

THIS REPORT IS NOT A FINAL ORDER OF DISCIPLINE\*

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



FILED

Apr 5 2023 1:25pm

In the Matter of: :  
: :  
DENISE A. DANIELS :  
: :  
Respondent. :  
: :  
An Administratively Suspended :  
Member of the Bar of the :  
District of Columbia Court of Appeals :  
(Bar Registration No. 399285) :

Board on Professional Responsibility

Board Docket No. 22-BD-014  
Disc. Docket No. 2021-D075

REPORT AND RECOMMENDATION OF  
THE AD HOC HEARING COMMITTEE

Respondent, Denise A. Daniels, is charged with violating Rule 4.2(a) (communication between lawyer and person known to be represented by counsel), Rule 8.1(b) (knowing failure to respond to Disciplinary Counsel), and Rule 8.4(d) (serious interference with the administration of justice) of the District of Columbia Rules of Professional Conduct (the “Rules”), as well as § 2(b)(3) of D.C. Bar Rule XI (failure to comply with Board Order). The charges arise from Respondent—while representing the Transportation Security Administration (“TSA”)—communicating with parties whom Respondent knew were represented by counsel, and Disciplinary Counsel’s investigation thereof. Disciplinary Counsel contends that Respondent committed all of the charged violations and should be suspended

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\* Consult the ‘Disciplinary Decisions’ tab on the Board on Professional Responsibility’s website ([www.dcattorneydiscipline.org](http://www.dcattorneydiscipline.org)) to view any subsequent decisions in this case.

for 30 days, with fitness, as a sanction for her misconduct. Respondent did not participate in these proceedings.

As set forth below, the Hearing Committee finds that Disciplinary Counsel has proven each allegation by clear and convincing evidence and recommends that Respondent be suspended for 30 days, with fitness.

## I. PROCEDURAL HISTORY

On March 21, 2022, Disciplinary Counsel served Respondent with the Specification of Charges (“Specification”). Respondent did not file an Answer, nor did she participate at the pre-hearing conference on May 3, 2022, or any other Hearing Committee proceedings.

A hearing was held on June 22, 2022, where Disciplinary Counsel was represented by Assistant Disciplinary Counsel, Jason R. Horrell, Esquire. Respondent was not present, nor was counsel present on her behalf.

During the hearing, Disciplinary Counsel called Scott Klippel, Esquire; Nikki Harding, Esquire; and Idrea Mayfield. And during the hearing, Disciplinary Counsel’s Exhibits 1-29 were received into evidence.<sup>1</sup> Tr. 38 (DCX 5); Tr. 79 (DCX 6-16, 24); Tr. 117 (DCX 1-4, 17-23, 25-29).

Upon conclusion of the hearing, the Hearing Committee made a preliminary non-binding determination that Disciplinary Counsel had proven at least one of the Rule violations set forth in the Specification. Tr. 128; *see* Board Rule 11.11.

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<sup>1</sup> “DCX” refers to Disciplinary Counsel’s exhibits. “Tr.” refers to the transcript of the hearing held on June 22, 2022.

Disciplinary Counsel did not submit additional evidence in aggravation, but noted that Respondent “is administratively suspended for nonpayment of dues.” Tr. 128.

Disciplinary Counsel submitted its Proposed Findings of Fact, Conclusions of Law, and Recommendation as to Sanction on July 22, 2022. Respondent did not file a brief.

## II. FINDINGS OF FACT

The following findings of fact are based on the testimony and documentary evidence admitted at the hearing, and these findings of facts are established by clear and convincing evidence. *See* Board Rule 11.6; *In re Cater*, 887 A.2d 1, 24 (D.C. 2005) (“clear and convincing evidence” is more than a preponderance of the evidence, it is “evidence that will produce in the mind of the trier of fact a firm belief or conviction as to the facts sought to be established” (internal quotations and citation omitted)).

### A. Background

1. Respondent is a member of the Bar of the District of Columbia Court of Appeals, having been admitted on May 27, 1986, and assigned Bar number 399285. DCX 1; DCX 2.

2. At all relevant times, Respondent was an attorney in the Office of Chief Counsel at the TSA. Tr. 43-46 (Harding). Respondent left the TSA in September 2021. Tr. 46. Respondent had a history of working on TSA matters involving Notices of Violation—similar to the matters generating Counts One and Two here. Tr. 84-86 (Harding); *see also* Tr. 81 (Ms. Harding testifying that Respondent “had

been [working on these types of matters] before [Ms. Harding] became [Respondent's] supervisor").

3. Nikki Harding, Esquire, is the Assistant Chief Counsel for Civil Enforcement and Compliance in the Office of Chief Counsel at the TSA. Tr. 40-41 (Harding). Ms. Harding was Respondent's direct supervisor. Tr. 45. (Harding).

4. The Office of Chief Counsel manages the administrative adjudication of civil enforcement actions relating to TSA's security regulations, including cases in which the TSA has issued a Notice of Violation. Tr. 41-42 (Harding).

5. A Notice of Violation informs the recipient of the initiation of a civil enforcement action for an alleged violation of a TSA security regulation, such as a passenger carrying a loaded firearm to a TSA airport checkpoint. Tr. 13-14 (Klippel); Tr. 41-43 (Harding).

6. An individual who receives a Notice of Violation has several ways to respond including, *inter alia*, requesting an informal conference with the TSA at which they can show evidence that the violation did not occur or show evidence mitigating the TSA's proposed civil penalty. Tr. 43 (Harding).

7. Informal conferences are conducted by the Office of Chief Counsel. Tr. 44 (Harding).

8. When handling a Notice of Violation case, TSA attorneys do not act in a neutral capacity; instead, they represent and advocate for the TSA's interests and attempt to resolve a Notice of Violation in a manner favorable to the TSA. *See* Tr. 46-47 (Harding).

B. Count One – TSA Notice of Violation No. 2018TPA0079

9. On August 28, 2020, the TSA issued a Notice of Violation to J.H. in case number 2018TPA0079 for possessing a loaded firearm at an airport. DCX 6; Tr. 48 (Harding).

10. On December 1, 2020, Scott Klippel, Esquire, entered his appearance as counsel for J.H. in case number 2018TPA0079, and he asked to discuss settling the matter for a reduced penalty. DCX 5 at 0020; Tr. 20-21 (Klippel). Mr. Klippel did so by emailing Richard Kravit, another TSA attorney who handled informal conferences. DCX 5 at 0020; Tr. 20-21 (Klippel). This was Mr. Klippel’s standard practice when he was not yet aware of which TSA attorney had been assigned to a Notice of Violation matter. Tr. 21-22 (Klippel). Mr. Klippel attached a “Statement of Facts” to his email. DCX 5 at 0020. This is a short summary of the case from his client’s perspective and an explanation of why the violation would not happen again. Tr. 22 (Klippel).

11. On December 1, 2020, Ms. Harding assigned the case to Respondent. DCX 7; Tr. 49 (Harding). Ms. Harding forwarded an email to Respondent indicating that “outside counsel” had requested an informal conference on behalf of J.H. DCX 7.<sup>2</sup>

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<sup>2</sup> We note that Mr. Klippel’s email entering his appearance (DCX 5 at 0020) appears to have been sent at 4:12 p.m. on December 1, 2020, after Ms. Harding’s 2:17 p.m. email forwarding the 12:27 p.m. email referring to Mr. Klippel’s email. DCX 7. Based on the content of the emails, it is clear that Ms. Harding’s email and the forwarded message were sent after Mr. Klippel’s, and the incongruous time stamps may reflect the seven hour time difference between Israel (where Mr. Klippel

12. Also on December 1, 2020, Mr. Kravit entered Mr. Klippel's appearance on behalf of J.H. in the TSA's case management system, LINKS. DCX 8; Tr. 58-59 (Harding).

13. Upon receiving a Notice of Violation assignment, the standard practice is for an assigned attorney to review the entire case file in LINKS before initiating an informal conference. Tr. 52-53 (Harding). The assigned attorney is also required to upload pertinent documents and keep notes in LINKS so that the TSA can maintain a record of all case activity. Tr. 54 (Harding).

14. On December 8, 2020, Respondent made a note in LINKS that she had "[r]eviewed attorney notes," which included that "R's attorney stated that R has an 'excellent compliance disposition.'" DCX 8. "R" is the standard shorthand used by TSA attorneys to refer to the individual charged in a Notice of Violation. Tr. 68 (Harding).

15. At approximately 3:45 p.m. EST on December 8, 2020, Respondent called J.H. directly. DCX 5 at 0021; Tr. 24-25 (Klippel). During this phone call, Respondent asked J.H. whether he wanted to discuss his case with her at an informal conference and potentially reduce his civil penalty. DCX 5 at 0021; Tr. 24-25

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resides) and the TSA office in Virginia. *See* Time Difference Between Virginia and Israel, TRAVELMATH, <https://www.travelmath.com/time-change/from/Virginia/to/Israel> (last visited March 14, 2023); *see also* Tr. 44-45 (Harding) (explaining that the Office of Chief Counsel was located in Virginia at all pertinent times); Tr. 12 (Klippel) (testifying he lives in Israel).

(Klippel). J.H. informed Respondent that he was represented by counsel and provided her with Mr. Klippel's contact information. DCX 5 at 0021; Tr. 24-25 (Klippel).

16. At approximately 4:01 p.m. on December 8, 2020, Respondent emailed Mr. Klippel a reduced civil penalty offer. DCX 9. Respondent did not mention in this email that she had spoken directly with J.H. *See id.* Mr. Klippel accepted the offer on behalf of his client. DCX 10.

17. Later, on December 8, 2020, J.H. informed Mr. Klippel by email that Respondent had called him directly. DCX 5 at 0021; Tr. 24-25 (Klippel).

18. Mr. Klippel was unaware that Respondent had contacted J.H. directly regarding his Notice of Violation until J.H. informed him. Tr. 25 (Klippel). Mr. Klippel had not given Respondent, or anyone else from the TSA, prior consent to contact J.H. directly regarding his case. *Id.*

C. Count Two – TSA Notice of Violation No. 2018RDU0165

19. On September 25, 2020, the TSA issued a Notice of Violation to S.M. in case number 2018RDU0165 for possessing a loaded firearm at an airport. DCX 11; Tr. 62 (Harding).

20. On October 30, 2020, S.M. emailed the TSA to request an informal conference. DCX 12; Tr. 63-64 (Harding).

21. On November 2, 2020, Ms. Harding assigned the case to Respondent. DCX 13; Tr. 65-66 (Harding).

22. On December 15, 2020, Mr. Klippel emailed Respondent to enter his appearance as counsel for S.M. in this case, since he had been informed that she was the assigned TSA attorney. DCX 5 at 0022; Tr. 26 (Klippel). In that email, Mr. Klippel provided his availability for an informal conference (in case having a conference was necessary) and noted he would email his Statement of Facts to Respondent by the next morning. DCX 5 at 0022.

23. On December 16, 2020, Mr. Klippel emailed Respondent a Statement of Facts and asked to settle the matter for a reduced penalty. DCX 5 at 0023; Tr. 28 (Klippel). In this email, Mr. Klippel reminded Respondent that he had been retained to represent S.M. in case number 2018RDU0165. DCX 5 at 0023; Tr. 28 (Klippel).

24. Neither the email on December 15, 2020, nor the email on December 16, 2020, were returned to Mr. Klippel as undelivered. Tr. 29 (Klippel).

25. On January 13, 2021, Respondent attempted to call S.M. directly but did not reach him. DCX 14 (showing Respondent's notes, in LINKS, which state that Respondent called S.M. on 1/13/2021 and that S.M.'s "VM" is not set up). Respondent then emailed S.M. directly. DCX 5 at 0026; Tr. 29-31 (Klippel); DCX 14; DCX 15. In this email, the subject line of which reads "TSA Case 2018RDU0165," Respondent identified herself as an attorney with the TSA, wrote that she was trying to reach S.M. to conduct an informal conference, and asked S.M. to contact her. DCX 5 at 0026; Tr. 29-31 (Klippel); DCX 14; DCX 15. Respondent did not copy Mr. Klippel on this email. DCX 5 at 0026; Tr. 29-31 (Klippel); DCX 14; DCX 15.



26. S.M. forwarded the email from Respondent to Mr. Klippel. DCX 5 at 0026; Tr. 29-31 (Klippel).

27. Mr. Klippel was unaware that Respondent had contacted S.M. directly regarding his Notice of Violation until S.M. informed him. Tr. 31 (Klippel). Mr. Klippel had not given Respondent, or anyone else from the TSA, prior consent to contact S.M. directly regarding his case. *Id.*

D. Count Three – Respondent’s Failure to Respond to Disciplinary Counsel’s Investigation

28. On January 31, 2021, Mr. Klippel filed a complaint with the Office of Disciplinary Counsel regarding Respondent’s communications with both J.H. and S.M. DCX 5; Tr. 16-17 (Klippel).

29. That same day, Mr. Klippel sent a copy of his complaint to both Respondent and Ms. Harding. Tr. 33 (Klippel); Tr. 80 (Harding).

30. Immediately after receiving it, Ms. Harding spoke with Respondent about Mr. Klippel’s complaint. Tr. 80-81 (Harding). Respondent told her only that she “had made a mistake.” Tr. 81 (Harding). She provided no other explanation for her actions. *Id.* Ms. Harding did not find this explanation credible based on all the information contained in LINKS and available to Respondent. Tr. 82 (Harding).

31. Ms. Harding reassigned any Notice of Violation cases that Respondent was handling in which Mr. Klippel was counsel. Tr. 71-72, 82 (Harding).

32. On April 23, 2021, Disciplinary Counsel emailed a copy of Mr. Klippel’s complaint to Respondent, using her email address of record with the D.C. Bar, and asked her to submit a written response by May 3, 2021. DCX 17; *see also*

DCX 2 (confirming email address). This letter informed Respondent that the Court has approved discipline based in part on an attorney's failure to comply with Disciplinary Counsel's request for information. DCX 17 at 0054. Disciplinary Counsel's email was not returned undelivered. Tr. 99 (Mayfield).

33. Respondent did not respond to Disciplinary Counsel's April 23, 2021, letter. Tr. 99 (Mayfield).

34. On May 19, 2021, Disciplinary Counsel sent Respondent a follow-up letter by first-class mail.<sup>3</sup> DCX 18. This follow-up letter included a copy of Mr. Klippel's complaint and Disciplinary Counsel's first letter. *Id.* It asked for a written response by June 1, 2021. *Id.* at 0070-71. This letter also reminded Respondent that she had an ethical obligation to respond to Disciplinary Counsel's inquiry and that a failure to do so may warrant discipline. *Id.* Disciplinary Counsel sent this letter to Respondent using her mailing address of record with the D.C. Bar. *Id.*; *see also* DCX 2 (confirming mailing address). The letter was not returned undelivered. Tr. 100 (Mayfield).

35. Respondent did not respond to Disciplinary Counsel's May 19, 2021, letter. Tr. 101 (Mayfield).

36. On June 23, 2021, Disciplinary Counsel emailed Respondent a copy of its May 19 letter (including enclosures). DCX 19. In this email, Disciplinary

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<sup>3</sup> We note that Disciplinary Counsel sent this follow-up letter also by certified mail, but it is not clear whether Respondent received the certified letter. *See* DCX 18 at 70 ("Via regular mail and certified mail"); Tr. 100 (Mayfield) (testifying that the letter was "sent first class mail, certified mail to her home address").

Counsel explained that it would move to compel a response to the complaint if Respondent did not submit one by June 25, 2021. *Id.* at 0091. Disciplinary Counsel emailed Respondent at her work email address. *Id.*; *see also* Tr. 47 (Harding) (confirming email address). Disciplinary Counsel's email was not returned undelivered. Tr. 102-03 (Mayfield).

37. Respondent did not respond to Disciplinary Counsel's June 23, 2021, email. Tr. 103 (Mayfield).

38. On June 29, 2021, Disciplinary Counsel emailed Respondent at both her email address of record and her work email address, advising her that it would move to compel a response to Mr. Klippel's complaint. DCX 20.

39. On June 30, 2021, Disciplinary Counsel filed with the Board on Professional Responsibility a Motion to Compel Response to Written Inquiry. DCX 21. Disciplinary Counsel served its Motion on Respondent via first-class mail and email to her addresses of record. *Id.* at 0118-19.

40. On July 13, 2021, Disciplinary Counsel filed with the Board an Amended Motion to Compel Response to Written Inquiry. DCX 22. The only change from the original Motion was to indicate that Disciplinary Counsel also served Respondent via her work email address. *Id.* at 0184 n.1.

41. Respondent did not file an opposition or otherwise respond to Disciplinary Counsel's Motion or Amended Motion. Tr. 105, 106-07 (Mayfield).

42. On July 30, 2021, the Board issued an Order compelling Respondent to submit a written response to Disciplinary Counsel's inquiry within ten days. DCX

23. The Office of the Executive Attorney sent a copy of the Order to Respondent via her email address of record and her work email address. *Id.* at 0253.

43. Respondent did not comply with the Board's Order. Tr. 108 (Mayfield).

44. On August 17, 2021, an investigator with the Office of Disciplinary Counsel emailed Ms. Harding. DCX 24 at 0261-62. The investigator informed Ms. Harding that Disciplinary Counsel was investigating Mr. Klippel's complaint, but that Respondent had not responded to numerous requests for information. *Id.* at 0261. The investigator asked Ms. Harding to instruct Respondent to contact Disciplinary Counsel. *Id.*

45. In response, Ms. Harding texted Respondent and told her to contact Disciplinary Counsel. Tr. 76 (Harding). Respondent replied to Ms. Harding that she "would do it right away." *Id.*

46. On August 19, 2021, Disciplinary Counsel's investigator emailed Ms. Harding again and told her that Respondent had not contacted Disciplinary Counsel. DCX 24 at 0260.

47. In response, Ms. Harding again texted Respondent and told her to contact Disciplinary Counsel. Tr. 78 (Harding).

48. At approximately 11:30 a.m. on August 19, 2021, Respondent left a voicemail for the assigned Assistant Disciplinary Counsel in which she acknowledged receiving correspondence from Disciplinary Counsel and apologized for not responding sooner. DCX 25 (time of voice message) (attached .wav file).

49. Approximately two hours later, the Assistant Disciplinary Counsel emailed Respondent and explained that he had tried returning her call but was unable to reach her, and left a voicemail (regarding the complaint) asking Respondent to call him back as soon as she is able. DCX 26 at 0264. This email included a request that Respondent respond to the complaint by August 26, 2021, and it included a copy of Disciplinary Counsel's May 19 letter, the Amended Motion, and the Board's Order. *Id.* The email also reminded Respondent that she had an obligation to cooperate with Disciplinary Counsel's investigation and that a failure to do so may warrant discipline. *Id.*

50. Respondent did not respond to Disciplinary Counsel's August 19, 2021, email. Tr. 114-15 (Mayfield).

51. On August 30, 2021, Disciplinary Counsel's investigator emailed Ms. Harding and asked her to instruct Respondent again to contact Disciplinary Counsel. DCX 24 at 0257-58.

52. In response, Ms. Harding texted Respondent and told her to contact Disciplinary Counsel. Tr. 79 (Harding). Respondent replied to Ms. Harding, "Okay, I will." *Id.*

53. At approximately 9:22 a.m. on September 1, 2021, Respondent left a voicemail for the assigned Assistant Disciplinary Counsel in which she acknowledged receiving Disciplinary Counsel's May 2021 letter, and she stated that she could prepare a written response to the complaint. DCX 27 (attached .wav file).

54. Approximately one hour later, the Assistant Disciplinary Counsel emailed Respondent and explained that he had tried returning her call but was unable to reach her. DCX 28. This email included a request that Respondent respond to the complaint immediately. *Id.* The email also reminded Respondent that she had an obligation to cooperate with Disciplinary Counsel's investigation and that a failure to do so may warrant discipline. *Id.*

55. Respondent did not respond to Disciplinary Counsel's September 1, 2021 email. Tr. 114 (Mayfield).

56. On November 17, 2021, Disciplinary Counsel sent Respondent a letter by first-class mail and email requesting that she comply with the Board's Order and respond to the complaint by December 3, 2021. DCX 29. The letter also reminded Respondent that she had an obligation to cooperate with Disciplinary Counsel's investigation and that a failure to do so may warrant discipline. *Id.* The letter included a copy of all Disciplinary Counsel's prior written correspondence, its Amended Motion, and the Board's Order. *Id.* Neither Disciplinary Counsel's mailing nor its email were returned undelivered. Tr. 117 (Mayfield).

57. Respondent did not respond to Disciplinary Counsel's November 17, 2021 letter. *Id.*

### III. CONCLUSIONS OF LAW

Disciplinary Counsel argues that Respondent violated Rule 4.2(a) (communication between lawyer and person known to be represented by counsel) in Counts One and Two. As to Count Three, Disciplinary Counsel alleges that

Respondent violated Rules 8.1(b) (knowing failure to respond to Disciplinary Counsel), 8.4(d) (serious interference with the administration of justice), and § 2(b)(3) of D.C. Bar Rule XI (failure to comply with Board Order). We address each allegation in turn.

A. Counts One and Two: Disciplinary Counsel Proved by Clear and Convincing Evidence that Respondent Violated Rule 4.2(a) by Communicating About the Subject of the Representation with a Person Known to be Represented by Counsel.

Rule 4.2(a) provides that,

During the course of representing a client, a lawyer shall not communicate or cause another to communicate about the subject of the representation with a person known to be represented by another lawyer in the matter, unless the lawyer has the prior consent of the lawyer representing such other person or is authorized by law or a court order to do so.

*See, e.g., In re Jones-Terrell*, Bar Docket No. 175-92, at 9-10 (BPR July 10, 1997) (finding a Rule 4.2(a) violation even though the respondent did not have an “evil or corrupt intent”) (quoting Hearing Committee Report), *recommendation adopted where no exceptions to Rule violations filed*, 712 A.2d 496, 497, 499 (D.C. 1998). The focus is to protect “represented persons unschooled in the law from direct communications from counsel for an adverse person.” Rule 4.2(a), cmt. [5].

“Known,” under Rule 1.0(f), “denotes actual knowledge of the fact in question. A person’s knowledge may be inferred from circumstances.”

Disciplinary Counsel argues that Respondent violated Rule 4.2(a) because she knew that J.H. and S.M. had an attorney when she contacted each of them.

We agree that Disciplinary Counsel has established a Rule 4.2(a) violation in both Counts. In **Count One**, on December 1, 2020, Ms. Harding assigned the case to Respondent and forwarded her an email, indicating that “outside counsel” had requested an informal conference on behalf of J.H. FFs 11, 15. When Ms. Harding assigns a case to an attorney, that attorney would review the case file. FF 13. There is no evidence that Respondent did not conduct this review, which would include reviewing Mr. Klippel’s appearance as counsel. *See* FFs 10, 12 (noting Mr. Klippel’s appearance entered on LINKS a week before Respondent’s contact with J.H.). Nor is there evidence that Respondent did not receive the forwarded email about J.H.’s “outside counsel” requesting an informal conference.

Just one week later, on December 8, Respondent,

- made a note in LINKS, stating that she had “reviewed attorney notes” and referring to a statement made by J.H.’s attorney (FF 14);
- called J.H. directly and asked him if he wanted to discuss his case at an informal conference and potentially reduce his civil penalty (FF 15); and,
- about 15 minutes after the call, emailed Mr. Klippel a reduced civil penalty offer (FF 16).

The close proximity of these events establishes that Respondent knew J.H. had an attorney when speaking with J.H.

We reach the same conclusion in **Count Two**. About six weeks after Respondent was assigned, Mr. Klippel emailed Respondent *directly* to enter his appearance on behalf of S.M. FFs 21-22. In that email, he provided his availability for an informal conference (if one were necessary), and noted that he will email



Respondent a Statement of Facts by the next morning. FF 22. Mr. Klippel thus emailed Respondent the next day—not only attaching his Statement of Facts (and requesting to settle), but also reiterating that he had been retained to represent S.M. in this matter. FF 23. Less than a month later, Respondent improperly communicated with S.M. FF 25.

As discussed above, Respondent did not substantively respond to Disciplinary Counsel’s investigate inquiries, and did not appear at the hearing. The only evidence of Respondent’s state of mind presented to the Hearing Committee was Ms. Harding’s testimony that when she confronted Respondent with Mr. Klippel’s disciplinary complaint, Respondent told her only that she had “made a mistake.” FF 30; ODC Br. at 17. Ms. Harding did not credit this explanation, noting the information in LINKS identifying Mr. Klippel as counsel, and asserting that there is no reason why Respondent did not understand Rule 4.2(a). FF 30; Tr. 82-84; *see also* Tr. 89 (Ms. Harding testifying that Respondent, in another conversation, “didn’t really provide any additional information” about what might have caused Respondent to reach out to the clients, knowing they were represented by counsel). Indeed, Respondent was an experienced attorney with TSA who handled these types of matters throughout her time there. FF 2 (finding that Respondent had previously worked (and has a history of working) on matters similar to the matters generating Counts One and Two here). We find Ms. Harding credible, and we agree with her assessment.

B. Count Three: Disciplinary Counsel Proved by Clear and Convincing Evidence that Respondent Violated Rule 8.1(b) by Knowingly Failing to Respond Reasonably to a Lawful Demand for Information from Disciplinary Counsel.

Rule 8.1(b) states that “a lawyer . . . in connection with a disciplinary matter, shall not . . . knowingly fail to respond reasonably to a lawful demand for information from . . . [a] disciplinary authority.” Thus, a knowing failure to respond to a request from Disciplinary Counsel regarding a disciplinary complaint constitutes a violation of Rule 8.1(b). *See, e.g., In re Lea*, 969 A.2d 881, 887-88 (D.C. 2009). The definition of “knowing,” applies here as it did to Rule 4.2(a).

Respondent has yet to respond to Disciplinary Counsel’s lawful demands for information:

- An April 23, 2021 email<sup>4</sup> to Respondent of Mr. Klippel’s complaint (FF 32);
- A May 19, 2021 follow-up letter (FF 34);
- A June 23, 2021 emailed copy of the May 19 letter (FF 36);
- A Board Order compelling Respondent to respond to Disciplinary Counsel’s inquiry, stemming from Disciplinary Counsel’s Motion (and Amended Motion) filed with the Board (FFs 39-43; *see also* Section D., *infra*);
- Respondent left Disciplinary Counsel a voicemail, where she acknowledged receiving correspondence and apologized for not responding sooner. Disciplinary Counsel emailed her back, stating it

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<sup>4</sup> Other than the certified letter discussed in n.3, *supra*, there is no evidence that Disciplinary Counsel’s emails and letters were not delivered. *See, e.g.*, FF 32.

was unable to reach her and requesting her response by August 26, 2021 (FFs 48-50), which she did not provide;

- Respondent left another voicemail<sup>5</sup> for Disciplinary Counsel, where she again acknowledged receiving correspondence and stated she could prepare a written response. Disciplinary Counsel emailed her back, stating it was unable to reach her and requesting a response to the complaint immediately (which she did not provide) (FFs 53-55); and
- A letter on November 17, 2021 (to which she did not respond) (FFs 56-57).

Respondent also knew of her obligation to respond. Respondent left two voicemails for Disciplinary Counsel, acknowledging that she had received the relevant materials and that she could respond to the complaint. FFs 48, 53. And even before Respondent's phone calls, Ms. Harding and Respondent spoke about Mr. Klippel's complaint several times, FFs 30, 45, 47, 52, where Respondent acknowledged that she had "made a mistake" and that she would respond "right away." FFs 30, 45. But Respondent has yet to provide a response.

Because Respondent has knowingly failed to respond to Disciplinary Counsel's lawful demand for information, Disciplinary Counsel has proven a violation of Rule 8.1(b).

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<sup>5</sup> Before Respondent left each voicemail, Respondent received texts from Ms. Harding (who was contacted by Disciplinary Counsel's investigator), directing Respondent to contact Disciplinary Counsel about the investigations. *See* FFs 44-48, 51-53.

C. Count Three: Disciplinary Counsel Proved by Clear and Convincing Evidence that Respondent Violated Rule 8.4(d) by Engaging in Conduct that Seriously Interferes with the Administration of Justice.

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.” Failure to respond to Disciplinary Counsel’s inquiries can also constitute a violation of Rule 8.4(d). Rule 8.4, cmt. [2]; *see, e.g., In re Edwards*, 990 A.2d 501, 524 (D.C. 2010) (appended Board Report) (failure to respond to Disciplinary Counsel’s inquiry); *In re Carter*, 11 A.3d 1219, 1223 (D.C. 2011) (per curiam) (failure to respond to notices of an investigation from Disciplinary Counsel, failure to comply with court orders requiring compliance with Disciplinary Counsel’s investigation, and dishonesty to the court about why he had missed filing deadlines).

For the same reasons set forth above discussing the violation of Rule 8.1(b), Disciplinary Counsel has proven a violation of Rule 8.4(d).

D. Count Three: Disciplinary Counsel Proved by Clear and Convincing Evidence that Respondent Violated D.C. Bar R. XI, § 2(b)(3) by Failing to Comply with a Board Order.

D.C. Bar R. XI, § 2(b)(3) provides that the “[f]ailure to comply with any order of . . . the Board” shall be “grounds for discipline.”

The Board issued an Order compelling Respondent to respond to Disciplinary Counsel’s inquiry within ten days. FF 42. A copy of this Order was sent to Respondent’s email address of record and her work email address. *Id.* Respondent has yet to respond to Disciplinary Counsel’s inquiry to date, much less within ten

days as per the Board's Order. These facts again establish clear and convincing evidence, so we find a violation of D.C. Bar R. XI, § 2(b)(3).

#### IV. RECOMMENDED SANCTION

Disciplinary Counsel has asked the Hearing Committee to recommend the sanction of a 30-day suspension, with reinstatement conditioned on Respondent proving her fitness to practice. For the reasons described below, we agree.

##### A. Standard of Review

The sanction imposed in an attorney disciplinary matter is one that is necessary to protect the public and the courts, maintain the integrity of the legal profession, and deter the respondent and other attorneys from engaging in similar misconduct. *See, e.g., In re Hutchinson*, 534 A.2d 919, 924 (D.C. 1987) (en banc); *In re Martin*, 67 A.3d 1032, 1053 (D.C. 2013); *Cater*, 887 A.2d at 17. “In all cases, [the] purpose in imposing discipline is to serve the public and professional interests . . . rather than to visit punishment upon an attorney.” *In re Reback*, 513 A.2d 226, 231 (D.C. 1986) (en banc) (citations omitted); *see also In re Goffe*, 641 A.2d 458, 464 (D.C. 1994) (per curiam).

The sanction also must not “foster a tendency toward inconsistent dispositions for comparable conduct or . . . otherwise be unwarranted.” D.C. Bar R. XI, § 9(h)(1); *see, e.g., Hutchinson*, 534 A.2d at 923-24; *In re Berryman*, 764 A.2d 760, 766 (D.C. 2000). In determining the appropriate sanction, the Court of Appeals considers a number of factors, including: (1) the seriousness of the conduct at issue; (2) the prejudice, if any, to the client which resulted from the conduct; (3) whether the

conduct involved dishonesty; (4) the presence or absence of violations of other provisions of the disciplinary rules; (5) whether the attorney has a previous disciplinary history; (6) whether the attorney has acknowledged his wrongful conduct; and (7) circumstances in mitigation or aggravation. *See, e.g., In re Martin*, 67 A.3d 1032, 1053 (D.C. 2013) (citing *In re Elgin*, 918 A.2d 362, 376 (D.C. 2007)). The Court also considers “‘the moral fitness of the attorney’ and ‘the need to protect the public, the courts, and the legal profession . . . .’” *In re Rodriguez-Quesada*, 122 A.3d 913, 921 (D.C. 2015) (per curiam) (quoting *In re Howes*, 52 A.3d 1, 15 (D.C. 2012)).

B. Application of the Sanction Factors

1. The Seriousness of the Misconduct

Respondent twice violated Rule 4.2(a), which is designed to protect “represented persons unschooled in the law.” Rule 4.2(a), cmt. [5]. Compounding this misconduct, Respondent continuously and knowingly refused to respond to Disciplinary Counsel’s inquiry and the related Board Order.

2. Prejudice to the Client

There is no evidence that TSA (Respondent’s client) was prejudiced.

3. Dishonesty

There is no dishonesty charge and thus no dishonesty violation.

4. Violations of Other Disciplinary Rules

We have found that Respondent violated Rule 4.2(a), Rule 8.1(b), Rule 8.4(d), and D.C. Bar R. XI, § 2(b)(3).

5. Previous Disciplinary History

Respondent has no prior discipline.

6. Acknowledgement of Wrongful Conduct

There is no testimony from Respondent acknowledging her wrongful conduct, as Respondent did not participate. We have found that Respondent told Ms. Harding that she “had make a mistake” when discussing Mr. Klippel’s complaint. FF 30.

7. Other Circumstances in Aggravation and Mitigation

All relevant circumstances have been described above. But we reiterate that Respondent did not participate in these proceedings, which is a significant aggravating factor. *See In re Wright*, 702 A.2d 1251, 1257 (D.C. 1997) (per curiam) (appended Board Report) (describing the respondent’s failure to participate as “an egregious disregard for his obligations within the disciplinary system” and finding that this “is an aggravating factor for purposes of arriving at a sanction”).

C. Sanctions Imposed for Comparable Misconduct

We agree with Disciplinary Counsel’s recommended sanction of a 30-day suspension. Cases involving a knowing failure to respond to Disciplinary Counsel’s inquiry and a Board Order, and a serious interference with the administration of justice, generate 30-day suspensions. And though Respondent, on two occasions, also knowingly spoke with an opposing party without prior consent, cases with greater than 30-day suspensions contain more serious misconduct.

The Court of Appeals has imposed 30-day suspensions with fitness for cases involving knowing failures to respond to Disciplinary Counsel’s inquiries and Board

orders (Rules 8.1(b), 8.4(d), and D.C. Bar R. XI § 2(b)(3)). *See, e.g., Lea*, 969 A.2d 881; *In re Cooper*, 936 A.2d 832 (D.C. 2007) (per curiam); *In re Burnett*, 878 A.2d 1291 (D.C. 2005) (per curiam). For violations of only Rule 8.4(d) and D.C. Bar R. XI § 2(b)(3), the Court or Board has imposed lesser sanctions of a public censure or a Board reprimand. *In re Nielsen*, 768 A.2d 41 (D.C. 2001) (per curiam) (Public Censure); *In re Taylor*, Bar Docket No. 504-98, at 9-11 (BPR Apr. 26, 2001) (Board Reprimand). *Taylor* is especially distinguishable from our matter, as it involved “significant mitigating circumstances”—particularly a “traumatized psychological state” resulting from “natural and personal disasters.” *Taylor*, Bar Docket No. 504-98, at 9-10. We recognize that Respondent’s misconduct appears to be an aberration; however, Respondent has offered no evidence in mitigation of sanction, and none appears on the face of the record.

Respondent also violated Rule 4.2(a) on two occasions. Rule 4.2(a) violations (without other misconduct) have resulted in informal admonitions. *See, e.g., In re Hovis*, Bar Docket No. 2005-D329 (Letter of Informal Admonition July 13, 2011); *In re Roxborough*, Bar Docket No. 2008-D262 (Letter of Informal Admonition May 12, 2011).

Importantly, Respondent did not engage in more serious misconduct that has resulted in longer periods of suspension. In *Jones-Terrell*, 712 A.2d 496, the respondent violated not only Rules 4.2(a) and 8.4(d), but also Rule 1.8(a) (conflict of interest—prohibited business transactions with a client), Rule 7.1(b)(3) (contact with incapacitated person regarding potential employment), Rule 1.7(b) (conflict of



interest—adverse interests), and Rule 8.4(c) (dishonesty, fraud, deceit, or misrepresentation). The Court imposed a 60-day suspension, recognizing that the “violations were extremely serious and akin to those in *McLain*”—where the Court found a conflict of interest violation. *Id.* at 501 (quoting Board Report); *In re McLain*, 671 A.2d 951 (D.C. 1996). We have neither a conflict of interest charge, nor an 8.4(c) dishonesty, fraud, deceit, or misrepresentation charge in our matter.

*In re Rogers* and *In re Roxborough* are also instructive. *Roxborough*, unlike here, involved a respondent with prior discipline who violated Rule 1.7(a) (representing clients with adverse positions creating an actual conflict of interest), Rule 1.6(a)(2) (misuse of client confidences), Rule 5.3(a) and (c) (failure to reasonably manage assistant and failure to mitigate) and Rule 1.16(a)(3) (failure to withdraw from representation after being discharged), in addition to Rule 4.2(a). The Court suspended the respondent for 60 days with fitness, *nunc pro tunc* to the date the respondent completed his previous 30-day suspension, and to run consecutively to that suspension. 692 A.2d 1379 (D.C. 1997) (per curiam). *Rogers* is likewise inapposite, which imposed a 90-day suspension, plus fitness for a Rule 4.2(a) violation “compounded by [the respondent’s 8.4(c)] dishonesty.” *In re Rogers*, Board Docket No. 12-BD-012 (BPR Dec. 31, 2013), appended HC Report at 39 (Oct. 29, 2013), *recommendation adopted*, 112 A.3d 923 (D.C. 2015) (per curiam). We do not condone Respondent’s misconduct; rather, we find that a 30-day suspension is consistent with cases involving comparable misconduct.

D. Fitness

A fitness showing is a substantial undertaking. *See Cater*, 887 A.2d at 20, 24. Thus, in *Cater*, the Court held that “to justify requiring a suspended attorney to prove fitness as a condition of reinstatement, the record in the disciplinary proceeding must contain clear and convincing evidence that casts a serious doubt upon the attorney’s continuing fitness to practice law.” *Id.* at 6. Proof of a “serious doubt” involves “more than ‘no confidence that a Respondent will not engage in similar conduct in the future.’” *In re Guberman*, 978 A.2d 200, 213 (D.C. 2009). It connotes “‘real skepticism, not just a lack of certainty.’” *Id.* (quoting *Cater*, 887 A.2d at 24).

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

The fixed period of suspension is intended to serve as the commensurate response to the attorney’s past ethical misconduct. In contrast, the open-ended fitness requirement is intended to be an appropriate response to serious concerns about whether the attorney will act ethically and competently in the future, after the period of suspension has run. . . .

. . . [P]roof of a violation of the Rules that merits even a substantial period of suspension is not necessarily sufficient to justify a fitness requirement . . . .

*Cater*, 887 A.2d at 22.

In deciding whether to impose fitness based on a respondent’s failure to participate in the disciplinary process, we look to the following factors: (1) the respondent’s level of cooperation in the pending proceeding(s), (2) the repetitive

nature of the respondent's lack of cooperation in disciplinary proceedings, and (3) "other evidence that may reflect on fitness. *Id.* at 25.

We agree with Disciplinary Counsel that fitness is warranted. The first two factors cut heavily against Respondent: Respondent repeatedly and knowingly failed to cooperate. To reiterate, Respondent first did not respond to three inquiries from Disciplinary Counsel and a Board Order compelling her response. *See* Section III. B., *supra*. This led to Ms. Harding, Disciplinary Counsel's investigator, and even the Board needing to get involved. Though Respondent eventually left Disciplinary Counsel two voicemails—one of which stated she could prepare a written response—Respondent never provided one.

Compounding her lack of cooperation during the investigation, Respondent did not participate in these proceedings. Respondent did not file an Answer. She did not appear at the pre-hearing conference, nor the hearing itself. And as to the hearing, Respondent did not file exhibits, witness lists, or post-hearing briefs. The lack of any participation, at any part of the process, gives us significant pause about how Respondent may conduct herself as an attorney in the future.

There is also "other evidence" we find relevant. As Disciplinary Counsel points out (ODC Br. at 27), Respondent is currently administratively suspended for non-payment of dues—a factor we may consider. *In re Godette*, 919 A.2d 1157, 1167 (D.C. 2007) ("The Board may also consider, in terms of [the respondent's] commitment or lack thereof to his professional obligations, that . . . he has been administratively suspended from practice for non-payment of dues."). We agree that

this also demonstrates Respondent's lack of commitment to her professional obligations as an attorney. ODC Br. at 27.

Other caselaw also aids our finding of fitness. In *In re Lea*, the Court imposed fitness based on several facts we have found here: The repeated, deliberate failures to cooperate with Disciplinary Counsel's inquiry, including the failure to respond to a Board Order. 969 A.2d at 890-94 (discussing the respondent's conduct against the three *Cater* factors). And importantly, as Disciplinary Counsel notes, these failures warranting fitness can stem from a single investigation, like what we have here. *Id.* at 890; *Godette*, 919 A.2d at 1167; ODC Br. at 26-27. *Hallmark's* warning is also helpful, holding that fitness is appropriate where a respondent demonstrates "persistent disregard for the disciplinary process and continued refusal to cooperate with [Disciplinary] Counsel and the Board." *In re Hallmark*, 831 A.2d 366, 377 (D.C. 2003) (quoting *In re Smith*, 649 A.2d 299, 300 (D.C. 1994) (per curiam)).

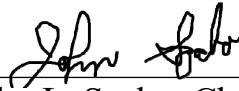
To be sure, we recognize that fitness is a particularly individualized inquiry, and no two cases are exactly alike. But we find significant overlap in the salient facts described in cases above, to the matter here. Together with our own inquiry, we have serious concerns about Respondent's future ability to act ethically and competently, and we thus recommend a fitness requirement to accompany a 30-day suspension.

## V. CONCLUSION

For the foregoing reasons, the Committee finds that Respondent violated Rule 4.2(a), Rule 8.1(b), Rule 8.4(d), and D.C. Bar R. XI, § 2(b)(3), and should receive

the sanction of a 30-day suspension, with fitness. We further recommend that Respondent's attention be directed 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



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John L. Szabo, Chair



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David Bernstein, Public Member



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Michelle C. Thomas, Attorney Member