.3(a)(1) and 8.4(c).

D. Respondent Violated Rule 8.4(b) in Count II

Disciplinary Counsel contends that Respondent violated Rule 8.4(b) in Count II by "repeatedly thumb[ing] his nose at the Arlington County court system, subverting its decision-making process and delaying its determination of guilt on a simple traffic misdemeanor for over a year and a half." ODC Br. at 52.

We find that Disciplinary Counsel has proved by clear and convincing evidence that Respondent's three misdemeanor failure to appear convictions and his fourth failure to appear in Circuit Court violated Rule 8.4(b) because they seriously interfered with the administration of justice.

Under Rule 8.4(b), "[i]t is professional misconduct for a lawyer to . . . (b) [c]ommit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects." Thus, "an attorney may be disciplined for having engaged in conduct that constitutes a criminal act that reflects adversely on his or her fitness as a lawyer under Rule 8.4(b) . . . ." *In re Slattery*,

767 A.2d 203, 207 (D.C. 2001). The Comment to Rule 8.4(b) makes clear that "[o]ffenses involving . . . serious interference with the administration of justice" violate Rule 8.4(b). Rule 8.4(b), cmt. [1].

Respondent's repeated failures to appear seriously interfered with the administration of justice in Arlington County. As Disciplinary Counsel noted, Respondent's three failures to appear in Arlington County District Court delayed his trial for an uncomplicated traffic offense (driving on a suspended license in violation of Va. Code § 46.2-301) for 14 months (from June 23, 2009 to August 26, 2010). ODC Br. at 52. The District Court was required to issue three writs of *Capias* to authorize his arrest, FOF ¶¶ 251, 253, 259, and, after his three arrests, to hold multiple proceedings relating to his pretrial release on bond (FOF ¶¶ 252, 255-56, 262-63).

After Respondent was convicted in District Court of this traffic offense and his three misdemeanor failures to appear, he appealed his convictions to the Circuit Court. Although Respondent was never criminally charged with, or convicted of, this offense, he then failed to appear for trial in the Circuit Court (his first failure to appear in that court, and his fourth failure to appear overall). FOF ¶ 267. The Circuit Court was required to issue a bench warrant for his arrest. *Id.* In addition, Respondent repeatedly made written promises to appear for trial, and then dishonored them by

failing to keep his promises. FOF ¶¶ 252, 255, 265. And for each of the four times that his matter was set for trial, the Commonwealth had to get ready for trial, all to no avail. Respondent's multiple failures to appear substantially interfered with the administration of justice.

These facts make clear that Respondent's four failures to appear were criminal acts that "reflect adversely on [Respondent's] trustworthiness, honesty, [and] fitness as a lawyer." Rule 8.4(b). As set forth above, Respondent's failures to appear seriously interfered with the administration of justice. They wasted the time of two busy courts with repeated and unnecessary proceedings, and delayed the resolution of his initial traffic charge for over a year. They caused substantial additional and unnecessary work for judges, the clerk's office, the sheriff's office, and the Commonwealth Attorney's office.

Therefore, we find that Disciplinary Counsel has proved by clear and convincing evidence that Respondent violated Rule 8.4(b).

E. Respondent Violated Rule 8.4(d) in Count II

Disciplinary Counsel contends that Respondent's failures to appear referred to in Count II and described above violated Rule 8.4(d) as well as Rule 8.4(b), because Respondent's conduct seriously interfered with the administration of justice. ODC Br. at 52-53. We agree, and find that Disciplinary Counsel has proved by clear

and convincing evidence that Respondent violated Rule 8.4(d) by his repeated failures to appear.

Rule 8.4(d) provides that "[i]t is professional misconduct for a lawyer to . . . (d) [e]ngage in conduct that seriously interferes with the administration of justice[.]" As noted above (at p. 166), the Court of Appeals has set out three requirements that must be met to find that a lawyer's conduct "seriously interferes with the administration of justice." *In re Hopkins*, 677 A.2d 55, 61 (D.C. 1996).

Respondent's failures to appear meet all three of the *Hopkins* requirements. First, all of his failures to appear were improper (in fact, illegal). Second, they directly affected an identifiable case (Respondent's criminal case) in identifiable tribunals (Arlington County District Court and Circuit Court). Finally, as noted above, they seriously and adversely affected the judicial process. Respondent's failures to appear delayed the trial and resolution of an uncomplicated traffic offense for more than a year, and wasted substantial amounts of the time of the Arlington County Court system.

We find that Disciplinary Counsel has proved by clear and convincing evidence that Respondent violated Rule 8.4(d) by his repeated failures to appear.

Respondent's False Statement in His Circuit Court Motion. Disciplinary Counsel also contends that Respondent violated Rule 8.4(d) by his false statement

in his Circuit Court motion that Mr. Currie had witnessed the beating of an inmate in the Arlington County Detention Center. ODC Br. at 53. Although we have found that Respondent's false statement violated Rules 3.3(a)(1) and 8.4(b) (see pp. 183-85, 188 *et seq.* above), we find that Disciplinary Counsel has failed to prove by clear and convincing evidence that Respondent's statement also violated Rule 8.4(d).

The first two *Hopkins* requirements are met for this contention. Respondent's false statement was wrong and was made in an identifiable case to a specific tribunal (Arlington County Circuit Court). There is no evidence, however, supporting the third *Hopkins* requirement: that this statement had the potential to have a "serious and adverse" impact upon the judicial process. There is no evidence in the record of any action by the court or anyone else in response to this false statement, which had no relevance to any of the issues in the criminal case against Respondent. Given that Respondent's motion was replete with other bizarre allegations (for example, that his Virginia license plate "was listed by the Virginia Division of Motor Vehicles on a harass computer check list [sic]," FOF ¶ 271; DCX 7.E at 39 ¶ 15, or that "[t]he failure of Arlington Courts to reign in its Gestapo units has led to two deaths by stun gun . . . .") (DCX 7.E at 42 ¶ 38), we cannot find that this false statement had even the potential to have the required "severe and adverse" effect upon the judicial process.

Therefore, we find that Disciplinary Counsel has failed to prove by clear and convincing evidence that Respondent's false statement in his Circuit Court motion violated Rule 8.4(d).

V. RECOMMENDATION AS TO SANCTION

The Court has instructed that the appropriate disciplinary sanction is the sanction that is necessary "to maintain the integrity of the profession and to protect the public and the courts, but also to deter other attorneys from engaging in similar misconduct." *In re Reback*, 513 A.2d 226, 231 (D.C. 1986) (*en banc*). The Court's decisions taken together spell out a number of factors that should be considered in determining an appropriate sanction, including: (1) the nature and seriousness of the misconduct; (2) prejudice to the client; (3) whether the conduct involved dishonesty or misrepresentation; (4) violation of other disciplinary rules; (5) the attorney's previous disciplinary history; (6) whether the attorney has acknowledged his or her wrongful conduct; and (7) circumstances in aggravation and mitigation. *In re Martin*, 67 A.3d 1032, 1053 (D.C. 2013) (citing *In re Scanio*, 919 A.2d 1137, 1144 (D.C. 2007)); *In re Vohra*, 68 A.3d 766, 771 (D.C. 2013) (citing *In re Hutchinson*, 534 A.2d 919, 924 (D.C. 1987) (*en banc*)). In addition, D.C. Bar R. XI, § 9(h) requires that the sanction must be consistent with the sanctions imposed in cases involving comparable misconduct.

In this case, Disciplinary Counsel has asked the Hearing Committee to recommend the sanction of a two-year suspension with the requirement that Respondent pay restitution to his clients (the Sagars and Mr. Currie) and demonstrate his fitness to practice law prior to reinstatement. For the reasons described below, we recommend the sanction of a three-year suspension, with the requirements for reinstatement that Respondent (1) demonstrate his fitness to practice law; (2) pay restitution to the Sagars and Mr. Currie; and (3) fully cooperate with all outstanding Disciplinary Counsel subpoenas and all related Court and Board orders.

A. The Nature and Seriousness of Respondent's Misconduct

Respondent's misconduct is serious, pervasive, wide-ranging, and protracted. Respondent committed 51 violations of 9 separate Rules of Professional Conduct and D.C. Bar Rules in 7 different matters. These violations are the following:

1. July 1, 2014 Specification (Counts I (Sagars) and IV (Currie)):
    a. Rule 1.1(a) (failure to provide competent representation)
    b. Rule 1.1(b) (failure to serve client with skill and care)
    c. Rule 1.2(a) (failure to consult with client)
    d. Rule 1.3(a) (failure to represent client with diligence and zeal)
    e. Rule 1.3(b)(1) (intentional failure to seek client's lawful objectives)

f. Rule 1.3(b)(2) (intentional damage to client) (only as to Count IV (Currie))

g. Rule 1.3(c) (failure to act promptly)

h. Rule 1.4(a) (failure to keep client reasonably informed about the status of a matter)

i. Rule 1.4(b) (failure to explain a matter to extent reasonably necessary to permit the client to make informed decisions) (only as to Count I (Sagars))

j. Rule 1.5(a) (charging an unreasonable fee)

k. Rule 1.5(b) (failure to communicate to client in writing the basis for the fee, the scope of representation, and client-responsible expenses) (only as to Count IV (Mr. Currie))

l. Rule 1.15(b) (failure to provide accounting of fees upon client's request) (only as to Count I (Sagars)

m. Rule 8.4(c) (dishonesty) (only as to Count I (Sagars))

2. July 1, 2014 Specification (Counts I-VI)

a. Rule 8.1(b) (failure to respond reasonably to lawful demand for information from a disciplinary authority) (Counts I-VI)

b. Rule 8.4(d) (serious interference with administration of justice in failure to cooperate with Disciplinary Counsel's investigations) (Counts I-VI)

c. D.C. Bar Rule XI, § 2(b)(3) (failure to comply with Board orders and court orders) (Counts I-V only, no violation of this Rule charged in Count VI)

3. June 30, 2014 Specification

a. D.C. Bar Rule XI, §10(b) (conviction of serious crimes)

b. Rule 3.3(a)(1) (knowing false statement of fact to tribunal)

c. Rule 8.4(b) (commission of a criminal act reflecting adversely on honesty, trustworthiness, or fitness)

d. Rule 8.4(c) (dishonesty)

e. Rule 8.4(d) (serious interference with the administration of justice)

Due to the nature and seriousness of Respondent's misconduct, a substantial sanction is warranted.

B. Prejudice to Clients

Respondent's misconduct caused serious and irreparable prejudice to the Sagars. The Sagars' claims against the United States were lost forever because of Respondent's incompetence, his dishonest acceptance of substantial monthly retainer payments (initially, $1,800 per month, later $3,600 per month) for legal services that he knew he was not providing, his failure to comply with court deadlines, and his failure to respond to the Government's motions to dismiss in two separate courts, and his failure to timely file an appeal to the CBCA. Respondent also charged the Sagars an unreasonable fee (totaling $88,887.70) for his incompetent representation, a fee that he retained and never refunded to the Sagars.

Respondent also prejudiced Mr. Currie by his failure, when he knew that timely filing was critical to protecting Mr. Currie's interests, to provide the agreed-upon federal court discrimination complaint until the day before the statute of limitations would run on Mr. Currie's claim, thus forcing Mr. Currie to prepare and file his own complaint *pro se*.

C. Violation of Other Disciplinary Rules

As previously noted, we have found by clear and convincing evidence that Respondent committed 51 violations of 9 separate Rules of Professional Conduct and D.C. Bar Rules in 7 different matters.

D. Whether the Conduct Involved Dishonesty or Misrepresentation

Respondent's misconduct involved dishonesty in a number of different respects. The most important dishonest conduct that Respondent engaged in involved the Sagars (Count I). As noted above (at pp. 161 *et seq.*), Respondent continued to receive substantial payments ($3,600 per month) for legal services that he knew he was not providing (because he was failing to respond to the Government's dispositive motions and the court's orders) while knowingly concealing his failures from the Sagars. Further, he affirmatively and repeatedly misled the Sagars about the status of their cases, going so far as to falsely deny that

their cases had been dismissed. Respondent's dishonesty was knowing and intentional.

In addition, Respondent also was dishonest in the motion he filed in Arlington County Circuit Court, in which he alleged that Mr. Currie had witnessed Sheriff's Office "thugs" viciously assaulting another inmate. This was a knowingly false statement of fact.

In these instances, Respondent knowingly and intentionally engaged in dishonesty.

E. Previous Disciplinary History

There is no evidence of any previous disciplinary history involving Respondent.

F. Acknowledgment of Wrongful Conduct

Respondent never appeared or participated in the hearing in any way. Respondent has never acknowledged that any of his conduct was wrongful.

G. Other Circumstances in Aggravation and Mitigation

The only circumstance in mitigation is Respondent's lack of prior disciplinary history. There are a number of aggravating circumstances, however.

First, as noted above, although not charged as a separate disciplinary violation, Respondent affirmatively and repeatedly lied to the Sagars about the status

of their cases for his own personal enrichment. Beginning in June 2007, when Respondent filed the first case (the District Court action), the Sagars were paying him $3,600 per month for his legal services. They repeatedly asked him about the status of their cases. Respondent always responded that he had heard nothing from the court. These responses were lies, because Respondent had been notified of *every* development in these cases, and was necessarily aware when the Government had filed dispositive motions to dismiss the Sagars' claims, when his responses were due, when the court had ordered him to respond, and when the cases were dismissed because of his failure to respond.

When the Sagars finally learned from the court that both cases had been dismissed and asked Respondent if that was true, he lied again. Respondent obtained substantial economic benefit from his lies, because all the time that he was lying to conceal the ultimately disastrous developments in the Sagars' cases, he continued to receive the monthly retainer payments while performing no work to protect their claims from dismissal. If he had told them the truth, the Sagars would have quickly terminated the representation and stopped their monthly payments, as they did when they finally learned the truth from the court.

Another aggravating circumstance is Respondent's failure to comply with the Board's order directing him to comply with Disciplinary Counsel's written inquiry

regarding the Saxon complaint (Count VI). As explained above (at p. 169 n. 15), by inadvertence, Disciplinary Counsel failed to charge that Respondent's failure to comply with the Board's order regarding the Saxon investigation violated D.C. Bar Rule XI, § 2(b)(3) (failure to comply with Court or Board orders), although Disciplinary Counsel did charge that this same noncompliance violated Rule 8.1(b) (failure to respond reasonably to lawful Disciplinary Counsel demand for information) and Rule 8.4(d) (serious interference with the administration of justice). See n. 15 above.

These aggravating circumstances (particularly Respondent's continued dishonesty with the Sagars for his personal economic benefit) substantially outweigh the single mitigating factor of lack of a prior disciplinary record.

H. Sanctions in Comparable Cases

The wide range and seriousness of Respondent's misconduct make it difficult to find comparable cases. The Court has instructed that, when multiple disciplinary violations in multiple matters are involved, the appropriate sanction should be selected "in light of the respondent's behavior in the aggregate." *In re Wright*, 885 A.2d 315, 316 (D.C. 2005) (citations omitted).

Respondent's misconduct involves three types of violations: (1) violations of his obligations to his clients (the Sagars and Mr. Currie); (2) violations of his

obligations to the Court and the disciplinary system (his failures to respond to Disciplinary Counsel inquiries, subpoenas, and Board and Court orders); and (3) his criminal conduct and related violations in the Arlington County court system.

The appropriate sanction for Respondent's varied and pervasive misconduct must reflect the seriousness of each of these types of misconduct. We address each type of misconduct in turn.

1. Respondent's Violation of His Obligations to His Clients and His Obligations to the Court and the Disciplinary System

The most serious aspect of Respondent's misconduct relating to his obligations to his clients involves the Sagars. Respondent's studied neglect of their cases in the U.S. District Court and the U.S. Court of Federal Claims, coupled with his untimely appeal to the CBCA, resulted in the forfeiture of their claims. Respondent filed two separate actions and then, despite court deadlines and orders to show cause, took no further action in either case. As a result, both cases were dismissed, the CBCA appeal was dismissed as untimely, and the Sagars' claims were forever lost. Respondent's neglect lasted from June 2007 (when he filed the District Court action) to April 2008 (when the Court dismissed the CFC action). He never said a word to the Sagars about his inaction, his failures to respond to dismissal motions and Court orders, or the Court's dismissal orders. As a result, he

intentionally prejudiced their interests, and, by concealing these adverse developments in their cases, prevented them from taking any action to protect their interests.

The case of *In re Carter*, 11 A.3d 1219 (D.C. 2011), is somewhat analogous. In that case, the attorney representing a client in an employment discrimination case failed to respond to the Government's summary judgment motion. The court granted summary judgment for the Government, and denied the attorney's motions for leave to file his opposition late. *Id.* at 1221-22. He also failed to send a letter to the EEOC on behalf of another client, and, like Respondent in this case, failed to respond to two Disciplinary Counsel investigations and related subpoenas and Board and Court orders compelling compliance. *Id.* at 1222. The Court adopted the Board's recommendation of an 18-month suspension, with reinstatement conditioned upon proof of fitness, proof of restitution to his clients, and cooperation with Disciplinary Counsel in the two outstanding investigations. Although the Court ultimately followed the Board's recommendation, it noted that "[Disciplinary Counsel's] argument is not without merit that the above[-]mentioned violations call for a *doubling* of respondent's suspension from eighteen months to three years." *Id.* (emphasis added).

The reason that the 18-month suspension in *Carter* is only partly analogous is that Respondent's misconduct here was far more extensive. There is no suggestion in *Carter* that the attorney had affirmatively concealed the adverse case developments from his client, either before or after the court granted summary judgment rejecting the client's claims. In addition, there was no dishonesty similar to Respondent's accepting $39,600 in fees ($3,600 per month from June 2007 to May 2008) while he was doing nothing and concealing his inaction from his clients. Nor did *Carter* involve the Rule 1.5(a) violation (charging a clearly unreasonable fee) established in this case. Similarly lacking in that case was the seriously incompetent representation and lack of skill and care violations of Rule 1.1(a) and Rule 1.1(b) involved here. Also lacking in that case was the violation of Rule 1.15(e) that Respondent committed in this case by failing to provide an accounting to the Sagars regarding the total legal fees of almost $90,000 that he charged them.

We recognize that *Carter* also involved the attorney's failure to respond in two separate Disciplinary Counsel investigations and to comply with a Board and Court of Appeals order requiring his responses. The breadth and scope of Respondent's failures to cooperate here are far more serious, however. Respondent failed to cooperate in a total of six investigations, three times as many investigations as in *Carter*. He failed to respond fully and completely to a total of 18 Disciplinary

Counsel inquiry letters and e-mails, 6 subpoenas, a Board order (in two matters), and two Court of Appeals orders. See Table 2 (Appendix 2).

In *In re Cater*, 887 A.2d 1 (D.C. 2005), the Court imposed a 180-day suspension for failure to cooperate with Disciplinary Counsel inquiries in three investigations (*versus* the six investigations in this case), and for violations relating to Respondent's failure to supervise her non-lawyer assistant and prevent the assistant's embezzlement of more than $47,000 from two estates. Thus, standing by itself, Respondent's pervasive failure to cooperate in this case also warrants a substantial suspension.

Consequently, based solely on Respondent's violations with respect to the Sagars and his failures to cooperate with Disciplinary Counsel's investigations, a suspension of substantially more than 18 months is warranted. But Respondent's misconduct is not limited to his violations with respect to the Sagars and his failures to cooperate with Disciplinary Counsel investigations and comply with related Board and court orders. His misconduct in his representation of Mr. Currie and his criminal conduct also must be considered.

2. Respondent's Violations Relating to the Currie Representation and to Respondent's Criminal Conduct

Respondent also committed numerous additional violations in his representation of Mr. Currie. His delays in providing the promised complaint violated Rules 1.3(a) and 1.3(c). He charged an unreasonable fee for the promised complaint (in violation of Rule 1.5(a)), failed to represent Mr. Currie with diligence and promptness (in violation of Rules 1.3(a) and 1.3(c)), failed to represent him competently and with the skill and care commensurate with that provided by other lawyers (in violation of Rules 1.1(a) and 1.1(b)), and failed to respond to Mr. Currie's repeated inquiries regarding the status of the promised but long-delayed complaint (in violation of Rule 1.4(a)).

Respondent's misconduct relating to the Currie representation, if it were the only misconduct involved, would warrant a substantial sanction. For example, in *In re Baber*, 106 A.3d 1072 (D.C. 2015), the Court disbarred the respondent for a series of violations similar to the violations that we have found here, including failing to provide competent representation (in violation of Rules 1.1(a) and 1.1(b)), failing to represent client with zeal and diligence, and with promptness (in violation of Rules 1.3(a) and 1.3(c)), failure to keep his client reasonably informed (in violation of Rules 1.4(a) and 1.4(b)), charging an unreasonable fee (in violation of Rule 1.5(a)), knowingly making false statements to the court (in violation of Rules 3.3(a) and

8.4(c)) and engaging in conduct that seriously interfered with the administration of justice (in violation of Rule 8.4(d)).

We recognize that the misconduct in *Baber* involved some additional and serious violations (betraying client confidences (in violation of Rule 1.6(a)) and failing to return the client's file after the representation ended (in violation of Rule 1.16(d)), and that the false statements and serious interference with the administration of justice in that case were arguably more significant than here (because they involved the attorney's pursuing false claims against his own client to the client's prejudice). Nonetheless, the imposition of the sanction of disbarment for violations that were otherwise somewhat comparable to Respondent's violations here suggests that a significant additional sanction is warranted solely for Respondent's misconduct relating to Mr. Currie.

The third category of misconduct that Respondent committed involves his criminal conduct in the course of his personal criminal case in Arlington County. His three misdemeanor convictions for willful failure to appear in Arlington County District Court were "serious crimes" under Rule XI, §10(b). These failures to appear, plus a fourth failure to appear for trial in Arlington County Circuit Court (for which he was never criminally charged), were criminal acts that reflected adversely on his honesty, trustworthiness, and fitness as a lawyer, in violation of Rule 8.4(b). His four

failures to appear also seriously interfered with the administration of justice in violation of Rule 8.4(d). Finally, his knowingly false statement in his Circuit Court motion alleging that "Sheriff's thugs" had assaulted an inmate violated Rule 3.3(a)(1), and also Rule 8.4(c).

This misconduct also warrants a substantial additional sanction. In *In re Vohra*, *supra*, a three-year suspension with fitness was imposed for a similar series of violations relating to competence and skill (Rules 1.1(a) and 1.1(b), failure to represent client with zeal and diligence (Rule 1.3(a)), intentional failure to seek client's lawful objectives (Rule 1.3(b)(1)), failure to keep clients reasonably informed (Rule 1.4(a)), failure to explain matter to extent reasonably necessary to allow clients to make informed decisions (Rule 1.4(b)), making false statement of material fact to tribunal (Rule 3.3(a)(1)), committing criminal acts (false statements to U.S. Government and/or forgery) that reflect adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer (Rule 8.4(b), engaging in conduct involving dishonesty, fraud, deceit, and/or misrepresentation) (Rule 8.4(c), and engaging in conduct that seriously interfered with the administration of justice (Rule 8.4(d)).[18]

[18] The attorney's misconduct in *Vohra* also involved one violation not present in the Currie representation: Rule 8.1(a) (knowingly making a false statement of fact in connection with a disciplinary matter). *Id.*, 68 A.3d at 769 n. 2.

Again, although the conduct in *Vohra* was more aggravated (forgery in violation of 18 U.S.C. § 1546, a felony), the critical point is that a three-year suspension was held warranted for the same type of conduct here, wholly apart from Respondent's serious misconduct relating to the Sagars representation and Respondent's total failure to respond to Disciplinary Counsel's inquiries and subpoenas, and his flouting of Court and Board orders requiring such responses.

Also, in *In re Steele*, 868 A.2d 146, 153 (D.C. 2005), a three-year suspension with fitness was imposed for intentional neglect and dishonesty that caused five clients to lose their claims and two to suffer large default judgments, and involved the attorney's creation and submission to a court of a fake subpoena in an attempt to justify his failure to appear at a scheduled pretrial conference.

We recognize that Disciplinary Counsel has recommended only a two-year suspension, with proof of fitness, restitution, and compliance with outstanding Disciplinary Counsel inquiries before reinstatement. ODC Br. at 56-57 (citing *In re Ukwu*, 926 A.2d 1106 (D.C. 2007) (two-year suspension)). We also are mindful of the Court's statement that imposing a sanction greater than the sanction recommended by Disciplinary Counsel "should be the exception, not the norm," because "[o]ur disciplinary system is adversarial – [Disciplinary Counsel] prosecutes and Respondent's attorney defends," and Disciplinary Counsel

"conscientiously and vigorously enforces the Rules of Professional Conduct." *In re Cleaver-Bascombe*, 892 A.2d 396, 412 n.14 (D.C. 2006). Nonetheless, for the reasons stated, we believe that the longer period of suspension we recommend is warranted under the circumstances. As discussed below, we also agree with Disciplinary Counsel's recommendation that a fitness requirement be imposed, as well as the requirement that Respondent pay restitution to the Sagars and Mr. Currie, and fully comply with all outstanding Disciplinary Counsel subpoenas and related Court and Board orders before he could be reinstated.

Therefore, viewing all of Respondent's misconduct in the aggregate, we recommend a sanction of a three-year suspension with reinstatement conditioned on proof of fitness, restitution, and full compliance with all outstanding Disciplinary Counsel subpoenas and related Court and Board orders.

I. A Fitness Requirement Should Be Imposed

The Court established the standard for imposing a fitness requirement in *In re Cater*, 887 A.2d 1 (D.C. 2005). "[T]o justify conditioning the reinstatement of a suspended attorney on proof of rehabilitation, 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 24 (adopting Board's proposed standard for imposing a fitness request). 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*, *supra*, 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, *supra*, 887 A.2d at 22 (citations omitted).

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:

> (1) the nature and circumstances of the misconduct for which the attorney was disciplined;
>
> (2) whether the attorney recognizes the seriousness of the misconduct;

(3) the attorney's conduct since discipline was imposed, including the steps taken to remedy past wrongs and prevent future ones;

(4) the attorney's present character; and

(5) the attorney's present qualifications and competence to practice law.

Cater, *supra*, *887* A.2d at 21, 25 (citing *In re Roundtree*, *supra*, 503 A.2d at 1217).

We recommend that the Court impose the requirement that Respondent demonstrate his fitness for the practice of law, as permitted by D.C. Bar Rule XI, § 3(a)(2). Given Respondent's serious, wide-ranging, and pervasive misconduct, we have serious doubt regarding his continuing fitness to practice law. He utterly failed in his professional responsibilities and obligations to the Sagars by his demonstrated incompetence, his serial abandonment of their claims in two separate courts that intentionally and irreparably prejudiced their claims, his dishonesty in concealing his complete and repeated failures to take necessary actions to preserve their claims (so that he could continue to receive their substantial monthly fee payments for which he was doing no work), and his failure to refund any part of the unreasonable fee that he charged.

Similarly, in his representation of Mr. Currie, he provided incompetent representation, and forced Mr. Currie to draft his own complaint *pro se*, because

Respondent's extensive delays in providing the promised complaint and his repeated failures to respond to Mr. Currie's increasingly frantic inquiries as the statute of limitations deadline approached made Mr. Currie doubt that Respondent would ever provide the promised complaint. Respondent showed a total disregard for the disciplinary system by his refusal to cooperate in six separate investigations. And, finally, he violated his obligations to the court system in connection with his own criminal matter, which involved three convictions for serious crimes (the failures to appear), a fourth criminal act (the fourth failure to appear), a false statement of fact to the Court, and serious interference with the administration of justice.

Thus, the nature and circumstances of Respondent's violations, the first *Roundtree* factor, raise substantial questions about Respondent's fitness for the practice of law. Our consideration of the remaining *Roundtree* factors also raises – and reinforces – the same concerns. Respondent has never recognized the seriousness of his misconduct (the second *Roundtree* factor). In his response to the Sagars' disciplinary complaint, he made a number of unsubstantiated attacks on the Sagars (referring to Mr. Sagar's alleged lack of credibility and "reputation for poor business ethics and lack of veracity"), but never even mentioned the two court actions that were dismissed because of his neglect and failure to respond. FOF ¶ 158.

Similarly, in response to Mr. Currie's disciplinary complaint, he attacked Mr. Currie with a number of unproven claims. He alleged that Mr. Currie was fired for "ongoing lack of credibility, including failing one or more lie detector tests," was "under treatment for diagnosed paranoia," and accused Mr. Currie (and not the "Sheriff's thugs") of assaulting the transferred inmate from Dinwiddie County. FOF ¶ 252. In the disciplinary hearing itself, Respondent never appeared or testified. His only participation was his filing of a last-minute motion with no legal or factual basis demanding immediate reinstatement and contesting all the charges against him. See p. 7 above. This is plainly not someone who has recognized the seriousness of his misconduct.

Respondent has also done nothing to remedy his past wrongs or prevent future ones (the third *Roundtree* factor). For more than four years, he has failed to provide complete substantive responses to six outstanding Disciplinary Counsel investigations, and to comply with Court and Board orders. Similarly, for at least seven years, he has failed to refund any portion of the clearly unreasonable fees that he charged the Sagars and Mr. Currie.

Finally, because he failed to participate in any way in the disciplinary hearing, there is no evidence regarding his present character and qualifications or his competence to practice law (the fourth and fifth *Roundtree* factors). Thus,

consideration of these two factors can do nothing to quiet the substantial doubts about his fitness that we have based on the first three *Roundtree* factors.

For these reasons, we recommend that Respondent's reinstatement from any suspension be conditioned upon proof of his fitness to practice law.

J. Restitution and Full Compliance with All Outstanding Disciplinary Counsel Subpoenas and Related Court and Board Orders Should Be Required

We also recommend that Respondent's reinstatement be conditioned upon his meeting two other requirements in addition to proof of fitness: (1) restitution, and (2) full compliance with all outstanding Disciplinary Counsel subpoenas and related Court and Board orders.

1. Restitution

D.C. Bar Rule XI, § 3(b) allows the Board and the Court to require an attorney "to make restitution . . . to persons financially injured by the attorney's conduct . . . as a condition of probation or reinstatement." *Id.* As used in this provision, "restitution" means "a payment by the respondent attorney reimbursing a former client . . . for the money, interest, or thing of value that the client has paid or entrusted to the lawyer in the course of the representation." *In re Cater*, *supra*, 887 A.2d at 19 (quoting *In re Robertson*, 612 A.2d 1236, 1240 (D.C. 1992)).

Respondent should be required to make restitution to the Sagars and Mr. Currie in the full amount of the fees that the Sagars and Mr. Currie paid to him, because these clients received no benefit from Respondent's services. As a result of Respondent's documented misconduct, the Sagars' claims were forever extinguished. Mr. Currie paid the full amount of the fee that Respondent demanded, and received nothing but a defective, inadequate complaint the day before the statute of limitations would run on his discrimination claim, and a week after Mr. Currie himself had been forced to draft and file his own discrimination complaint with no help from Respondent.

Because the Sagars and Mr. Currie received no benefit from the fees they paid to Respondent, Respondent should be required to make restitution to them in the full amount of the fees that each paid. *In re Roundtree*, 467 A.2d 143, 148 (D.C. 1983) (restitution of full amount of fee required because attorney's neglect and errors caused dismissal of client's case) (citations omitted); *In re Cater*, *supra*, 887 A.2d 1, 19 (payment of restitution of full amount of client estates' losses required).

Therefore, Respondent's reinstatement should be conditioned upon his making restitution to the Sagars and to Mr. Currie. This restitution should include the full amounts of the fees paid to Respondent, plus interest at the legal rate. *In re Hewett*, 11 A.3d 279, 287 n.8 (D.C. 2011) (quoting *In re Huber*, 708 A.2d 259, 260

("'The obligation to pay interest is intertwined with the obligation to make restitution'")).

Accordingly, Respondent's reinstatement should be conditioned upon (1) his paying the Sagars $88,870.70, plus interest at the legal rate from June 2008 to the date of payment, and (2) his paying Mr. Currie $900.00, plus interest at the legal rate from July 22, 2011 to the date of payment.

2. Full Compliance with All Outstanding Disciplinary Counsel Subpoenas and Related Court and Board Orders

The final requirement for reinstatement that we recommend is that Respondent should be required to fully comply with all outstanding Disciplinary Counsel subpoenas and related Court and Board orders in all six investigations (July 1 Specification, Counts I-VI). D.C. Bar Rule XI, § 3(b) allows the Board and Court to impose "any other reasonable condition" in addition to restitution as a condition of reinstatement. *In re Lea*, 969 A.2d 881, 894 (D.C. 2009) (as a condition of reinstatement after suspension, attorney required "to respond promptly to the inquiries of [Disciplinary Counsel] and the order of the Board pertaining to the underlying disciplinary proceedings"). Respondent should have to demonstrate that he has fully complied with all outstanding Disciplinary Counsel subpoenas and with the related Court and Board orders in the six investigations.

VI. CONCLUSION

For the foregoing reasons, the Committee finds that Respondent violated Rules 1.1(a), 1.1(b), 1.2(a), 1.3(a), 1.3(b)(1), 1.3(b)(2), 1.3(c), 1.4(a), 1.4(b), 1.5(a), 1.5(b), 1.15(b), 3.3(a)(1), 8.4(b), 8.4(c), and 8.4(d), and D.C. Bar Rule XI, § 2(b)(3). The Committee recommends that he should receive the sanction of a three-year suspension, with reinstatement conditioned on proof of fitness, restitution to the Sagars and Mr. Currie, and full compliance with all outstanding Disciplinary Counsel subpoenas and related Court and Board orders. We direct Respondent's attention to the requirements of D.C. Bar R. XI, § 14, and their effect on eligibility for reinstatement. *See* D.C. Bar R. XI, § 16(c).

AD HOC HEARING COMMITTEE

/CCB/
C. Coleman Bird, Chair

/SH/
Sundeep Hora, Attorney Member

/KGC/
Kaprice Gettemy-Chambers, Public Member

Appendix 1

Table 1: Payments by Pixl, Inc. to Respondent (2005-2008)			
Date	**Check Number**	**Amount**	
Payments in 2005			
12/30/2005	2764	$1,800.00	
		$1,800.00	$1,800.00
Payments in 2006			
5/10/2006	2805	$1,800.00	
7/14/2006	2838	$1,800.00	
9/4/2006	2853	$1,800.00	
10/3/2006	2865	$1,800.00	
10/25/2006	2879	$1,800.00	
11/16/2006	2887	$1,800.00	
12/5/2006	2891	$1,800.00	
12/5/2006	2892	$1,800.00	
12/5/2006	2893	$350.00	
12/27/2006	2906	$1,800.00	
	Subtotal for 2006	$16,550.00	$16,550.00
Payments in 2007			
2/7/2007	2938	$1,800.00	
3/12/2007	2929	$3,200.00	
3/23/2007	2955	$3,600.00	
4/3/2007	2960	$2,780.00	
4/6/2007	2964	$2,880.00	

4/23/2007	2973	$4,860.00	
5/1/2007	2978	$2,340.00	
5/8/2007	2980	$3,150.00	
5/18/2007	2988	$1,980.00	
6/6/2007	2994	$3,600.00	
6/26/2007	3000	$90.00	
6/26/2007	3001	$57.70	
6/26/2007	3002	$3,600.00	
7/2/2007	3003	$350.00	
8/1/2007	3013	$3,600.00	
8/28/2007	3023	$3,600.00	
10/1/2007	3037	$3,600.00	
11/1/2007	3053	$3,600.00	
11/23/2007	3062	$3,850.00	
12/30/2007	3074	$3,600.00	
	Subtotal for 2007	$56,137.70	$56,137.70
Payments in 2008			
2/1/2008	3100	$3,600.00	
3/1/2008	3108	$3,600.00	
4/1/2008	3113	$3,600.00	
5/1/2008	3119	$3,600.00	
	Subtotal for 2008	$14,400.00	$14,400.00
		Total (2005-2008)	***$88,887.70***

Appendix 2

Table 2: Summary of Respondent's Failures to Respond	
Date	**ODC Investigative Effort**
Count I (Sagars)	
7.15.2009	Letter forwarding Sagars' complaint and requesting response (FOF ¶134)
8.13.2009	Follow-up letter to Respondent (FOF ¶ 136)
9.18.2009	Follow-up e-mail to Respondent (FOF ¶ 137)
9.18.2009	Follow-up e-mail to Respondent (FOF ¶ 139)
10.14.2009	Subpoena for office files re Sagars representation served (FOF ¶ 140)
10.19.2009	Follow-up e-mail to Respondent (FOF ¶ 141)
1.29.2010	Letter to Respondent requesting additional information (FOF ¶ 145)
3.8.2010	Follow-up letter to Respondent (FOF ¶ 145)
3.15.2012	Follow-up letter to Respondent re Respondent's failure to respond (FOF ¶ 148)
3.19.2012	Subpoena for office files concerning District Court action and CFC action served (FOF ¶ 150)

8.2.2012	Subpoena for financial and payment records mailed (FOF ¶ 162)
6.6.2013	Court of Appeals' order requiring compliance with ODC subpoenas (FOF ¶ 164)
Count II (Turley)	
7.26.2011	Letter to Respondent forwarding Turley complaint and requesting response (FOF ¶ 166)
7.26.2011	Subpoena mailed requiring production of Respondent's office file (FOF ¶ 167)
3.15.2012	Follow-up letter to Respondent (FOF ¶ 169)
6.6.2013	Court of Appeals' order requiring compliance with ODC subpoena (FOF ¶ 172)
Count III (SunTrust)	
12.1.2011	Letter seeking information about activity in Respondent's IOLTA account for specified period (FOF ¶ 176)
12.1.2011	Subpoena for records verifying Respondent's to Disciplinary Counsel information request mailed (FOF ¶ 176)
1.9.2012	Letter seeking information regarding IOLTA account activity for corrected period (FOF ¶ 181)
3.15.2012	Follow-up letter to Respondent (FOF ¶ 183)

7.3.2012	Follow-up letter to Respondent (FOF ¶ 185)
7.3.2012	Subpoena mailed requiring production of documents (FOF ¶ 186)
6.6.2013	Court of Appeals' order requiring compliance with ODC subpoena (FOF ¶ 189)
Count IV (Currie)	
11.30.2011	Letter forwarding Currie complaint and requesting response (FOF ¶ 222)
11.30.2011	Subpoena for Respondent's office file relating to Currie representation (FOF ¶ 222)
3.15.2012	Follow-up letter to Respondent (FOF ¶ 224)
7.23.2012	Court of Appeals' order directing Respondent to comply with ODC subpoena (FOF ¶ 230)
Count V (Fisher Khoury and Baker)	
5.21.2012	Letter forwarding Fisher Khoury and Baker complaint and requesting response (FOF ¶ 232)
7.6.2012	Follow-up letter to Respondent (FOF ¶ 235)
3.4.2013	BPR Order directing Respondent to provide response (FOF ¶ 238)

Count VI (Saxon)	
11.16.2012	Letter forwarding Saxon complaint and requesting response (FOF ¶ 241)
1.15.2013	Follow-up letter to Respondent (FOF ¶ 244)
3.4.2013	BPR order directing Respondent to provide response (FOF ¶ 247)