THIS REPORT IS NOT A FINAL ORDER OF DISCIPLINE*

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

In the Matter of:	:	
	:	
GEORGE W. CRAWFORD II,	:	
	:	Board Docket No. 15-BD-108
Respondent.	:	Disciplinary Docket No. 2013-D022
	:	
A Member of the Bar of the	:	
District of Columbia Court of Appeals	:	
(Bar Registration No. 311639)	:	

REPORT AND RECOMMENDATION
OF THE AD HOC HEARING COMMITTEE

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

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Respondent, George W. Crawford II, is charged with violating Rules 3.1, 3.3(a)(1), 3.4(c), 8.4(a), 8.4(c), and 8.4(d) of the District of Columbia Rules of Professional Conduct (the "Rule" or "Rules"), arising from a civil judgment against him and his conduct in connection with a subsequent settlement agreement. Disciplinary Counsel[1] contends that Respondent committed all of the charged Rule violations and that, as a sanction for his misconduct, Respondent should be suspended for six months, with reinstatement conditioned upon a showing of fitness, payment of any outstanding sanctions, and compliance with any pending court orders. Respondent contends that Disciplinary Counsel has failed to establish, by clear and convincing evidence, any of the charged Rule violations.

[1] The Specification of Charges was filed by the Office of Bar Counsel. 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 report.

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As set forth below, the Hearing Committee finds clear and convincing evidence that Respondent violated each of the Rules charged. The Hearing Committee agrees with Disciplinary Counsel's recommendation regarding sanction, and recommends that Respondent receive a sanction of a six-month suspension, with reinstatement conditioned upon a showing of fitness, payment of any outstanding sanctions, and compliance with any pending court orders.

I. PROCEDURAL HISTORY

On November 9, 2015, Disciplinary Counsel served Respondent with a Specification of Charges ("Specification"). The Specification alleges that Respondent violated the following rules:

- Rule 3.1, by defending a proceeding, and asserting or controverting an issue therein, although there was no basis in law for doing so that was not frivolous;
- Rule 3.3(a)(1), by knowingly making false statements of fact to a tribunal or failing to correct false statements of material fact previously made to the tribunal by Respondent through his lawyer;
- Rule 3.4(c), by knowingly disobeying an obligation under the rules of a tribunal except for an open refusal based on an assertion that no valid obligation exists;
- Rule 8.4(a), by violating or attempting to violate the Rules, knowingly assisting or inducing another to do so, or through the acts of another;
- Rule 8.4(c), by engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation by his failure to comply with the court's orders to pay sanctions and his agreement to do so; and
- Rule 8.4(d), by engaging in conduct that seriously interfered with the administration of justice by his conduct before the Superior Court of the District of Columbia.

Specification ¶ 25.

Respondent filed an answer on November 30, 2015.[2] On May 3, 2016, Disciplinary Counsel filed its Brief in Support of Applying Collateral Estoppel to the Court's Rulings in the Underlying Litigation. On June 17, 2016, Respondent filed his brief in opposition thereto.

A hearing was held on June 20 and 23, 2016 before this Ad Hoc Hearing Committee (the "Hearing Committee").[3] Disciplinary Counsel was represented at the hearing by Deputy Disciplinary Counsel Elizabeth Herman, Esquire. Respondent was represented at the hearing by Latif Doman, Esquire. Prior to the hearing, the parties agreed to written Stipulations ("Stip.") that were entered into evidence. Tr. at 5.[4] Disciplinary Counsel presented the testimony of Stephen Neal, Esquire, and offered Disciplinary Counsel's Exhibits A-D and 1-60, all of which were admitted into evidence, without objection. Tr. at 23-24, 385. Respondent presented the testimony of his wife, Harriet Crawford, and testified on his own behalf. Respondent offered Respondent's Exhibits 1-24, which were admitted into evidence, also without objection. Tr. at 24, 506.

Upon conclusion of the hearing, the Hearing Committee made a preliminary non-binding determination that Disciplinary Counsel had proven at least one of the

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[2] Respondent also filed an amended answer on April 25, 2016.

[3] On July 31, 2020, the Public Member, Mary C. Larkin, was appointed to the Board on Professional Responsibility, effective August 1, 2020. On October 27, 2020, the parties filed written statements indicating that they had no objection to Ms. Larkin's continuing to preside in this matter.

[4] "Tr." refers to the Transcript of the proceeding held on June 20 and 23, 2016.

ethical violations set forth in the Specification of Charges. Tr. at 491-92; *see* Board Rule 11.11. On June 29, 2016, the Committee issued a written order setting the post-hearing briefing schedule and requiring the parties to respond to specific questions in their briefs.

Disciplinary Counsel submitted its Proposed Findings of Fact, Conclusions of Law, and Recommendation as to Sanction ("ODC Br.") on July 28, 2016. Respondent filed his Proposed Findings of Fact, Conclusions of Law, and Recommendation as to Sanction ("R. Br.") on August 22, 2016.[5] Disciplinary Counsel's Reply was filed on August 29, 2016.

On the basis of the record as a whole, the Hearing Committee makes the following findings of fact and conclusions of law, each of which is supported 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").

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[5] Respondent's proposed findings of fact did not comply with the Hearing Committee's June 29, 2016 order. That order required Respondent's brief to "contain a response to each numbered paragraph in Disciplinary Counsel's proposed findings of fact, including, in the case of any disagreement, specific references to the parts of the record relied upon." June 29, 2016 Order at 1-2. Respondent's brief provided no specific response to any of Disciplinary Counsel's 109 proposed findings of fact. On September 16, 2016, the Hearing Committee issued an order directing Respondent to file an amended brief that complied with the June 29 order on or before October 3, 2016. Respondent subsequently filed two motions for extensions of time to file his amended brief. The Hearing Committee granted both motions (for a total extension of 18 days). Respondent never filed the required amended brief, however, and never sought any further extension of time to file it.

II. FINDINGS OF FACT

1. Respondent was admitted to the Bar of the District of Columbia Court of Appeals on May 27, 1980 and assigned Bar Number 311639. DCX A; Stip. ¶ 1.[6]

2. At the time of the events in question, Respondent was an experienced lawyer. He had worked for the D.C. government as general counsel for the District of Columbia Taxicab Commission. After he retired in 2001 from D.C. government employment, he served as the president of the North Capitol Neighborhood Development Corporation ("NCNDC"), a non-profit development corporation involved in community development and housing development. For the previous 15 years before he became NCNDC President, he had served as a member of its board of directors. Tr. at 184-87 (Respondent). By September 2011, he had returned to work for the D.C. government as an administrative law judge. *Id.* at 228 (Respondent); *id.* at 139 (Neal) ("[W]hen he had his job as the chief judge of the Department of Employment Services . . . .").

3. Respondent was also sophisticated in D.C. real estate matters. After he retired from D.C. government employment, he became a licensed real estate agent. Tr. at 201 (Respondent). During his service as NCNDC president, he got even further into housing development to get various housing projects completed. *Id.* at 186 (Respondent).

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[6] "DCX" Refers to Disciplinary Counsel's exhibits. "RX" refers to Respondent's exhibits.

Civil Action No. 2007-CA-5890

4. On August 23, 2007, First Washington Insurance Company ("First Washington") and Gerald Schaeffer, First Washington's majority owner, filed a complaint in the District of Columbia Superior Court against Respondent and others alleging, *inter alia*, breach of certain promissory notes, deeds of trust, and personal guaranties. The case was styled *First Washington Insurance Co. v. Kelly*, No. 2007 CA 005890B (the "-5890 Action"). The claims against Respondent arose from his personal guaranty of the promissory notes. The case was later consolidated with *Crawford v. First Washington Insurance Co.*, No. 2010 CA 6309B, and *District of Columbia v. Crawford*, No. 2012-CCC 022. DCX 8; DCX 1; Stip. ¶ 2.

5. Stephen L. Neal, Jr., Esq. represented First Washington and Mr. Schaeffer in this action. Tr. at 45 (Neal). (For convenience we will use "First Washington" to include both plaintiffs.)

6. The -5890 Action arose from a secured loan in the amount of $850,000 made by First Washington to Joy Kelly and Sunshine VW, LLC (the "Kelly/Sunshine Loan"). The loan, which was made on or about June 7, 2006, was secured by deeds of trust on four District of Columbia real properties. DCX 17 (Memorandum Opinion and Order, dated Dec. 14, 2012) at 2, 3 n.5; DCX 29 ([Respondent's] Memorandum of Points and Authorities in Support of Motion to Vacate Judgment and for Leave to Supplement Answer to Plaintiffs' First Amended Complaint ("MVJ Memo"), dated Mar. 15, 2010) at 3-4; Tr. at 191, 194 (Respondent).

7. Before Respondent was involved with the Kelly/Sunshine Loan, on four or five previous occasions he had helped other prospective borrowers obtain loans from First Washington. For those transactions, he had prepared the deeds of trust and promissory notes and had taken the necessary steps to ensure that First Washington would have first priority lien position on the collateral property securing each loan. RX 11 (Deposition of George W. Crawford, II, dated Dec. 30, 2008 attached as Ex. 5 to MVJ Memo, at unnumbered page 64 (Tr. page 26)); Tr. at 186-88 (Respondent) (for these loans Respondent personally "did the background check on whether [First Washington] would have the first position on the money that [First Washington] would loan").

8. Respondent testified that he had agreed to provide his personal guaranty of the repayment of First Washington's loan to Ms. Kelly and Sunshine VW, because he understood that First Washington would have first priority lien position on the four secured properties in the event of a default. Tr. at 190, 193-94, 202-06 (Respondent); RX 11 (MVJ Memo) at 3-4. Respondent believed that the value of the four collateral properties securing the repayment obligation was approximately $2.4 million (for a loan-to-value percentage of approximately 40-45%). He also believed that one of the properties (referred to as the "9th & Upshur Property") was itself worth $895,000, $45,000 more than the original total amount of the loan ($850,000). Tr. at 201-02 (Respondent). As Respondent explained:

> So even if Joy Kelly defaults on all the loans and First Washington forecloses and acquires the properties, they've gotten $2.4 million of property for $850,000.

Id. at 202.

9. Respondent had introduced Ms. Kelly and Sunshine VW to Mr. Schaeffer at First Washington. Because of the amount of the requested loan, Mr. Schaeffer asked him to serve as a guarantor for the loan. Tr. at 190, 193 (Respondent). Respondent received a finder's fee in the amount of $8,500 (1% of the loan amount) for bringing the borrower to First Washington. *Id.* at 314 (Respondent). Respondent did not prepare the promissory notes and deeds of trust for the Kelly/Sunshine Loan or review what needed to be done to make sure that First Washington would have first priority lien position on the collateral properties. *Id.* at 192 (Respondent) (Respondent "took a back seat in terms of reviewing the [R]ecorder of [D]eeds records, reviewing what needed to be done so that . . . First Washington would have a first trust or first deed [of trust] on all the properties"). The closing on the Kelly/Sunshine Loan was handled by First American Title Insurance Company ("First American Title"). *Id.* at 191-92 (Respondent). Respondent testified that documents that he observed at the loan closing (but did not otherwise identify in his testimony except for a single D.C. government tax form (Form FP 7/C)) showed that First Washington would have a first deed of trust (*i.e.*, first priority lien position) on all four properties that were securing the loan. *Id.* at 194. In fact, the Form FP 7/C suggested that First Washington would have a first mortgage only on the 9th and Upshur Property, not on all four properties. *See* Form FP 7/C attached as Ex. 4 to RX 11 (MVJ Memo) at unnumbered page 58 (Bates-numbered page FATIC 00187).

10. Unlike his practice in the previous four or five transactions in which he had helped borrowers obtain loans from First Washington, for this transaction, and even though he was going to execute his personal guaranty making him potentially liable for the full amount of the loans ($850,000) in the event of a default, Respondent never checked to confirm that First Washington would have first priority lien position on all of the collateral properties. Instead, he relied on his understanding that that was what First Washington would require, and on his instruction to the borrower that First Washington had to have first priority lien position on all four properties. Tr. at 190-93 (Respondent). As set out below (FF 61-62), the only thing that he did was review at loan closing a D.C. Real Property Recordation and Transfer Tax Form (Form FP 7/C) that suggested First Washington would have a first mortgage. Tr. at 193-94 (Respondent).

The Court Enters a $1.2 Million Judgment Against Respondent

11. On March 6, 2009, Judge Brian F. Holeman orally granted First Washington's motion for summary judgment against Respondent and other defendants in the -5890 Action. Stip. ¶ 3; DCX 12 (Order, dated Aug. 21, 2012) at 1-2. On December 1, 2009, the court ordered the clerk to enter a total of three judgments totaling $1,158,701.40 against Respondent, jointly and severally. DCX 9 (Order, dated Dec. 1, 2009); DCX 10 (Omnibus Order, dated May 31, 2012) at 2; Stip. ¶ 3; Tr. at 48 (Neal). The clerk entered these judgments against Respondent on December 21, 2009. DCX 8 (Docket Sheet for -5890 Action) at 16. (For convenience, we will refer to the three judgments against Respondent as "the $1.2

million judgment.") This judgment was not an appealable final judgment, because it did not resolve all claims against all parties to the action and the court did not make the "no just reason for delay" determination required by Super. Ct. Civ. R. 54(b) that would have made it an appealable final judgment. DCX 9 (Order, dated Dec. 1, 2009); *Farrow v. J. Crew Group Inc.*, 12 A.3d 28, 35 (D.C. 2011) ("A judgment must dispose of all claims against all parties in order to be final for purposes of appeal.") (citations omitted)).

12. On December 28, 2009, Respondent filed a notice of appeal to the District of Columbia Court of Appeals from the $1.2 million judgment against him. This appeal was docketed as No. 09-CV-1593. DCX 53 (Docket Sheet for Appeal No. 09-CV-1593) at 2; DCX 17 (Memorandum Opinion and Order, dated Dec. 14, 2012) at 3 n.7. Respondent's appeal from this non-appealable order was frivolous. The Court of Appeals later dismissed Respondent's appeal. DCX 17 (Memorandum Opinion and Order, dated Dec. 14, 2012) at 3 n.7; DCX 53 at 1.

The Parties' Mediation and Partial Settlement Agreement

13. Following the Superior Court's entry of the $1.2 million judgment against Respondent and other defendants, the court ordered the parties, including Respondent, to participate in a mediation. Tr. at 49 (Neal); Stip. ¶ 4. On January 7, 2010, a mediation session was held. DCX 23 (Praecipe of Partial Settlement, dated Jan. 14, 2010) at 1.

14. At the mediation session, First Washington, Respondent, and First American Title entered into a partial settlement of the case, agreeing to resolve all

the claims and cross-claims against each other, subject to certain terms and conditions. This settlement was "partial" only in the sense that, although it settled all matters involving Respondent, First Washington, and First American Title, it did not resolve any matters involving any other defendants. Stip.¶ 4; Tr. at 50-51, 53 (Neal).

15. The terms agreed upon were the following. First Washington and Respondent agreed that First Washington would release Respondent from the $1.2 million judgment against him subject to (1) his execution of an affidavit detailing all of his assets and liabilities, (2) his agreement to pay plaintiffs a total of $10,000 over the next three years, and (3) his signing a promissory note consistent with D.C. law confirming his payment obligation. As part of this settlement, Respondent agreed to dismiss the cross-claims he had asserted against First American Title. Tr. at 52-53, 88-90 (Neal); DCX 23 (Praecipe of Partial Settlement, dated Jan. 14, 2010) at 2.

16. Respondent agreed to these settlement terms. Tr. at 51-53, 88-90, 112 (Neal); Tr. at 198-99 (Respondent agrees that First Washington's counsel (Mr. Neal) had "accurately summarized" in his Hearing Committee testimony the terms of the settlement to which Respondent had agreed); *id.* at 207 (Respondent); Stip. ¶ 5.

17. At the mediation, First Washington also resolved its claims against First American Title. DCX 23 at 1-2. For convenience, we will refer to the agreement reached at the mediation session that was memorialized in the Praecipe of Partial Settlement (DCX 23) as the parties' "Settlement Agreement."

Respondent Initially Repudiates the Settlement Agreement But Then Agrees to It Again

18. The day after the Settlement Agreement was reached at the mediation, but before the Praecipe memorializing the agreement had been filed with the court, Respondent sent an e-mail to Mr. Neal in which he repudiated the settlement. Respondent stated that he had changed his mind, that he was not going to pay First Washington the $10,000 agreed upon, that First Washington, instead, should dismiss its $1.2 million judgment against him, and that First American should pay him $35,000. None of these terms had been discussed or agreed upon at the mediation. Tr. at 54-55 (Neal); *see also* RX 14 (E-mail dated Feb. 10, 2010 from Neal to Respondent) at unnumbered page 24 (E-mail page 1); DCX 30 (Tr. of May 28, 2010 Hearing) at 6.

19. First Washington's counsel objected to Respondent's repudiation of the settlement and served post-judgment discovery (interrogatories and document requests). RX 14 (E-mail dated Feb. 8, 2010 from Neal to Respondent) at unnumbered page 25 (E-mail page 2). Respondent then changed his mind, and again agreed to the settlement terms he had previously agreed to at the mediation. Tr. at 53, 96 (Neal).

20. On January 14, 2010, Mr. Neal filed with the court the Praecipe of Partial Settlement that stated the terms of the settlement to which all parties to the settlement (*i.e.*, First Washington, First American Title, and Respondent) had agreed. DCX 23 (Praecipe of Partial Settlement, filed Jan. 14, 2010); Tr. at 53 (Neal);

DCX 10 (Omnibus Order, dated May 31, 2012) at 2. Respondent approved the exact language of the Praecipe before it was filed with the court. Tr. at 53 (Neal).

21. The Praecipe stated the terms of the partial settlement to which Respondent had agreed as follows:

> [Respondent] shall pay [First Washington] $10,000 over the next three years ($3,333 by January 15, 2011, $3,333 by January 15, 2012, and $3,334 by January 15, 2013) and provide [First Washington] with a sworn Affidavit detailing all his assets and liabilities. To secure [Respondent's] obligation, [Respondent] will enter into a Promissory Note with [First Washington] which provides for, *inter alia*, acceleration and [First Washington's] attorneys' fees and costs if they are required to enforce it. Upon [Respondent's] execution of the Affidavit and Promissory Note, [First Washington] will release [Respondent] from the Judgment entered against him.

DCX 23 at 2.

22. Following the filing of the Praecipe, Respondent began his efforts described below to avoid complying with its terms.

Respondent Refuses to Execute the Promissory Note Required by the Settlement Agreement

23. As noted above (FF 15), Respondent agreed as part of the Settlement Agreement to execute a promissory note that complied with D.C. law. On February 3, 2010, Mr. Neal sent Respondent a draft promissory note. RX 14 (E-mail dated Feb. 3, 2010 from Neal to Respondent and attached Promissory Note) at unnumbered pages 14-18. The draft promissory note was a "confessed judgment" promissory note. *Id.* at unnumbered pages 16-18 (Feb. 3, 2010 Promissory Note pages 1-3). A "confessed judgment" note is a form of note specifically allowed under D.C. law

that, in the event of an uncured default by the maker of the note, allows the note holder's representative to confess judgment against the maker for the amount due. *See Hackney v. Chamblee*, 980 A.2d 427, 429-30 (D.C. 2009); Super. Ct. Civ. R. 68-I.

24. First Washington's February 3 draft promissory note also contained other provisions, all consistent with D.C. law, including a "Waivers" provision and a "Default" provision. RX 14 at unnumbered pages 16-18 (Feb. 3, 2010 Promissory Note pages 1-3). Respondent objected to the "Confession of Judgment" "Waivers," and "Default" provisions. Tr. at 108-09 (Neal); *compare* RX 14 (Feb. 3, 2010 Promissory Note drafted by Neal) at unnumbered pages 16-18 (Feb. 3, 2010 Promissory Note pages 1-3), *with* RX 14 (Feb. 8, 2010 Promissory Note drafted by Respondent) at unnumbered pages 20-21 (Feb. 8, 2010 Promissory Note pages 1-2) (deleting the "Confession of Judgment," "Waivers," and "Default" provisions). Significantly, in his testimony before the Hearing Committee, Respondent never claimed that the "Confession of Judgment," "Waivers" and "Default" provisions did not comply with D.C. law, and never disputed the testimony of First Washington's counsel that these provisions were standard provisions in promissory notes in the District of Columbia. Tr. at 208 (when Mr. Neal told Respondent that these provisions were standard provisions in D.C., he responded only that they were "not standard with me") (Respondent).

25. The provisions of the First Washington-proposed promissory note that Respondent objected to (regarding "Confession of Judgment," "Default," and

"Waivers" of homestead exemption and other rights) were standard provisions in promissory notes in the District of Columbia. The draft promissory notes that First Washington's counsel proposed to Respondent were "form" documents that he obtained from his corporate law partner and their provisions were "typical[]" in D.C. promissory notes. Tr. at 98 (Neal); *see id.* at 115 (proposed promissory notes were "form document[s]" that complied with D.C. law; any promissory note has to have a "Default" provision specifying the "grounds for default, otherwise there's no way to enforce it").

26. We find that Respondent agreed to the "Waivers" and "Default" provisions of the promissory notes because they were standard provisions in promissory notes in the District of Columbia, and Respondent had agreed as part of the Settlement Agreement to execute a promissory note in the standard form of promissory notes in the District of Columbia.

27. Respondent objected that these terms were not consistent with the Settlement Agreement because he had never specifically discussed and agreed to these particular terms at the mediation. He objected in particular to the "Waivers" provision because it would have waived his homestead exemption (under D.C. Code § 15-501). If Respondent had waived that exemption and then had failed to make the promised payments, the note holder could have enforced any resulting judgment by executing or levying upon Respondent's interest in his house without regard to the

homestead exemption.[7] He objected to the "Default" provision because it specified a number of events, including non-payment of an installment payment when due, and filing for bankruptcy, that would have constituted a default that would have allowed the note holder to accelerate Respondent's obligation and declare the full unpaid amount of the note immediately due and payable. (For example, if Respondent missed the first year's payment obligation, the note holder could declare the entire amount of the note ($10,000) due and payable and would not have to wait until Respondent missed the second- and third-year's payments to sue to enforce those obligations.) Tr. at 109 (Neal); *id.* at 208-10 (Respondent).

28. The "Waivers" provision in both versions of the promissory note that First Washington's counsel proposed waived only Respondent's statutory homestead exemption "as to this debt" for his interest in the jointly-owned property. The "Waivers" provision stated in its entirety:

> ***Waivers***. I hereby (1) waive the benefit of homestead exemption as to this debt and also waive presentment, demand, protest and notice of any kind respecting this Note, including, but not limited to, notice of maturity, notice of default, notice of dishonor and notice of acceleration; (2) agree that the Holder at any time or times, without notice or further consent, may grant extensions of time, without limit, for payment of this Note

[7] It is not clear why Respondent was so concerned about preserving and not waiving his homestead exemption in the promissory note. Because he held his residence in a tenancy by the entireties with his wife, the note holder could not have executed or levied upon his interest in his residence in any event, whether or not Respondent preserved his homestead exemption. *Morrison v. Potter*, 764 A.2d. 234, 236-37 (D.C. 2000) (a tenancy by the entireties estate is not subject to execution or levy for the debts of only one of the co-tenants) (citing *Finley v. Thomas*, 691 A.2d 1163, 1166 (D.C. 1997), and *In re Estate of Wall*, 440 F.2d 215, 220 (D.C. Cir. 1971)).

> without affecting the liability of the undersigned; and (3) waive the benefit of any law or rule of law providing for his release or discharge hereon, in whole or in part, on account of any facts or circumstances other than full payment of all amounts due hereunder. No waiver of any payment or right under this Note shall operate as a waiver of any other payment or right.

RX 14 at unnumbered page 17 (Feb. 3, 2010 Promissory Note page 2) (emphasis in original); *see also* RX 14 at unnumbered page 32 (Feb. 22, 2010 Promissory Note page 2).

29. The court found that the forms of promissory note that First Washington provided (which contained the "Waivers" and "Default" provisions) were "consistent with the Settlement Agreement and acceptable." DCX 12 (Order, dated Aug. 21, 2012) at 4.

30. Based on the foregoing, we also find that Respondent agreed in the parties' Settlement Agreement to execute one of the forms of promissory note that First Washington's counsel provided, including the Waivers and Default provisions.

31. Respondent's argument that he only agreed to the promissory note terms that were specifically discussed and agreed upon at the mediation session is contrary to common sense and an unreasonable interpretation of the parties' agreement. First Washington had a $1.2 million judgment against Respondent, and, as part of the settlement, it was agreeing to vacate that judgment in exchange for a promissory note for $10,000. When final, this $1.2 million judgment would be fully enforceable against Respondent. The promissory note was nothing more than Respondent's promise to pay a much smaller amount ($10,000). Without the

"Confession of Judgment" provision, First Washington's only remedy if Respondent defaulted on the note would be to file a new suit for breach of contract and start all over again. The purpose of the "Default" and "Waivers" provisions (and the "Confession of Judgment" provision that First Washington's counsel later deleted in response to Respondent's objection (*compare* RX 14 at unnumbered page 17 (Feb. 3, 2010 Promissory Note page 2), *with* RX 14 at unnumbered pages 31-32 (Feb. 22, 2010 Promissory Note pages 1-2))) was to insure that First Washington had an enforceable obligation. Tr. at 122-23 (Neal) (explaining that the purpose of the waiver of homestead exemption was to prevent Respondent from avoiding his obligation under the promissory note by claiming his homestead exemption); *id.* at 126-27 (Neal).

32. If Respondent's understanding of the parties' agreement was correct, First Washington had agreed to vacate its $1.2 million judgment in exchange for a promise to pay $10,000 in a purported promissory note that was not a true promissory note (see FF 37-38 below), that lacked standard terms found in promissory notes in the District of Columbia, and that could not be enforced against Respondent's homestead under D.C. Code § 15-501(a). We find that Respondent's testimony to this effect is not credible.

33. On February 8, 2010, Respondent sent First Washington's counsel a revised "Agreement and Promissory Note" that Respondent claimed was consistent with the Settlement Agreement. RX 14 (E-mail dated Feb. 8, 2010 from Respondent

to Neal and attached Promissory Note) at unnumbered pages 19-21. Contrary to Respondent's claim, his revision was not consistent with the Settlement Agreement.

34. Respondent's revision was markedly different from First Washington counsel's proposed promissory note. It deleted the "Confession of Judgment," "Default" and "Waivers" provisions in their entirety. By deleting the "Default" provision, Respondent's revision eliminated the "acceleration" provision to which Respondent had specifically agreed in the Settlement Agreement. DCX 23 (Praecipe of Partial Settlement) at 2 (describing that the "Promissory Note [will] provid[e] for, *inter alia*, acceleration . . . . ").

35. Respondent's revision also added an entirely new provision entitled "Obligations of the Holders and Maker." RX 14 at unnumbered pages 20-21 (Feb. 8, 2010 Promissory Note pages 1-2). Under the terms Respondent proposed, the first time that First Washington would have been able to review Respondent's Affidavit detailing all of his assets and liabilities (the Affidavit that would supposedly demonstrate Respondent's inability to pay any more than $10,000 over three years to satisfy First Washington's $1.2 million judgment against him) would have been only *after* First Washington had already agreed to vacate the judgment and had joined with Respondent in filing a joint motion asking the court to vacate the judgment against him. *Id.* ("*Concurrent with* the filing of the [Joint Motion] the Maker [Respondent] shall execute a sworn Affidavit detailing his assets and liabilities.") (emphasis added)). The definition of "concurrent" is "[h]appening, existing, or done at the same time as something else." *Concurrent*, American

Heritage Dictionary of the English Language (5th ed. 2020), https://www.ahdictionary.com/-word/search.html?q=concurrent.

36. Under Respondent's proposed revision, the filing of the joint motion to vacate and Respondent's signing of the required affidavit would occur "concurrent[ly]," *i.e.*, at the same time. By requiring First Washington to file the joint motion "concurrent with" Respondent's providing his affidavit, Respondent was proposing that First Washington would have to join in filing, and actually file, the motion to vacate its judgment against Respondent simultaneously with Respondent's providing for the first time any information under oath about his financial condition. This was contrary to the language of the parties' Settlement Agreement, which provided that Respondent would *first* execute the required affidavit and promissory note, and only then would First Washington release him from the $1.2 million judgment. DCX 23 (Praecipe of Partial Settlement, dated Jan. 14, 2010) at 2 ("*Upon* [Respondent's] execution of the Affidavit and Promissory Note, [First Washington] will release [Respondent] from the Judgment entered against him.") (emphasis added)). Respondent's proposal would also have defeated the purpose of requiring Respondent to demonstrate his inability to pay as a pre-condition to First Washington's agreeing to vacate its judgment against him.

37. Also, by making the document a promissory note *and* an agreement, this new provision would also have transformed the fundamental character of Respondent's obligation. Instead of a promissory note (defined as an "*unconditional* written promise, signed by the maker, to pay *absolutely and in any event* a certain

sum of money . . . .” (Black’s Law Dictionary (11th ed. 2019) (emphasis added)), the instrument would have become an agreement that would impose new obligations upon the note holders (First Washington), and arguably give Respondent a basis (by disputing the note holders’ compliance with these new obligations) to defeat payment of his otherwise unconditional obligation.

38. Respondent’s proposed “joint motion” to vacate the judgment was never discussed at the mediation. It was unnecessary because, under the parties’ Settlement Agreement, as confirmed in the Praecipe of Partial Settlement, First Washington was already required to release Respondent from the judgment after he had executed the required affidavit and promissory note. DCX 23 at 2 (“Upon [Respondent’s] execution of the Affidavit and Promissory Note, Plaintiffs will release [Respondent] from the Judgment entered against him.”).

39. First Washington’s counsel rejected Respondent’s revised instrument that same day. RX 14 (E-mail dated Feb. 8, 2010 from Neal to Respondent) at unnumbered page 22 (E-mail page 1) (stating that Respondent’s proposed changes are “entirely inconsistent with the settlement reached and are completely unacceptable”).

40. Respondent was familiar with the terms and form of promissory notes in the District of Columbia. As noted above in FF 7, he had prepared numerous promissory notes for First Washington in previous transactions. He also was familiar with the terms of the promissory notes that he had guaranteed that were the basis of the $1.2 million judgment against him. He never contended at any time that the

provisions he objected to were not standard or routine in promissory notes in the District of Columbia or even that the notes that he himself had previously prepared did not contain these very same provisions. Instead, he only argued that he had not agreed to these specific terms in the Settlement Agreement reached at the mediation session.

41. After further discussions and e-mails with Mr. Neal, on February 19, 2010, Respondent sent him a revised "Agreement and Promissory Note." RX 14 (E-mail dated Feb. 19, 2010 from Respondent to Neal and attached Promissory Note) at unnumbered pages 27-29. Respondent's February 19 version still did not comply with the requirements of the parties' Settlement Agreement. It contained a provision entitled "Default," but it was not a "Default" clause because it did not specify what events would constitute a default, and, in addition, still did not provide for acceleration. *Id.* at unnumbered page 28 (Feb. 19, 2010 Promissory Note page 1). Further, under the terms of Respondent's revised proposed "Agreement and Promissory Note," Respondent would execute the "Agreement and Promissory Note" and required Affidavit, and First Washington would *simultaneously* execute a release releasing Respondent from the $1.2 million judgment. *Id.* at unnumbered page 29 (Feb. 19, 2010 Promissory Note page 2) ("Upon the execution of this Agreement and Promissory Note, [Respondent] shall provide an Affidavit detailing his assets and liabilities. *Concurrent* with the execution of this Agreement and Promissory Note and Affidavit, [First Washington] shall execute a Release discharging [Respondent] from the Judgment entered against him.") (emphasis

added)). Thus, like his previous proposed promissory note, Respondent's revised note would have required First Washington to release Respondent from the $1.2 million judgment before it had any opportunity to review Respondent's sworn demonstration of his alleged inability to pay. And finally, like Respondent's previous "Agreement and Promissory Note," Respondent's revised instrument was not a "promissory note" at all, because it was no longer an unconditional promise to pay, but was, instead, a promise to pay combined with additional (and unnecessary) terms of agreement. *Id.* at unnumbered pages 28-29 (Feb. 19, 2010 Promissory Note pages 1-2).

42. On February 22, 2010, Mr. Neal made a further (and final) attempt to reach an agreement by sending a revised "Promissory Note" to Respondent. RX 14 (E-mail dated Feb. 22, 2010 from Neal to Respondent and attached Promissory Note) at unnumbered pages 30-32. First Washington's counsel's revised promissory note removed the "Confession of Judgment" provision to which Respondent had objected, restored the D.C. standard "Default" provision (with the acceleration provision) and the D.C. standard "Waivers" provision, and also deleted the language that Respondent had added that would have required First Washington to sign a release releasing him from the $1.2 million judgment at the same time that Respondent provided the affidavit disclosing his assets and liabilities. *Id.*

43. Respondent did not accept First Washington counsel's revised proposal. There were no further discussions between the parties regarding the terms

of the promissory note that Respondent had agreed to provide. *See* Tr. at 211 (Respondent).

44. In fact, as set forth below (at FF 175), Respondent never signed any form of promissory note provided by First Washington. Tr. at 135-36 (Neal).

Respondent Fails to Provide the Required Affidavit Detailing All of His Assets and Liabilities

45. The Settlement Agreement imposed another obligation on Respondent in addition to the execution of the required promissory note. The Settlement Agreement also required Respondent to provide "a sworn Affidavit detailing all his assets and liabilities." DCX 23 at 2. Respondent never provided an affidavit that complied with the Settlement Agreement. *See* Tr. at 64 (Neal),

46. On February 3, 2010, Mr. Neal (First Washington's counsel) sent Respondent a form of affidavit containing blank spaces for the parts where Respondent was to insert the required information detailing all of his assets and liabilities. RX 14 (E-mail dated Feb. 3, 2010 from Neal to Respondent and attached Affidavit) at unnumbered pages 9-13.

47. Respondent did not provide any affidavit at all until June 4, 2010, four months later, and only after the court had ordered him to execute the affidavit required by the Settlement Agreement. *See* FF 94; DCX 30 (Tr. of May 28, 2010 Hearing) at 53-54, 57-58. And as we describe below (FF 102), he never provided an affidavit that detailed all of his assets and liabilities as the Settlement Agreement required.

First Washington's Motion to Enforce Settlement and Respondent's Motion to Vacate Judgment

48. On March 1, 2010, First Washington filed a motion asking the court to enforce the settlement, or, in the alternative, to compel Respondent to respond to the post-judgment discovery that First Washington had served after Respondent had initially repudiated the settlement. DCX 10 (Omnibus Order, dated May 31, 2012) at 2; Tr. at 146 (Neal). On March 10, 2010, First American Title also moved to enforce the Settlement Agreement and for sanctions against Respondent. DCX 10 at 2-3; DCX 25 (Motion of Defendant First American Title Insurance Company to Enforce Settlement Agreement and for Sanctions against Defendant George Crawford, dated Mar. 10, 2010); Stip. ¶ 6; Tr. at 56-57, 146 (Neal).

49. On March 15, 2010, Respondent filed a Motion to Vacate Judgment, in which he contended that First Washington's $1.2 million judgment against him had been obtained by fraud, misrepresentation, and misconduct by First American and its counsel. RX 11 (Motion to Vacate Judgment, dated Mar. 15, 2010) at 1 *et seq.*; Stip. ¶ 6. That same day he filed an opposition to the motions to enforce the settlement filed by First Washington and First American Title. DCX 26 ([Respondent's] Opposition to Plaintiffs' Motion to Enforce Settlement or, in the Alternative, to Compel and [to] Defendant First American Title Insurance Company's Motion to Enforce Settlement and for Sanctions against Defendant George Crawford ("Opposition to Motion to Enforce Settlement"), dated Mar. 15, 2010). In his opposition, Respondent referred to his motion to vacate judgment, and claimed for the first time that First Washington's counsel had also been a party to

the alleged fraud committed by First American Title and its counsel upon Respondent. *Id.* at 2-4.

50. The essence of the claimed fraud was that First American Title had procured his guaranty by fraudulently misrepresenting to him that First Washington's deeds of trust would have first priority lien position on all of the collateral properties that were securing the loans for which Respondent would serve as guarantor. RX 11 (MVJ Memo), at 7 (documents presented to Respondent at loan closing misrepresented that First Washington "would be in a first position" on all collateral properties).

51. According to Respondent, First American Title had concealed from him two prior deeds of trust on one of the collateral properties, a property referred to as the "9th and Upshur Property." This property was one of the four properties that together secured the loans from First Washington for which Respondent had agreed to act as guarantor. Because of these prior deeds of trust, First Washington did not have first priority lien position on this particular property (the 9th and Upshur Property). Respondent claimed that he would never have agreed to act as guarantor if he had known that First Washington would not have first priority lien position on this particular collateral property. RX 11 (MVJ Memo) at 4-5, 7-10.

52. Based on this alleged fraud that purportedly made the $1.2 million judgment against him void, Respondent told the court in his opposition that he was "void[ing] the Partial Settlement due to fraud." DCX 26 at 4.

53. In his motion to vacate and in his testimony before the Hearing Committee, Respondent claimed that he had no knowledge that First Washington did not have first priority lien position on the 9th and Upshur Property until October 2009, when he obtained copies of the two prior deeds of trust on that property. At that time, he was served with a subpoena to appear in a landlord-tenant action relating to this property. RX 11 (MVJ Memo) at 4 n.1 (Respondent "obtained the [two prior deeds of trust] in October 2009"); Tr. at 194-95 (in October 2009 Respondent "discover[ed]" that First Washington did not have first priority lien position on this property) (Respondent). *See* FF 64.

54. The record contradicts Respondent's claim. The record makes clear that Respondent was aware that First Washington did not have first priority lien position on the 9th and Upshur Property almost three years before October 2009. He learned this allegedly critical fact in a telephone conversation with Mr. Schaeffer (First Washington's president) that occurred in late October or early November 2006. Tr. at 203 (Respondent) (Mr. Schaeffer told Respondent "We don't have the first position on the [9th and Upshur Property]."). Other evidence establishes that Mr. Schaeffer himself had learned in late October or early November 2006 that First Washington did not have first priority lien position on this property, and had promptly begun notifying other parties. RX 11 (Deposition of Nazim Mehbaliyev (First Washington's corporate representative), dated Jan. 7, 2009 (attached as Ex. 2 to MVJ Memo)) at unnumbered page 31 (Tr. pages 88-89) (when Mr. Mehbaliyev told Mr. Schaeffer (his boss) that First Washington did not have first priority lien

position on the 9th and Upshur Property, Mr. Schaeffer's "reaction was like bleep, bleep, bleep . . . . Just call everyone, see what's going on. It was around the end of October. Then we started calling people. Asking what's going on.").

55. Therefore, we find that Respondent's conversation with Mr. Schaeffer in which he learned that First Washington did not have first priority lien position on the 9th and Upshur Property occurred in late October or early November 2006, more than three years before Respondent filed his motion to vacate judgment.

56. In fact, Respondent was also informed in *December 2007*, almost two years before October 2009, of the existence of the two prior deeds of trust on the 9th and Upshur Property that were allegedly fraudulently concealed from him. These two deeds of trust were specifically discussed and referred to on the record at a December 11, 2007 deposition in the case, a deposition that Respondent himself attended in person. RX 11 (Deposition of Keith J. Smith, dated Dec. 11, 2007 (attached as Ex. 8 to MVJ Memo)) at unnumbered pages 88-89 (Tr. pages 122-27); *see id.* at unnumbered page 87 (Tr. page 2) (noting Respondent's appearance at the deposition). At this deposition, First Washington's counsel (Mr. Neal) asked the deponent about these two prior deeds of trust. *Id.* at unnumbered pages 88-89 (Tr. pages 122-27).

57. Based upon Mr. Neal's questions at this deposition, Respondent asserted later that Mr. Neal "was aware, as early as December 11, 2007, of the BB&T Financing Statement and Sunshine DOT [the two prior deeds of trust]." DCX 26 (Opposition to Motion to Enforce Settlement) at 3.

58. But Respondent attended that same deposition and heard that same questioning. Necessarily, therefore, he, too, was aware of these two prior deeds of trust no later than December 11, 2007 (the date of the deposition). Respondent asked no questions at this deposition about the two prior deeds of trust.

59. A year later, in December 2008, when Respondent was deposed in the -5890 Action, he testified that he was planning to bring claims for fraud and fraudulent and negligent misrepresentation against First American Title. RX 11 (Deposition of George W. Crawford II, dated Dec. 30, 2008 (attached as Ex. 5 to MVJ Memo)) at unnumbered page 66 (Tr. page 47).

60. In addition, on January 7, 2009, Respondent attended the deposition of First Washington's corporate representative, Mr. Nazim Mehbaliyev. At his deposition, Mr. Mehbaliyev testified that First Washington did not have first priority lien position on the 9th and Upshur Property. FF 54. Respondent later admitted in a colloquy with the court at the May 28, 2010 hearing described below (FF 82 *et seq.*) that the fact that First Washington did not have first priority lien position on the 9th and Upshur Property was specifically discussed at this January 7, 2009 deposition. DCX 30 (Tr. of May 28, 2010 Hearing) at 22, 30-31.

61. On January 8, 2009, the day after the Mehbaliyev deposition, Respondent attended First Washington's deposition of Adam Abrahams, the First American Title employee who, according to Respondent, was the prime mover in the fraud that was perpetrated on him. *See* RX 11 (Deposition of Adam Abrahams, dated Jan. 8, 2009 (attached as Ex. 3 to MVJ Memo)) at unnumbered pages 40-41

(Tr. pages 1-2). At this deposition, Respondent questioned Mr. Abrahams at some length. *See id.* at unnumbered page 41 (Tr. page 4) (table of contents reflects Respondent's examination consumed nine transcript pages). Despite Respondent's having known for more than two years at that point that, contrary to his claimed understanding, First Washington did not have first priority lien position on the 9th and Upshur Property, Respondent did not ask any questions about any allegedly fraudulent misrepresentations made to him prior to closing about what First Washington's lien priority position would be after the transaction closed. Instead, he focused entirely on a D.C. Government recordation tax form (Form FP 7/C) that he signed at closing that suggested that First Washington's deed of trust on the 9th and Upshur Property was a first mortgage. *See id.* at unnumbered page 55 (Tr. pages 106-09). But as we find above Respondent had known since October-November 2006 that that tax form was inaccurate because First Washington did not have first priority lien position on the 9th and Upshur Property.

62. There is no evidence that Respondent ever requested or obtained a title search on the 9th and Upshur Property or any of the other collateral properties securing First Washington's loan. Nor did Respondent ever identify either any specific inquiry he had made prior to closing about First Washington's lien priority position on the 9th and Upshur Property or any alleged misrepresentations made to him prior to closing that formed the basis for his claimed understanding that First Washington would have first priority lien position on this property.

63. The basis for Respondent's fraud claim against First Washington was that First Washington's counsel had failed to include a claim for fraud among the claims he had asserted on First Washington's behalf against First American Title, and had failed to ask questions at depositions (depositions that Respondent himself had attended in person) that, if asked, would have provided evidence of the alleged fraud. RX 11 (MVJ Memo) at 9-10. Respondent claimed that the decision by First Washington's counsel, despite counsel's purported knowledge of the alleged fraud (knowledge that counsel obtained at the depositions that Respondent himself had attended), to pursue only negligence and breach of fiduciary claims against First American Title was a "smokescreen" to conceal Mr. Abrahams' alleged fraud. *Id.*

64. Although Respondent was aware in October-November 2006 of the basis for his fraud claim (the alleged misrepresentations regarding First Washington's having first priority lien position on the 9th and Upshur Property), there is no evidence that he made any effort to investigate his alleged claim or marshal any supporting evidence at any time before October 2009. At that time, he investigated and obtained the two prior deeds of trust (the BB&T Financing Statement and the Sunshine DOT). RX 11 (MVJ Memo at 4 n. 1); Tr. at 194-95 (Respondent); FF 53. There is no evidence that, apart from obtaining the two prior deeds of trust and his brief examination at Mr. Abrahams' deposition, Respondent made any efforts to investigate his alleged fraud claims at any time.

First Washington's Motion for Summary Judgment Against Respondent

65. On January 26, 2009, less than three weeks after the Mehbaliyev and Abrahams depositions, First Washington moved for summary judgment against Respondent. DCX 8 (Docket Sheet for -5890 Action) at 19. Although at that point Respondent had known the basis for his fraud claim for more than two years, there is no evidence that he ever raised the alleged fraud when he filed his opposition to First Washington's motion for summary judgment on February 13, 2009. *Id.* at 18; see FF 54-61.

66. As previously noted, on March 6, 2009, the court orally granted First Washington's motion for summary judgment against Respondent. FF 11. There is no evidence that Respondent ever challenged this order based on the alleged fraud before he filed his motion to vacate the $1.2 million judgment a year later (in March 2010). Nor did he raise the alleged fraud in December 2009 when, as directed by the court, the clerk entered the $1.2 million judgment against him. *See* DCX 8 at 16 (docket entries for Dec. 2 and Dec. 21, 2009).

67. Even though he had been aware almost three years before, and, by his own admission, had documentary proof no later than October 2009, of the facts allegedly fraudulently concealed from him, Respondent took no action to investigate or pursue his purported fraud claims other than obtaining copies of the two prior deeds of trust. DCX 30 (Tr. of May 28, 2010 Hearing) at 31-32, 50.

68. Instead, with full knowledge of these facts, Respondent participated in the January 2010 mediation and agreed to settle all of his claims against First American Title and First Washington. *See* DCX 23 (Praecipe of Partial Settlement).

69. Respondent never claimed before the Superior Court, before the Hearing Committee, or otherwise, that he had become aware of any new facts relating to the alleged fraud at any time after he agreed to the settlement at the mediation.

70. Respondent never claimed, either in his motion to vacate judgment, in his oppositions to First Washington's and First American Title's motions to enforce the settlement, or otherwise, that he had been induced to enter into the Settlement Agreement by any fraudulent misrepresentations. Instead, in both of these filings he claimed only that the $1.2 million judgment against him was itself obtained by fraud and that, during the course of the litigation, Mr. Abrahams, First American Title, and First Washington had all engaged in litigation misconduct to conceal the fraud. DCX 26 (Opposition to Motion to Enforce Settlement) at 2-3 (alleging that judgment upon which settlement was based was procured by fraud, misrepresentation, *etc*.).

71. At the time Respondent agreed in the Settlement Agreement to settle all of his alleged claims, he was aware of all of the alleged fraudulent misrepresentations made to him and all of the alleged litigation misconduct by First American Title and First Washington. With full knowledge of these potential fraud claims, he nonetheless agreed to settle all of them.

Respondent's Baseless Claims of Litigation Misconduct

72. Respondent's motion to vacate judgment and his opposition to the motions to enforce the settlement were based on four claims of litigation misconduct. All are baseless.

73. Respondent's first claim was that First American Title had improperly failed to produce in discovery copies of the two prior deeds of trust on the 9th and Upshur Property that prevented First Washington from having first priority lien position on that particular collateral property. RX 11 (MVJ Memo) at 7-8.

74. Respondent provided only speculation, not evidence, however, that these documents were even in First American Title's possession, custody, or control. A document request under Superior Court Civil Rule 34 extends only to documents in the responding party's "possession, custody, or control." Super. Ct. Civ. R. 34(a)(1). First American Title's counsel represented to the court that it did not produce these documents because it did not have them. The reason it did not have them is that these prior transactions had closed before Mr. Abrahams started his employment with First American Title. DCX 30 (Tr. of May 28, 2010 Hearing) at 46-47. First American Title hired Mr. Abrahams in or after June 2005. RX 11 (Deposition of Adam Abrahams, dated Jan. 8, 2009 (attached as Ex. 3 to MVJ Memo) at unnumbered page 43 (Tr. page 12). The BB&T and Sunshine loans closed two months before, on April 8, 2005. RX 11 (BB&T Financing Statement and Sunshine DOT (attached as Ex. 1 to MVJ Memo)) at unnumbered pages 16-25.

75. In addition, Respondent is not in any position to complain about First American Title's allegedly improper failure to produce these documents because it was First Washington, not Respondent, that had propounded the Rule 34 requests for documents to First American Title. *See* RX 11 at 7-9.

76. Respondent's second claim of alleged litigation misconduct is that First American Title provided false answers to interrogatories (again, interrogatories propounded by First Washington, not Respondent). Respondent claimed that First American Title's answer to Interrogatory No. 7 was false. DCX 26 at 2 ¶ 7. First American Title's answer stated that Mr. Schaeffer had "made Mr. Abrahams aware" of an undisclosed loan from BB&T on the 9th and Upshur Property in a "late October/early November" 2006 telephone conversation. RX 11 (Partial Excerpt from First American Title's Interrogatory Answers, dated Jan 3. 2008 (Ex. 7 to MVJ Memo)) at unnumbered pages 79-80 (Interrogatory Answers pages 6-7). These interrogatory answers were served less than a week before Mr. Abrahams was deposed in Respondent's presence, and Respondent never asked him any questions about this allegedly critical conversation.

77. Also, this interrogatory answer is not false. Respondent does not dispute that Mr. Schaeffer brought the prior BB&T loan to Mr. Abrahams' attention in this conversation, and that is all that the answer states.

78. Moreover, Respondent's focus on Mr. Abrahams' alleged misconduct is a diversion. It is an attempt to shift the focus to the means by which the alleged fraud was perpetrated upon Respondent rather than on the substance of the alleged

fraud itself. The alleged fraud was the alleged misrepresentation to Respondent that First Washington would have first priority lien position on the 9th and Upshur Property. Respondent knew in late October or early November 2006, just a few months after the loan closing that, contrary to his claimed understanding, First Washington did not have first priority lien position on this property. FF 54-55. First American Title's allegedly false interrogatory answer more than year later concealed nothing about the alleged fraud from Respondent that he did not already know. As a result, even if it had been a false answer, and we find that it was not, it can provide no support for Respondent's motion.[8]

79. Respondent's third claim of alleged litigation misconduct is that First American Title gave a false answer to Interrogatory No. 10 when it claimed that Mr. Abrahams did not receive closing instructions or otherwise communicate with the lender (First Washington). DCX 26 at 3 ¶ 8. This was apparently an error, but an error that Mr. Abrahams himself corrected at his deposition on January 8, 2009, five days later. *See id.* In any event, it has no significance whatsoever. On its face, whether Mr. Abrahams was or was not communicating with First Washington prior

[8] In addition, the allegedly false answer was not even responsive to the interrogatory. Interrogatory No. 7 was limited to loan, mortgages, deeds of trust "after March 7, 2006." RX 11 (Partial Excerpt from First American Title's Interrogatory Answers, dated Jan 3. 2008 (Ex. 7 to MVJ Memo)) at unnumbered pages 79-80 (Interrogatory Answers pages 6-7). The prior deeds of trust were executed on April 8, 2005, almost a full year before March 7, 2006. RX 11 (BB&T Financing Statement and Sunshine DOT (attached as Ex. 1 to MVJ Memo)) at unnumbered pages 16-25. Therefore, the interrogatory did not even ask for the information that First American Title's answer allegedly concealed from Respondent.

to the closing has nothing to do with the alleged fraud perpetrated on Respondent, and Respondent never suggested otherwise.

80. In addition, First Washington's counsel marked the interrogatory answers in question as an exhibit at the deposition of Mr. Abrahams, but, as far as the record indicates, Respondent never asked a single question about the allegedly critical misrepresentations in these answers. *See* RX 11 (Deposition of Adam Abrahams, dated Jan. 8, 2009 (attached as Ex. 3 to MVJ Memo) at unnumbered pages 41, 48 (Tr. pages 4, 53) (answers marked as exhibit), 55 (partial excerpt of Respondent's examination of Mr. Abrahams) (Tr. pages 106-09).

81. Respondent's fourth and final claim of alleged litigation misconduct is that First Washington's counsel was aware of the two prior deeds of trust as of December 11, 2007, and allegedly "knew that Abrahams had conspired to defraud Plaintiffs [First Washington] and [Respondent]" by misrepresenting to Respondent that First Washington would have first priority lien position on the 9th and Upshur Property. DCX 26 at 3 ¶¶ 9-10. The only evidence that Respondent provided for his claim was a reference to a D.C. Government recordation tax document executed at closing that recited that the recordation tax would be applied to a first mortgage in the amount of $650,000. *Id.* (citing Ex. 4 attached to MVJ Memo (RX 11 at unnumbered page 58) at Bates-numbered page FATIC 00187). But this fails to establish that First Washington's counsel knew about the alleged fraud that Mr. Abrahams supposedly perpetrated on counsel's own client (First Washington). And, as noted above, because Respondent had attended and participated in that same

December 11, 2007 deposition, Respondent himself was necessarily aware of the alleged fraud perpetrated on him.

The May 28, 2010 Hearing (Holeman, J.)

82. On May 28, 2010, Judge Holeman held a hearing on the outstanding motions. At that time, Respondent still had not signed the promissory note or executed the affidavit that the Settlement Agreement required. DCX 30 (Tr. of May 28, 2010 Hearing) at 1-3, 8.

83. At the May 28, 2010 hearing, Respondent admitted in response to a question from the court that the parties had reached a settlement at the mediation that was embodied in the Praecipe of Partial Settlement. DCX 30 at 11-12. Even though Respondent had stated in his opposition to the motions to enforce the settlement that he was "void[ing]" this settlement because of the alleged fraud, he told the court that the settlement should be enforced. *Id.* at 12; DCX 26 at 4; *see also* DCX 30 at 15 (Respondent told the court he was "prepared to fulfill the terms of the partial agreement"). Respondent also agreed that the court should enforce the parties' Settlement Agreement. DCX 30 at 12. Based upon Respondent's admissions, the court found that an enforceable agreement had been made at the mediation, and ordered the Settlement Agreement enforced. *Id.* at 52.

84. The court ordered Respondent to provide an executed promissory note and an executed affidavit by 12:00 noon a week later (June 4, 2010). *Id.* at 57.

85. As described below (FF 120), the court apparently intended to require Respondent to sign one of the forms of promissory note that First Washington's

counsel had previously provided to Respondent, but the court later recognized that there had been some "confusion" about what its oral order had required. DCX 10 (Omnibus Order, dated May 31, 2012) at 8-9.

86. Respondent was not confused, however. In his testimony before the Hearing Committee, Respondent admitted that, at the May 28, 2010 hearing, the court (Judge Holeman) had ordered him to sign one of the First Washington-provided notes. Tr. at 214 (Respondent) ("Judge Holeman told me you better sign one of those documents [referring to the First Washington-provided promissory notes]"). As described in FF 103-04, 381 below, Respondent failed to sign either of the promissory notes, and also failed to provide the affidavit that the court had required.

The Court Denies Respondent's Motion to Vacate Judgment

87. At the May 28, 2010 hearing, the court also denied Respondent's motion to vacate the judgment as frivolous and meritless, because Respondent had "gone to sleep" on his fraud claims and had failed to exercise due diligence by investigating them. DCX 30 at 49-50, 52. For more than two years after learning of the alleged fraud regarding First Washington's lien priority position on the 9th and Upshur Property, Respondent had never investigated these claims, but, instead, had voluntarily agreed at the mediation to settle all the claims that he had against First Washington and First American Title. See FF 14.

88. Respondent testified before the Hearing Committee that the court had denied his motion to vacate without having read it. Tr. at 219-20 (Respondent) ("And

I asked, judge, did you read it. He said no, I didn't even read it, we didn't get this motion . . . . He hadn't even read [it], but yet, he called it frivolous and meritless."). The record contradicts Respondent's assertion. What the court actually said was that it was missing the exhibits that Respondent had attached to his motion, not the motion itself. DCX 30 (Tr. of May 28, 2010 Hearing) at 34 ("In other words you have provided the [opposing parties] with these documents that would support your motion to vacate, the court doesn't have them."). First Washington's counsel explained that the exhibits that Respondent had filed electronically could not be downloaded (and Respondent had refused to provide them despite two requests that counsel had made). *Id.* at 33. Respondent apparently felt that the court's and opposing counsel's lack of the exhibits to his motion was not prejudicing his case because he made no effort to provide any of the missing exhibits to the court or opposing counsel, nor did he ask the court for a brief recess so that he could do so. Instead, he chose to continue the argument on his motion. In any event, the court never said that it had not read Respondent's motion before it determined that it was frivolous and meritless.

89. At the hearing, the court had before it Respondent's 13-page motion, which set out in great detail his arguments and contained extensive references to, and quotations from, the supporting exhibits. *See* RX 11 (Motion to Vacate Judgment, dated Mar. 15, 2010). In addition, during the argument on the motion at the May 28, 2010 hearing, both Respondent and First Washington's counsel referred at length to the exhibits and quoted extensively from them. DCX 30 at 17-49.

90. As a result, when the court denied Respondent's motion to vacate, it was fully aware of the legal and factual bases for his motion.

91. After the court had denied Respondent's motion to vacate judgment, it warned Respondent that if he asserted claims of fraud that "should have been brought by the exercise of due diligence," but had not been asserted, the court would impose sanctions. DCX 30 at 52.

92. Less than three months later, on August 12, 2010, undeterred by the court's warning, Respondent asserted the same baseless fraud claims in his motion for Rule 11 sanctions against First Washington. *See* FF 109 *et seq.*

The Court Grants First Washington's and First American Title's Motions for Sanctions

93. At the May 28, 2010 hearing, the court gave Respondent the opportunity to withdraw his motion to vacate the $1.2 million judgment against him, but Respondent declined to withdraw it. DCX 30 (Tr. of May 28, 2010 Hearing) at 14-15. The court granted First Washington's and First American Title's motions for sanctions and instructed them to submit appropriate documentation in support of their requests for attorneys' fees and costs incurred in enforcing the Settlement Agreement and in opposing Respondent's motion to vacate judgment. *Id.* at 52-53; DCX 10 (Omnibus Order, dated May 31, 2012) at 3.

Despite the Court's Order, Respondent Fails to Provide the Required Financial Affidavit and Promissory Note

94. On June 4, 2010, a few hours after the court's deadline of 12:00 noon had passed, Respondent sent an e-mail to First Washington's counsel with attached

copies of an executed affidavit and an executed "Agreement and Promissory Note." RX 14 (E-mail dated June 4, 2010 from Respondent to Neal and attached Promissory Note and Affidavit) at unnumbered pages 1-7; DCX 24 (Affidavit of George Crawford, dated June 4, 2010).[9] Neither Respondent's affidavit nor his "Agreement and Promissory Note" complied with the court's order or the parties' Settlement Agreement.

95. Respondent's June 4 affidavit was deficient in the following respects. In his affidavit, except for two D.C. real properties that Respondent and his wife owned jointly as tenants by the entireties (his residence and a separate rental property), Respondent did not disclose any assets that he owned jointly with his wife. RX 14 (Affidavit of George Crawford, dated June 4, 2010) at unnumbered pages 5-7 (Affidavit pages 2-4); Tr. at 382-83 (Respondent). His rationale for failing to disclose any jointly-held assets other than these two properties was his interpretation of the terms of the Settlement Agreement. In his view, the language of the settlement that required him to submit an affidavit detailing all of "his" assets covered only his personal assets, *i.e.*, assets that he held in his sole name. Tr. at 382-83 (Respondent). For this same reason, in the June 4, 2010 Affidavit, he did not disclose any of the four automobiles that he owned jointly with his wife. *Id.*

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[9] The version of Respondent's June 4, 2010 Affidavit that was admitted into evidence at the hearing as DCX 24 is missing the second page. As a result, we will cite to the version of the Affidavit contained in RX 14 (also admitted into evidence), which is virtually identical except that it contains the missing page.

96. In addition, although the Settlement Agreement required Respondent to provide an affidavit that detailed his liabilities as well as his assets, he failed to disclose the amounts of the indebtedness on the two real properties that he jointly owned with his wife. *See* RX 14 (Affidavit of George Crawford, dated June 4, 2010) at unnumbered page 7 ¶ 25 (Affidavit page 4) (no mortgages listed); Tr. at 227-28 (Respondent) ("The settlement agreement didn't ask for my wife's assets. The settlement agreement didn't ask for mortgages and deeds and when did you acquire property . . . .").

97. Respondent never explained, either in his testimony before the Hearing Committee or otherwise, why, if he were correct that the Settlement Agreement required him to disclose only those assets that he held in his sole name, he had nonetheless disclosed the two D.C. real properties that he jointly owned with his wife as tenants by the entireties. RX 14 (Affidavit of George Crawford, dated June 4, 2010) at unnumbered page 5 ¶¶ 7-9 (Affidavit page 2).

98. In a later court filing, Respondent argued that he had not disclosed his joint assets "because disclosure of his wife's assets and liabilities was not required by the settlement agreement." RX 15 (Praecipe: Notice of George W. Crawford's Compliance with Court Order, dated Nov. 26, 2012) at 2. The Settlement Agreement did require him to disclose all of *his* assets, however, and he provided no authority at any point for his view that his interests in jointly-held property were not "his" assets. Indeed, the language of his affidavit repeatedly referred to his "interest" in various kinds of property (real property, businesses, patents, copyrights, trademarks,

and "property"). RX 14 (Affidavit of George Crawford, dated June 4, 2010) at unnumbered page 5 ¶¶ 7-10 (Affidavit page 2), unnumbered page 7 ¶¶ 22-23 (Affidavit page 4).

99. There is no evidence that Respondent ever disclosed his unreasonably narrow view of the assets he was required to disclose in his affidavit until after First Washington's counsel had objected to Respondent's affidavit as inadequate and incomplete. It was clear, however, that First Washington understood immediately after the settlement had been agreed upon that Respondent's disclosure obligation under the Settlement Agreement extended to his jointly-held property. The form of affidavit that Mr. Neal provided to Respondent on February 3, 2010 made this clear. *See* RX 14 (E-mail dated Feb. 3, 2010 from Neal to Respondent and attached Affidavit) at unnumbered pages 8-13.

100. Paragraph 12 of First Washington's form of affidavit called upon Respondent to disclose all "accounts (*individual and/or joint*)" with banks and other financial institutions. RX 14 (Form of Affidavit attached to Neal's Feb. 3, 2010 e-mail to Respondent) at unnumbered page 12 (Form Affidavit page 3) (emphasis added).

101. But when Respondent submitted his June 4 affidavit, he changed the wording of this paragraph – without any notice to First Washington – so that it disclosed only his individual accounts. *Id.* (Affidavit of George Crawford, dated June 4, 2010) at unnumbered page 6 (Affidavit page 3) ("Since 2007 to the present, I have had accounts (*individual*) with the following banks, . . .") (emphasis added).

102. Respondent never signed an affidavit that complied with the Settlement Agreement and continuously refused to disclose all of his assets, contending that assets he held jointly with his wife were not "his" assets. Tr. at 64, 66-68 (Neal).

103. As noted above, on June 4, 2010, Respondent also sent First Washington's counsel a copy of an "Agreement and Promissory Note" that Respondent had signed. FF 94. This "Agreement and Promissory Note" was substantively identical to the "Agreement and Promissory Note" that Respondent had previously proposed in February and that First Washington's counsel had already rejected. *Compare* RX 14 (E-mail dated Feb. 19, 2010 from Respondent to Neal and attached proposed "Agreement and Promissory Note")) at unnumbered pages 27-29, *with* RX 14 (E-mail dated June 4, 2010 from Respondent to Neal and attached proposed "Agreement and Promissory Note") at unnumbered pages 1-3.

104. Respondent's June 4 "Agreement and Promissory Note" was not the promissory note required by the Settlement Agreement or the court's order. The principal reasons were that it was not a promissory note at all, but a promissory note combined with a separate agreement, it never specified the events that would constitute a default, it failed to waive Respondent's homestead exemption, and, most important, it still did not contain the acceleration provision specifically required by the Settlement Agreement. *See* FF 41.

First Washington's First Motion for Contempt

105. On June 29, 2010, First Washington filed a motion for contempt against Respondent ("Plaintiffs' Motion for Contempt against George Crawford"). DCX 8

(Docket Sheet for -5890 Action) at 13; *see* DCX 10 (Omnibus Order, dated May 31, 2012) at 6-9 (discussing and ruling on motion).

106. In its motion, First Washington contended that Respondent had failed to comply with the court's oral order at the May 28, 2010 status hearing because (1) he had failed to execute either of the promissory notes prepared by First Washington's counsel, (2) the promissory note he had executed did not comply with either the court's oral order or the Praecipe of Partial Settlement, and (3) the affidavit he had provided (the June 4 affidavit) was also deficient (because, among other things, it omitted the value of the two properties that he did disclose, his income or tax returns, and the balance and amounts received from his Civil Service Retirement account). First Washington asked the court to hold Respondent in contempt, or in the alternative, to enforce the $1.2 million judgment against him. First Washington also sought an award of attorney's fees and costs incurred in prosecuting its motion. DCX 10 at 6-7.

107. In his opposition to the contempt motion, Respondent claimed that he had complied with his obligations under the Praecipe of Partial Settlement and the court's oral order. He argued that he was not required to execute either of the promissory notes that First Washington had provided; his only obligation was to execute a promissory note that complied with the Praecipe of Partial Settlement, and that neither of the First Washington notes complied with the Praecipe of Partial Settlement. DCX 10 (Omnibus Order, dated May 31, 2012) at 7. He also contended that his June 4 Affidavit fully complied with both the Praecipe and the court's oral

order. He argued in addition that the income he received from his Civil Service retirement pension was not income that had to be disclosed, that his personal income tax returns did not have to be disclosed because they were filed jointly with his wife, and that his interests in the four automobiles he jointly owned with his wife were not "his" assets. *Id.*

108. As described below (FF 120), the court decided this motion on May 31, 2012, two years later.

Respondent's Motion for Rule 11 Sanctions Against First Washington and Its Counsel

109. As previously noted, on August 12, 2010, less than three months after the May 28, 2010 hearing, Respondent filed a motion seeking Rule 11 sanctions against First Washington (including Mr. Schaeffer) and its counsel. DCX 8 at 13 (docket entry for Motion of Co-Defendant Crawford for Rule 11 Sanctions against First Washington Insurance Company, Gerald Schaeffer, and Stephen Neal, Their Counsel, filed Aug. 12, 2010); DCX 10 (Omnibus Order, dated May 31, 2012) at 9 (describing Respondent's motion). Respondent's motion is not in the record.

110. Respondent contended in his motion that First Washington and its counsel should be sanctioned under Rule 11 for filing and pursuing the original complaint, the amended complaint, the motion for summary judgment, and for opposing Respondent's motion to vacate judgment. DCX 10 (Omnibus Order, dated May 31, 2012) at 9. According to Respondent, Rule 11 sanctions were warranted because First Washington (including Mr. Schaeffer) and its counsel were pursuing First Washington's claims against Respondent knowing that he had been

fraudulently induced to serve as the guarantor for the promissory notes sued upon. DCX 10 at 9.

111. First Washington and its counsel opposed the motion. They made several arguments, including that Rule 11 sanctions could only be awarded against counsel, not First Washington or Mr. Schaeffer, that the motion was untimely (because it was filed after judgment had been entered against Respondent), and that Respondent was making the same frivolous arguments that he had made in his Motion to Vacate Judgment, which the court had denied as "frivolous" and "meritless" at the May 28, 2010 hearing. *Id.*

112. The court denied Respondent's Rule 11 motion in its Omnibus Order, dated May 31, 2012 (DCX 10), for two reasons. First, the motion was untimely, because it was filed after the court had entered judgment against Respondent and had ordered the parties' Settlement Agreement enforced. DCX 10 at 9-10. Second, in his motion, Respondent was "resurrect[ing] . . . the same baseless claims" that Respondent had made in his previous motion to vacate judgment, claims that the court had rejected as "frivolous" and "meritless" at the May 28, 2010 hearing. *Id.* The court held that sanctions were warranted against Respondent because, less than three months later, he was making the same claims again. The court awarded the reasonable attorneys' fees and costs that First Washington had incurred in opposing Respondent's Rule 11 motion. *Id.* at 10.

113. Although Respondent complained in his brief to the Hearing Committee about First Washington's alleged failure to comply with the "safe

harbor" requirement of Superior Court Civil Rule 11(c)(2) (R. Br. at 21) when it filed its motion for sanctions, there is no evidence in the record that Respondent himself complied with this provision by serving his motion for Rule 11 sanctions at least 21 days before he filed it with the court.

Respondent's Forum-Shopping Lawsuit (No. 2010-CA-6309)

114. On August 23, 2010, while First Washington's contempt motion remained pending, Respondent filed a new lawsuit in D.C. Superior Court (*Crawford v. First Washington Ins. Co, et al.,* Civil Action No. 2010 CA 6309B) (the "-6309 Action") against First Washington, Mr. Abrahams, and other defendants that had also been named in the -5890 Action. DCX 5 (Docket Sheet for -6309 Action); Tr. at 241 (Respondent). In this new action, Respondent asserted the same claims of fraud against First Washington and the other defendants that he had previously asserted against the same parties in his Motion to Vacate Judgment in the -5890 Action, and that the court had already rejected. DCX 6 (Order, dated Aug. 27, 2012) at 3.

115. In his testimony before the Hearing Committee, Respondent admitted that he had filed the -6309 Action in order to relitigate before another judge the same issues that the court had already decided against him in the -5890 Action. Tr. at 241 (Respondent) ("I wanted . . . another judge to look at this, [to] take a fresh look at it and see that I had been defrauded into signing that promissory note.").

116. Respondent's new action (the -6309 Action) was assigned to Judge Erik Christian. First Washington and Mr. Abrahams filed motions to dismiss this case,

which Respondent opposed. Respondent filed a motion to amend his complaint, which First Washington and Mr. Abrahams opposed. According to the docket sheet, before the case was transferred to Judge Jackson on June 1, 2012, Judge Christian conducted at least seven scheduling or status conferences (on December 10, 2010; January 14, 2011; February 18, 2011; August 26, 2011; December 9, 2011; April 6, 2012; and June 1, 2012). DCX 5 at 2-6. The docket entries for this action before it was transferred to Judge Jackson consume nearly five pages of the docket sheet. *Id.*

117. First Washington and First American Title filed motions to consolidate the -5890 Action with the new -6309 Action. In its May 31, 2012 Omnibus Order, the court granted the motions and ordered the two cases consolidated because Respondent's new case involved the same parties and same allegations that Respondent had made in the pending case (the -5890 Action). DCX 10 (Omnibus Order, dated May 31, 2012) at 5-6.

118. After the case was transferred to Judge Jackson, as described below (FF 127), Judge Jackson granted First Washington's motion to dismiss the -6309 Action, for two independent reasons. First, Respondent was precluded by the doctrine of collateral estoppel from relitigating these claims again. Second, in the alternative, these claims should have been asserted as compulsory counterclaims in the original case (the -5890 Action). Because Respondent had failed to assert them in the original case, they were barred. DCX 6 (Order, dated Aug. 27, 2012) at 3-4. The court also denied Respondent's motion for leave to amend his complaint, finding that that it

had been made in bad faith because "all of the relevant factual and legal issues ha[d] been resolved already." *Id.* at 6.

119. Respondent's -6309 Action was frivolous and a violation of Rule 11 of the D.C. Superior Court Rules of Civil Procedure, because there was no non-frivolous basis upon which Respondent could relitigate in a new action issues that he had previously litigated and lost in the pending action.

The Court's May 31, 2012 Omnibus Order

120. Judge Holeman decided First Washington's contempt motion in his May 31, 2012 Omnibus Order (DCX 10). The court held that, because a finding of contempt requires a violation of a clear and unambiguous order, and because "there was confusion with" the court's previous oral order, the court would "hold in abeyance" its ruling on the issue of contempt and sanctions. DCX 10 at 8-9.

121. In its motion to hold Respondent in contempt, First Washington had pointed out all of the deficiencies in the "Agreement and Promissory Note" that Respondent had provided in response to the court's oral order at the May 28, 2010 hearing. In its Omnibus Order, the court considered First Washington's objections to Respondent's "Agreement and Promissory Note," and Respondent's response (that the forms of promissory note that First Washington provided were not consistent with the Praecipe of Partial Settlement, and his only obligation was to execute a promissory note that was consistent with that settlement). DCX 10 at 6-7.

122. After carefully considering the parties' detailed arguments, the court unequivocally rejected Respondent's objections to the First Washington-provided

promissory notes. At the time the court rejected Respondent's objections to the First Washington-provided notes and ordered him to sign one of those notes, the court had both versions in the record before it. *See* Tr. at 123 (Neal) (First Washington "attached all of the promissory notes" to its briefs). The court ordered Respondent to execute one of the promissory notes provided by First Washington's counsel without adding or deleting any provisions. DCX 10 at 8. This was the first time the court rejected Respondent's objections to the forms of promissory note that First Washington had provided.

123. In its Omnibus Order, the court also rejected Respondent's argument that his June 4, 2010 Affidavit complied with the court's previous order and the parties' Settlement Agreement. *See id.* at 3, 7-8. The court directed Respondent to complete the form of affidavit drafted by First Washington's counsel and to include in that affidavit the assets and income he held individually and jointly with his wife, his personal tax returns, whether individual or joint, and "true and correct documentation" of (1) the balance of his Civil Service Retirement account, (2) the income received from that account, and (3) the value of the properties or tangible assets he owned, including automobiles. *Id.* at 12. The court directed Respondent to provide the required affidavit no later than June 29, 2012. *Id.*

124. As previously noted (FF 112), in the Omnibus Order, the court also denied the motion that Respondent had previously filed seeking Superior Court Civil Rule 11 sanctions against First Washington, Mr. Schaeffer, and First Washington's counsel (Mr. Neal). *Id.* at 10.

The Court's First Award of Sanctions Against Respondent ($30,517.35)

125. In the Omnibus Order, the court awarded sanctions in the amount of $18,787.00 to First Washington and $11,730.35 to First American Title for Respondent's failure to comply with the terms of the Praecipe of Partial Settlement and his filing of a frivolous motion to vacate judgment. *Id.* at 12-13. The total amount of sanctions awarded was $30,517.35. This was the court's first award of monetary sanctions against Respondent. (For convenience, we will refer to these sanctions as the "Omnibus Order Sanctions.")

126. In its order, the court warned Respondent that if he failed to comply with the court's "clear and unambiguous Order, he shall be required to show cause why he should not be held in contempt of Court; . . ." *Id.* at 12.

127. Finally, in the Omnibus Order, the court consolidated the -6309 Action with the -5890 Action, and referred the consolidated action to Civil Division Calendar 6, Judge Gregory E. Jackson presiding. *Id.* at 11.

The June 1, 2012 Status Hearing (Jackson, J.)

128. On June 1, 2012, Judge Jackson conducted a status hearing, and several days later issued an order requiring Respondent to pay no later than June 29, 2012, the Omnibus Order Sanctions totaling $30,517.35 that Judge Holeman had ordered. The court also ordered Respondent to comply with all of the other terms of Judge Holeman's Omnibus Order. DCX 11 (Sua Sponte Order, dated June 4, 2012) at 1.

Respondent's Interests in Real Property Located in the District of Columbia and Alabama

129. In order to fully understand the extent of Respondent's false and misleading statements to the court that we discuss below, we must briefly review at this point his ownership interests in various real properties located in the District of Columbia and in Alabama.

130. *Respondent's D.C. Properties.* During all times relevant to this case, Respondent had an ownership interest in two properties in the District of Columbia: (1) his residence at 2302 First Street, N.W., and (2) a rental property located at 1609 Lincoln Road. N.E. (the "Lincoln Road rental property"). Respondent owned these properties as a tenant by the entireties together with his wife (Ms. Harriet Crawford). *See* RX 11 (Deposition of George W. Crawford, II, dated Dec. 30, 2008 (attached as Ex. 5 to MVJ Memo)) at unnumbered page 63 (Tr. pages 7-8); DCX 32 (Tr. of Aug. 17, 2012 Hearing) at 17; DCX 40 (Tr. of Mar. 18, 2013 Hearing) at 17.

131. *Respondent's Ownership Interests in Two Alabama Properties.* Respondent also had ownership interests in two separate properties located in Alabama, one in Hurtsboro (in Russell County) (the "Hurtsboro Property"), and the other in Troy (in Pike County) (the "Troy Property"). Respondent acquired his ownership interests in these two properties when his father died intestate in 2007. Respondent and his three sisters each acquired a 25% ownership interest as tenants in common in each property. DCX 57 (Tr. of Section 341 Meeting of Creditors, Jan. 17, 2014) at 19-22 (Hurtsboro Property), 24 (Troy Property).

132. *The Hurtsboro Property.* Respondent retained his 25% ownership interest in the Hurtsboro Property from 2007 until at least 2014 when he filed a voluntary petition under Chapter 7 of the Bankruptcy Code. *See* FF 343. The Hurtsboro Property consisted of 20 acres that had a tax-assessed value of $80,000. DCX 57 at 19-22.

133. As we discuss below, Respondent never disclosed his ownership interest in the Hurtsboro Property to opposing parties or the court at any point during the Superior Court litigation. Instead, through a false statement under oath, another false court filing, and misleadingly incomplete answers to the court's questions, he successfully concealed his ownership in this property. FF 156-59, 179, 214-15.

134. Respondent's ownership of the Hurtsboro Property only came to light in 2014 in his personal bankruptcy proceeding, when he filed an amended schedule of assets that listed this property for the first time on the day before he was to be examined under oath at the Creditors' Meeting in the United States Bankruptcy Court. *See* Tr. at 68 (Neal) (mistakenly refers to Respondent's "Georgia" property). At his bankruptcy examination the next day, Respondent revealed for the first time the facts regarding his joint ownership of the Hurtsboro property with his sisters. DCX 57 (Tr. of Section 341 Meeting of Creditors, Jan. 17, 2014) at 19-20, 24.

135. *The Troy Property.* The history of Respondent's dealings with the Troy Property is different, but no less troubling. This property had a tax-assessed value of $61,950 according to documents that Respondent ultimately produced. DCX 35 (Tr. of Dec. 10, 2012 Hearing) at 4-5.

136. Although Respondent had originally inherited only a 25% ownership interest in the Troy Property, by June 2012, he had acquired 100% ownership of this property in his sole name. Two of his sisters transferred their 25% ownership interests to him for no consideration. He paid his other sister $5,000 for her 25% ownership interest. DCX 57 (Tr. of Section 341 Meeting of Creditors, Jan. 17, 2014) at 24-25.

137. On June 16, 2012, less than three weeks after Respondent had been ordered to pay the Omnibus Order Sanctions (totaling $30,517.35), he transferred the Troy Property to his son. RX 15 (Praecipe: Notice of George W. Crawford's Compliance with Court Order, dated Nov. 26, 2012) at 13-14 ¶ 6. Respondent's son paid no consideration for this property. DCX 57 (Tr. of Section 341 Meeting of Creditors, Jan. 17, 2014) at 26-27.

138. As we discuss below, Respondent maintained, both before the Superior Court and in his personal bankruptcy proceeding, that the Troy Property was worthless, *i.e.*, it had no value, because the house was in poor condition and a potential buyer had refused to proceed with the sale after receiving a home inspector's report detailing work that was needed. RX 15 at 13-14 ¶ 6; DCX 57 (Tr. of Section 341 Meeting of Creditors, Jan. 17, 2014) at 24-27.

139. Respondent's testimony is not credible. The property had an assessed value for tax purposes of $61,950. Further, as Respondent ultimately admitted in his bankruptcy proceeding, even after the buyer had walked away from the purchase, allegedly because of the house's poor condition, Respondent had still paid one of his

sisters $5,000 to acquire her 25% ownership interest in this property. DCX 57 (Tr. of Section 341 Meeting of Creditors, Jan. 17, 2014) at 25. Paying $5,000 to purchase a 25% interest in a worthless property makes no sense.[10]

Respondent's Motion for Reconsideration and Motion to Stay

140. On June 14, 2012, two days before Respondent transferred the Troy Property to his son for no consideration, Respondent filed a motion for reconsideration challenging the portion of the Omnibus Order that required him to execute one of the First Washington-provided promissory notes. DCX 8 (Docket Sheet for -5890 Action) at 10; DCX 12 (Order, dated Aug. 21, 2012) at 3. First Washington opposed Respondent's motion. DCX 8 (Docket Sheet for -5890 Action) at 10.

141. On June 28, 2012, the day before the court's deadline for paying the Omnibus Order Sanctions, Respondent filed a motion to stay. Defendant George Crawford's Motion to Stay, dated June 28, 2012; DCX 8 (Docket Sheet for -5890

[10] Respondent never disclosed to the court or the parties in the Superior Court action that he had paid $5,000 to purchase a 25% interest in this supposedly worthless property. *See* RX 15 (Praecipe: Notice of George W. Crawford's Compliance with Court Order, dated Nov. 26, 2012) at 13-14 ¶ 6 (stating only that Respondent's sisters "deeded their interest in the property to him"); DCX 35 (Tr. of Dec. 10, 2012 hearing) at 4. Nor did he ever disclose to the court or the parties that he had transferred this property to his son for no consideration. *See* DCX 35 at 4; RX 15 at 13-14 ¶ 6. These facts only came to light in the bankruptcy proceeding.

Action) at 10.[11] First Washington and First American Title filed oppositions to the motion to stay. DCX 8 (Docket Sheet for -5890 Action) at 9-10.

Respondent's False, Evasive, and Misleading Supplemental Affidavit

142. In the Omnibus Order, the court had ordered Respondent to "*complete the affidavit*, drafted by [First Washington's] counsel" by no later than June 29, 2012, and to include in the new, completed affidavit the following information:

> [1] [T]he assets and income he holds individually and jointly with his wife, [2] his personal tax returns, whether individual or joint, [3] true and correct documentation of the balance of his Civil Service Retirement Account, [4] true and correct documentation of the income received from his Civil Service Retirement Account, and [5] true and correct documentation of the value of the properties or tangible assets he owns, including, but not limited to, automobiles; . . .

DCX 10 at 12 (emphasis added).

143. Respondent did not provide the completed First Washington affidavit that the court had ordered him to provide. Instead, he attached to his June 28 motion to stay a partial and incomplete supplemental affidavit (Supplement to Affidavit of

[11] Respondent's motion to stay was included at unnumbered pages 8-9 in Disciplinary Counsel's Submission of Respondent's Affidavits, filed June 28, 2016 by direction of the Hearing Committee. *See* Tr. at 552, 557.

George Crawford, dated June 27, 2012).[12] (For convenience, we will refer to this affidavit as Respondent's "Supplemental Affidavit.")

144. In his Supplemental Affidavit, Respondent claimed that his previous June 2010 affidavit "detail[ed] all my assets and liabilities." Supplemental Aff. at 1 ¶ 3. This was a false and misleading statement in numerous respects.

145. First, the June 4, 2010 affidavit was not accurate and complete even on the day Respondent signed it in 2010. It did not disclose Respondent's interests in any assets that he jointly owned with his wife except for his two D.C. real properties (his residence and the Lincoln Road rental property). It omitted the automobiles that he jointly owned with his wife. In addition, the 2010 affidavit did not disclose the mortgage indebtedness he owed on either of these two properties. FF 96-97. Therefore, even when it was originally submitted, the June 2010 affidavit did not detail all of Respondent's assets and liabilities as he claimed in his Supplemental Affidavit.

146. In his testimony before the Hearing Committee, Respondent attempted to justify his failure to include in the June 2010 affidavit the various properties that he jointly owned with his wife (other than the two D.C. real properties). He claimed that he was not trying to be "slick" or to "defraud the court" in any way, but that his "understanding" was that, because property he held with his wife as tenants by the

[12] Respondent's Supplemental Affidavit (the Supplement to Affidavit of George Crawford, dated June 27, 2012) was included as Attachment 2 at unnumbered pages 22-24 of Disciplinary Counsel's Submission of Respondent's Affidavits, filed June 28, 2016.

entireties could not be seized by creditors in payment of his sole debt, he therefore did not have to disclose this property to opposing counsel. Tr. at 223-25 (Respondent).

147. Respondent's attempted justification is not credible, for several reasons. First, his "understanding" is contradicted by his own inconsistent conduct. As noted above, Respondent did list in the June 2010 affidavit the two D.C. real properties that he and his wife jointly owned as tenants by the entireties. Under his claimed "understanding," he should not have disclosed these two properties, because they could not be seized by creditors in payment of his sole debt. But, having listed the two real properties that he and his wife owned as tenants by the entireties, he then failed to list any other property that he and his wife owned as tenants by the entireties, such as their automobiles. *Compare* RX 14 (Affidavit of George Crawford, dated June 4, 2010) at unnumbered pages 5 ¶¶ 6-8 (Affidavit page 2), 6 ¶ 20 (Affidavit page 3), *with* Supplemental Aff. at 3 ¶ 11.

148. Second, nothing in the form of affidavit or the parties' Settlement Agreement suggested that he was not required to disclose any interest in jointly-owned property if it was not subject to immediate seizure by his creditors. The affidavit specifically required him (1) to identify any "real properties" in which he had "an interest," (2) to set forth his "percentage of interest" in each such property, and (3) to identify any other persons or entities that had an interest in that property. RX 14 (Affidavit of George Crawford, dated June 4, 2010) at unnumbered page 5 ¶¶ 7-9 (Affidavit page 2). Nothing indicated that no disclosure was required for any

of his assets that Respondent thought was exempt from seizure by his creditors. Moreover, information about Respondent's full asset holdings (including those assets allegedly exempt from creditors' collection efforts) would be directly relevant to Respondent's claim in the settlement negotiations that he was so poverty stricken that First Washington should agree to accept $10,000 paid over three years in full satisfaction of its $1.2 million judgment against him. *See* Tr. at 315-16 (Respondent).

149. Finally, he never told opposing counsel of his narrow interpretation of what "interests" in property he was required to disclose. FF 99. For these reasons we find his explanation wholly unconvincing.

150. In addition, by the time Respondent executed his Supplemental Affidavit in 2012, in which he referred to, and relied upon, the June 2010 affidavit as providing a complete picture of his assets and liabilities, the 2010 affidavit was out of date, inaccurate, and incomplete in one key respect. The June 2010 affidavit necessarily did not disclose Respondent's transfer of the Troy Property to his son for no consideration because he did not make that transfer until 2012, two years later. FF 137.

151. In order to comply with the Omnibus Order, Respondent was required to submit a completed First Washington-provided affidavit that was current as of June 2012. As we demonstrate below, because of the language of the form of affidavit he was required to sign, this necessarily would have required him to disclose any gifts or transfers of property he had made from 2007 to June 2012. If he had complied with the court's order, he would have had to disclose to the

opposing parties and the court that he had transferred the Troy Property to his son for no consideration just two weeks before. Through his evasions and misstatements in the Supplemental Affidavit, Respondent was attempting to conceal this critical fact.

152. Paragraph 17 of the form of affidavit that Respondent was required to execute required Respondent to provide a complete list of "all real estate or personal property that I have owned, purchased, sold, traded, *transferred, given away* or abandoned since January 2007." RX 14 (Affidavit of George Crawford, dated June 4, 2010) at unnumbered page 6 ¶ 17 (Affidavit page 3) (emphasis added).

153. Respondent's only response to ¶ 17 in his June 2010 affidavit was "See No. 7." *Id*. That paragraph (¶ 7) reads: "I currently have an interest in the following investment and/or other real properties." Respondent then listed only his residence (2302 First Street, N.W.) and the Lincoln Road rental property (1609 Lincoln Road, N.E.). *Id.* at unnumbered page 5 (Affidavit page 2).

154. But things had changed between June 2010 and two years later. Respondent's response in his June 2010 affidavit to ¶ 17's question regarding real properties that he had "transferred [or] given away" was no longer true as of June 2012, because in the interim Respondent had transferred and given away the Troy Property to his son for no consideration. But in his Supplemental Affidavit, Respondent never updated his previous answer to ¶ 17, and thus failed to disclose his transfer of the Troy Property to his son.

155. Thus, by the ploy of providing only an incomplete "supplemental" affidavit instead of the complete, up-to-date affidavit that the court's order required, Respondent concealed his transfer from opposing counsel and the court. This was evasive, dishonest, and improper.

Respondent's False Statement in His Supplemental Affidavit to Conceal His Ownership Interest in the Hurtsboro Property

156. Respondent's use of the ploy of a misleading "Supplemental Affidavit" to conceal his recent transfer of the Troy Property to his son for no consideration was not the only false or misleading aspect of Respondent's Supplemental Affidavit.

157. Respondent went beyond evasion to falsehood under oath when he concealed his 25% ownership interest in the Hurtsboro Property. FF 132-34.

158. In ¶ 9 of his Supplemental Affidavit, Respondent stated:

> Documentation of the value of the *real estate I own* is attached. They are the real property tax bills for 2302 First Street, NW [his home] and 1609 Lincoln Road, NE [the Lincoln Road rental property].

Supplemental Aff. at 3 ¶ 9 (emphasis added). He made no mention of his 25% ownership interest in the Hurtsboro Property (which had an assessed value of $80,000), nor did he provide any documentation regarding this property.

159. Given that just two weeks before Respondent had transferred to his son one of the two Alabama properties that he had inherited from his father (the Troy Property), it is impossible to believe that he simply overlooked or forgot to mention his other inherited property (the Hurtsboro Property). Respondent's omission was a

knowingly false statement under oath, made to conceal his ownership interest in this substantial asset from opposing counsel and the court.

160. Respondent also attached to his Supplemental Affidavit certain documents that the court had required, including income tax returns, Forms 1099-R relating to his Civil Service pension income, real estate tax bills, and financial institution account statements. Supplemental Aff. at unnumbered pages 5-103. These were discussed at the August 17, 2012 hearing discussed below.

161. Finally, Respondent attached to his Supplemental Affidavit a one-page schedule entitled "George [and] Harriet Crawford Income and Expenses May 2012" ("Schedule"). Schedule attached to Supplemental Aff. at unnumbered page 4. Respondent's Schedule revealed that he had a monthly income of $6,048.68 from his employment as a D.C. Chief Administrative Law Judge, and a monthly Civil Service Retirement System pension of $2,782.72. *Id*.

162. On July 9, 2012, First Washington renewed its motion for contempt. DCX 8 at 10.

The August 17, 2012 Hearing and Resulting Order

163. On August 17, 2012, the court heard oral argument on the pending motions, and a few days later, issued a written order reflecting its decisions. DCX 12 (Order, dated Aug. 21, 2012).

164. During this hearing, Respondent acknowledged that he had not executed either of the promissory notes that First Washington had provided and that he had not paid any amount of the Omnibus Order Sanctions ($30,517.35) that the

court had ordered. DCX 32 (Tr. of Aug. 17, 2012 Hearing) at 7, 12, 31-32 (promissory notes); *id.* at 8-9 (no payment of sanctions).

165. At the August 17 hearing, the court considered at length Respondent's claim that he did not have the money to pay the Omnibus Order Sanctions ($30,517.35) that the court had ordered. DCX 32 at 9, 17-35, 39-42.

166. The thrust of Respondent's "ability to pay" argument was that, despite his earning a substantial income as reflected in the attachments to his Supplemental Affidavit, he could not pay any amount of the sanctions because he had other expenses to pay. For example, at the hearing the court asked Respondent whether it was true that his and his wife's joint income for May 2012 was $16,819 (the precise amount that Respondent had listed in the Schedule he attached to his Supplemental Affidavit). DCX 32 (Tr. of Aug. 17, 2012 Hearing) at 17-18. Respondent did not confirm this directly, but said "that's possibl[e] that is true." *Id.* at 18.[13] According to this Schedule (Respondent's income and expense summary for May 2012), Respondent's own monthly income was $8,831.40 ($6,048.68 in his salary from the District of Columbia and $2,782.72 in his Civil Service Retirement System pension). Schedule attached to Supplemental Aff. at unnumbered page 4.

[13] Respondent's statement regarding the "possibil[ity]" that the income information on the Schedule was true was surprising, given that Respondent had attached this Schedule to his Supplemental Affidavit and had stated under oath that the "assets *and income* I hold individually and jointly with my wife" were provided in this Schedule. Supplemental Aff. at 2 ¶ 5 (emphasis added).

167. Respondent's claimed inability to pay was based on nothing more than the argument that he could not afford to pay the sanctions without reducing the amounts of the other expenses that he had been paying and wanted to continue to pay. The court was not persuaded. DCX 32 (Tr. of Aug. 27, 2012 Hearing) at 9-10, 19-23.

168. Nor are we. We find that Respondent clearly had the ability to pay the Omnibus Order Sanctions.

169. At the August 17 hearing, Respondent admitted that, except for one payment of $2,000, he had not paid either of the two installment payments (totaling $6,666) that he owed under the terms of the Settlement Agreement. DCX 32 at 31; *see* DCX 33 (Tr. of Sept. 19, 2012 Status Conf.) at 5.

170. Respondent contended that, under the "plain language of the settlement agreement," First Washington had to vacate the judgment first before he had any obligation to pay anything under the Settlement Agreement. DCX 32 at 31. In fact, the plain language of the Settlement Agreement (the Praecipe of Partial Settlement) refutes Respondent's claim. Respondent's obligation to pay the installments was not subject to any condition precedent. DCX at 23 at 2 ("[Respondent] shall pay [First Washington] $10,000 over the next three years ($3,333 by January 15, 2011, $3,333 by January 15, 2012, and $3334 by January 15, 2013 . . . ."). Further, under the terms of the Settlement Agreement, First Washington had no obligation to release the $1.2 million judgment against Respondent until after he had first executed the affidavit detailing all his assets and liabilities and had executed the required promissory note.

DCX 23 (Praecipe of Partial Settlement, dated Jan. 14, 2010) at 2 ("*Upon* [Respondent's] execution of the Affidavit and Promissory Note, Plaintiffs will release [Respondent] from the Judgment entered against him.") (emphasis added). Since Respondent never executed the required promissory note or affidavit, First Washington's obligation to release him from the $1.2 million judgment never arose.

171. At this hearing, Respondent repeated his argument that he should not be required to sign either of the First Washington-provided promissory notes because their provisions were inconsistent with the Settlement Agreement. *See* DCX 32 at 7-8.

172. At the August 17 hearing, Respondent contended in addition that, if he signed either of the First Washington-provided promissory notes, he would waive his right to have the $1.2 million judgment against him vacated, that his only obligation under the Settlement Agreement was to sign a note that complied with that agreement, and that agreement did not require him to sign a promissory note that included any "waivers" of his homestead exemption or any other rights. DCX 32 (Tr. of Aug. 17, 2012 Hearing) at 11-12. For this reason, Respondent contended that Judge Holeman's order to sign one of the First Washington-provided promissory notes was "plain error." *Id.* at 11, 39.

173. At the August 17 hearing, Respondent never refused to sign one of the First Washington-provided promissory notes and never claimed that the court's order to sign one of those notes was not a valid obligation. Instead, he claimed that,

based on his reading of the language of the notes, if he signed one of them, he would waive his right to have the $1.2 million judgment against him vacated. *Id.* at 11-12.

174. There is no support for Respondent's interpretation in the language of either of the First Washington-provided notes, however. The language of the notes provides that Respondent would "waive the benefit of any law or rule of law providing for his release or discharge *hereon*, in whole or in part, on account of any facts of circumstances other than full payment of all amounts due hereunder." RX 14 (Feb. 3, 2010 Promissory Note) at unnumbered page 17 (Feb. 3, 2010 Promissory Note page 2) (emphasis added). The only reasonable interpretation of this language is that, absent full payment of the note, he was waiving only any right to have his obligation *under the promissory note* released or discharged, not his right to have the $1.2 million judgment vacated in accordance with the terms of the Settlement Agreement.

175. Respondent never complied with the court's orders to sign one of the First Washington-provided promissory notes. Even after the Court of Appeals rejected his appeal challenging these orders (Appeal No. 12-CV-1500) and denied his motion to stay the orders, Respondent never complied with these orders. FF 204.

176. Respondent's attempt through the ploy of his misleading Supplemental Affidavit to conceal from opposing counsel and the court his recent transfer of the Troy Property to his son would likely have succeeded if the court had not made an inquiry at this hearing. As we demonstrate below, in response to a specific question

from the court, Respondent was forced to admit that he had transferred the Troy Property to his son.

177. At the August 17, 2012 hearing, Respondent initially claimed that he had been "honest and candid," that his "affidavit [the Supplemental Affidavit] speaks for itself," (which, of course, it did – falsely and misleadingly – because it referred to and relied upon a 2010 affidavit that Respondent had failed to update as required), and that he had not "misrepresented anything in the affidavit." DCX 32 (Tr. of Aug. 17, 2012 Hearing) at 17.

178. But this all came unraveled when First Washington's counsel complained at the hearing that Respondent had failed to provide any information about the location or value of, or indebtedness on, the property that Respondent had cryptically referred to in his June 4, 2010 affidavit as "Twenty-five percent (25%) interest in deceased father's real property." RX 14 (Affidavit of George Crawford, dated June 4, 2010) at unnumbered page 7 (Affidavit page 4); DCX 32 (Tr. of Aug. 17, 2012 Hearing) at 27.

179. The court asked Respondent where his deceased father's property was located. DCX 32 at 27 ("Where is the property of your deceased father? Where is it located?"). In response, Respondent told the court about only one of the two properties he inherited from his father. He told the court about the Troy Property, but never mentioned the Hurtsboro Property. *Id.* at 27-28.

180. In his answer, Respondent also revealed for the first time that he had transferred the Troy Property to his son. Respondent was exceedingly economical

with the truth in his explanation to the court. He claimed that the property was "worth zero basically," and "ha[d] no value." *Id*. at 27, 30. He told the court that his sisters had deeded their interests in this property to him, but never mentioned that he had paid one of his sisters $5,000 to acquire her 25% interest in this supposedly worthless property. And he never told the court that he had transferred the property to his son for no consideration. *See id.* at 28.

181. In his explanation to the court, he was also extremely vague about the date of the transfer to his son. *Id.* at 28 ("Now, that's happened [referring to the attempt to sell the property, his sisters' transferring their interests to him, and his transfer to his son] over the last two, two and a half years"). It was not until four months later, on November 26, 2012, that Respondent revealed in a court filing that he had transferred this property to his son on June 16, 2012, less than two weeks before he was required to pay the Omnibus Order Sanctions ($30,517.35). RX 15 (Praecipe: Notice of George W. Crawford's Compliance with Court Order, dated Nov. 26, 2012) at 13 (Respondent "deeded the property [the Troy Property] to his son on June 16, 2012"). The deadline for Respondent to pay these sanctions was June 29, 2012. *See* FF 128.

182. At the August 17 hearing, the court denied Respondent's motion for reconsideration and his motion to stay. The court held Respondent in contempt for his failure to comply with the Omnibus Order, and specifically warned him that failure to purge his contempt by complying with the order could result in his incarceration. DCX 32 at 45 ("You can go to jail and you can sit over in the D.C.

Jail until such time as you purge the contempt. That's the bottom line."); Stip. at 3 ¶ 9.

The Court's August 21, 2012 Order

183. On August 21, 2012, the court issued a written order confirming its rulings at the August 17 hearing. In this order, the court noted that, in his motion for reconsideration, Respondent was making the same arguments about the First Washington-provided promissory notes that the court had previously rejected. DCX 12 (Order, dated Aug. 21, 2012) at 3-4 (Respondent "continues to raise, and re-raise, the same arguments he has made previously in this case"). The court added that it had "twice considered these arguments, rejected them, and reiterated that the various versions of the promissory notes are consistent with the Settlement Agreement and acceptable." *Id*. at 4. On that basis, the court denied Respondent's motion for reconsideration of the order to sign one of the First Washington-provided promissory notes. *Id.* at 5.

184. In that same August 21 order, the court denied Respondent's motion to stay the order to pay sanctions, and directed him to pay the Omnibus Order Sanctions and comply with all the other provisions of the Omnibus Order, *i.e.*, provide a complete assets and liabilities affidavit and sign one of the First Washington-provided promissory notes. DCX 12 at 4-6. The court ordered Respondent to do all of these things no later than September 19, 2012, the date of the next scheduled status conference. *Id.* at 4-6.

The September 19, 2012 Status Conference

185. At the September 19, 2012 status conference, Respondent did not dispute that he had not paid any amount of the sanctions previously awarded, had not signed either of the First Washington-provided promissory notes as the court had previously directed, and had not submitted any additional affidavit regarding his assets and liabilities, as the court had also previously ordered. *See, e.g.*, DCX 33 (Tr. of Sept. 19, 2012 Status Conf.) at 3-8, 14.

186. Respondent attempted to justify his failure to sign either of the First Washington-provided promissory notes, using the same arguments that the court had already rejected. He told the court he did not want to sign one of these notes as he had been ordered to do, because, if he did, he would waive his right to have the judgment against him vacated, and that it was unfair to require him to sign a promissory note containing a "Confession of Judgment" provision. DCX 33 at 14. There was no language in either of the promissory notes that Respondent had refused to sign that provided any basis for his stated concern that he would waive his right to have the judgment vacated if he signed the note. *See* FF 174. And, as noted above (FF 42), in response to Respondent's objection, First Washington had previously removed the "Confession of Judgment" provision from the proposed promissory note, and Respondent had still refused to sign it.

187. Later in his discussion with the court at the September 19 status conference, Respondent told the court that he would sign one of the First Washington-provided promissory notes. DCX 33 at 38 ("With, with that said, Your

Honor, I will, I will sign one of the promissory notes."). He never did sign one of the First Washington-provided promissory notes, however.

188. Respondent never claimed during the September 19, 2012 status conference or at any other time that the court's orders to sign one of the First Washington-provided promissory notes were void or did not impose a valid obligation.

189. Respondent also raised for the first time at this status conference the argument that, if he complied with the court's numerous orders and signed one of the First Washington-provided promissory notes, he would waive his right to appeal from the order requiring him to sign one of the promissory notes. DCX 33 at 15-17, 33-38. His argument was that his appeal would become moot because there would no longer be any case or controversy because he had in effect given up. *Id.* at 36-37. He based his argument on the decision in *Cropp v. Williams*, 841 A.2d 328 (D.C. 2004).

190. Respondent's argument makes no sense, and the case he relied upon (*Cropp v. Williams*) provides no support for it. As the court pointed out, unlike Respondent's case, the *Cropp* case did not involve a party performing an action that the court had ordered it to perform. DCX 33 at 36-37.

191. At the September 19 status conference, the court again considered Respondent's claim that he lacked the ability to pay the sanctions, and again rejected it. *Id.* at 7 ("[T]he Court finds that, in fact, you have more than adequate assets to pay the sums that have been assessed against you. So I want that very, very clear.").

The court pointed to Respondent and his wife's substantial combined income ($16,819.10 per month, or $201,829.20 per year), and Respondent's Civil Service pension ($2,782.72 per month, or $33,392.54 per year) in concluding that Respondent's choice to "spend as much as [he] make[s], or even more than [he] make[s]" did not establish that he was unable to pay the sanctions, or that he should be excused from paying them. *Id.* at 10-13; *see* Schedule attached to Supplemental Aff. at unnumbered page 4.

192. At the status conference, the court considered entering an order voiding the settlement between First Washington and Respondent and reinstating the $1.2 million judgment against Respondent. The court suggested that, if the settlement were voided, then Respondent would no longer be required to provide the promissory note required by the settlement. DCX 33 at 61-63.

193. In the end, the court never did issue an order voiding the settlement between First Washington and Respondent or reinstating the $1.2 million judgment against Respondent. As the court later noted, because Respondent had never complied with the Settlement Agreement, the settlement had never taken effect, and the judgment remained in effect. DCX 39 (Tr. of Jan. 17, 2013 Hearing) at 9-11.[14]

Discussion of *Estate of Bonham* at the September 19, 2012 Status Conference

[14] The caption of the first page of this transcript erroneously states that the date of the hearing was "January 17, 2012." In fact, as the court reporter's certificate reflects, the actual date was January 17, 2013. DCX 39 at 18.

194. At the September 19 status conference, there was also an extensive discussion of Respondent's argument, relying on *In re Estate of Bonham*, 817 A.2d 192, 195 (D.C. 2003), that the court lacked authority to incarcerate Respondent for non-payment of attorney's fees. DCX 33 at 26-32. In that case, the Court of Appeals held, based on D.C. Code § 15-320(c)'s prohibition against incarceration for failure to comply with a decree directing only the payment of money, that "in the absence of statutory authority or exceptional circumstances, a money judgment cannot be enforced by incarceration of the debtor." *Estate of Bonham*, 817 A.2d at 194.

195. First Washington's counsel contended that *Estate of Bonham* was not controlling, for two reasons. First, Respondent's repeated failures to comply with the court's orders constituted "exceptional circumstances" that would allow the court to incarcerate Respondent for his failures. Second, the orders that Respondent failed to comply with were not limited merely to the payment of money. DCX 33 at 28-29; *see also id.* at 33 (court noting that the decrees in question required Respondent to take other actions besides the payment of money).

196. During the status conference, Respondent made a number of false statements to the court. He twice represented to the court that the two affidavits he had provided (his June 4, 2010 affidavit and the Supplemental Affidavit) were "accurate" and "complete." He further stated that "[e]verything that my wife and I own jointly and *what I own individually* is spelled out in those affidavits." DCX 33 at 8 (emphasis added). In fact, as discussed above (FF 145, 150, 177), those affidavits were neither accurate nor complete.

197. At this status conference, there was an extensive discussion about Respondent's failure to comply with the court's previous orders to provide information about his assets and liabilities. DCX 33 (Tr. of Sept. 19, 2012 Status Conf.) at 40-45 (discussing Respondent's failure to provide the amounts of mortgage indebtedness on properties that he owned).

198. The court asked First Washington's counsel to provide a list of all the information that needed to be provided or updated, and said it would order Respondent to provide that information by a date certain. *Id.* at 61-62. The court said it would "have more comfort" in finding that the case was "exceptional" under *Estate of Bonham* if the court also required Respondent, by a date certain, either to pay the sanctions completely or to submit a payment plan with an initial payment and a schedule for repaying the balance. *Id.* at 67. The court also said that, if Respondent failed to provide the required information and either pay the sanctions or propose a payment plan, that would be an "exceptional circumstance" that would permit incarcerating Respondent for non-payment of the sanctions. *Id.* at 67, 70.

The Court's October 3, 2012 Order

199. By order entered October 3, 2012, the court directed Respondent to provide within ten days detailed financial information and supporting documents relating to thirteen categories of income, assets, and liabilities, including his joint assets and liabilities. DCX 13 (Order, dated Oct. 3, 2012) at 1-3. The court's order provided that, if Respondent failed to comply with this order, "he will again be held

in contempt of Court and will be subject to sanctions up to and including incarceration." *Id.* at 3.

200. As we discuss below, Respondent failed again to comply with this order (after it was reissued on November 5, 2012). DCX 13 (Reissued Order of October 3, 2012, dated Nov. 5, 2012) at 4-7.

Respondent's Failed Interlocutory Appeal

201. Previously, however, on the morning of September 19, minutes before the status conference had begun that day, Respondent had filed a notice of appeal to the Court of Appeals. This appeal was docketed as No. 12-CV-1550. DCX 14 (Order, dated Nov. 27, 2012) at 1. Respondent appealed from the trial court's orders dated May 31, June 4, August 21, and August 27, 2012. DCX 8 (Docket Sheet for the -5890 Action) at 9. Respondent's appeal was untimely as to the May 31 and June 4, 2012 orders.[15]

202. Respondent then moved for a stay of the trial court's orders. DCX 50 (Docket Sheet for Appeal No. 12-CV-1550) at 2. First Washington and First American Title opposed the stay and moved to dismiss his appeal. *Id.*

203. On October 18, 2012, less than a month after Respondent had filed his appeal, the Court of Appeals denied Respondent's motion for stay and granted First Washington and First American Title's motions to dismiss Respondent's appeal.

[15] Rule 4(a)(1) of the Rules of the District of Columbia Court of Appeals requires that a notice of appeal must be filed within 30 days after entry of the order. Therefore, Respondent's appeals from the May 31 and June 4, 2012 orders were time-barred.

DCX 50 (Order, filed Oct. 18, 2012) at 3. The Court of Appeals dismissed the appeal because the orders appealed from were not final judgments that disposed of all the issues in the case. *Id.* (dismissal was "without prejudice to appellant noting a new notice of appeal after the trial court disposes of all issues"). By this language in its order, the Court of Appeals specifically called to Respondent's attention that he needed to await a final judgment disposing of all claims before filing a further appeal. Finally, the Court of Appeals directed the trial court to re-enter all the orders it had entered after Respondent had filed his September 19 notice of appeal. *Id.*

204. After the Court of Appeals had rejected his challenge to these orders and denied his motion to stay the orders, Respondent never complied with the court's repeated orders to sign one of the First Washington-provided promissory notes.

205. The trial court reissued its October 3 order on November 5, 2012, and again required Respondent to provide the required information and documents within 10 days. DCX 13 (Reissued Order of October 3, 2012, dated Nov. 5, 2012) at 4-7. Except for its title and preamble, the court's November 5 order was identical to its October 3 order. *See id.* at 1-7.

Respondent's Motion for Clarification

206. On November 14, 2012, Respondent filed a motion for clarification in the trial court. He argued that, until the court had re-entered the oral orders that Respondent claimed the court had made at the September 19 status conference, he would be violating the Court of Appeals' mandate if he were to comply with the

court's November 5 reissued order. DCX 28 (Respondent's Motion for Clarification, dated Nov. 14, 2012) at 3-4.

207. By order dated November 27, 2012, the court denied Respondent's motion for clarification as "the most recent in a string of stalling tactics," ordered him to comply with the November 5 order within two days, and scheduled a show cause hearing for December 5, 2012. DCX 14 (Order, dated Nov. 27, 2012) at 2. The court stated in its order that it had made no orders at the September 19 hearing, but had instead reserved ruling pending the submission of a written order. *Id.*

Respondent's False Responses to the Court's November 5, 2012 Order

208. On November 26, 2012, the day before the court issued its November 27 order, Respondent responded to the court's November 5 order by filing a "Praecipe: Notice of George W. Crawford's Compliance with Court Order." RX 15. Respondent's Praecipe was not sworn or verified under penalty of perjury. DCX 34 (Tr. of Dec. 5, 2012 Hearing) at 5.[16]

209. Respondent did not pay the Omnibus Order Sanctions, nor did he provide, either in his Praecipe or otherwise, any form or suggestion of a payment plan under which he would pay the sanctions over a period of time. *See* DCX 34 at 22, 34.

[16] The November 5 order required Respondent to provide his response within 10 days (*i.e.*, by November 19). *See* Super. Ct. Civ. R. 6(a) (pre-2017 amendments). Respondent filed his response a full week late (on November 26).

210. In his Praecipe, Respondent spent the first 10 pages reiterating arguments that the court had previously considered and repeatedly rejected. Thus, Respondent argued that he had complied with the Settlement Agreement because he was not required to list in his previous June 4, 2010 Affidavit any information regarding his joint assets with his wife (because the Settlement Agreement did not require him to provide any financial information regarding his wife) (RX 15 at 2-3), that his wife's assets were beyond the Settlement Agreement (*id.* at 10-11), that the court had committed plain error by failing to interpret the Settlement Agreement using contract law principles (*id.* at 4-7), and that the Settlement Agreement did not require him to sign either of the First Washington-provided promissory notes (*id.* at 8-10).

211. In his Praecipe, Respondent confirmed that he had refused to execute either of the First Washington-provided promissory notes. RX 15 (Praecipe: Notice of George W. Crawford's Compliance with Court Order, dated Nov. 26, 2012) at 4 (Respondent states that he has "refused to execute either of the promissory notes drafted by Plaintiff's counsel").

212. In his Praecipe, Respondent never contended that the order to sign one of the First Washington-provided promissory notes was void or imposed no valid obligation. Instead, he complained that the promissory notes were "contrary to the Settlement Agreement terms originally agreed upon between the parties and, as a matter of law, [he] should not be required to execute either of them." *Id.* at 4. Respondent contended that the order to execute one of the First Washington-

provided promissory notes was plain error, and also reiterated his objection to the "Waivers" and "Default" provisions contained in those notes. *Id.* at 8-9.

213. In his Praecipe, Respondent also provided his response to the court's November 5 order. His response was false and misleading in at least two respects. First, he again failed to disclose his ownership interest in the Hurtsboro Property. FF 214. Second, in response to the court's order he stated in his Praecipe that the Lincoln Road rental property had a debt in the amount of $67,000 owed to his mother-in-law. FF 216. We discuss each below.

Respondent's Continued Concealment of His Ownership Interest in the Hurtsboro Property

214. The court's November 5 order required Respondent to provide to First Washington's counsel certain information about Respondent's residence and the Lincoln Road rental property, and any other jointly-owned property. DCX 13 (Reissued Order of Oct. 3, 2012, dated Nov. 5, 2012) at 5 ¶¶ 3, 4. Paragraph 5 of that order required Respondent to provide "[t]he address of and equity in any other real property [*i.e.*, other than his residence and the Lincoln Road rental property] owned by [Respondent] individually or jointly with his wife *or any other person or entity, including his 25% interest in his deceased father's real property . . . .*" *Id.* at 5 ¶ 5 (emphasis added). In his response to ¶ 5 in his Praecipe, Respondent first quoted verbatim the court's description of the information he was required to provide, and then stated "**Answer:** None." RX 15 (Praecipe: Notice of George W. Crawford's Compliance with Court Order, dated Nov. 26, 2012) at 13 ¶ 5 (emphasis in original).

215. Respondent's answer was false. Even though the order specifically required him to provide information about any real property Respondent owned, individually or jointly with his wife or any other person, and specifically included "his 25% interest in his deceased father's real property," Respondent failed to disclose his 25% ownership interest in the Hurtsboro Property that he had inherited from his father. Instead, Respondent falsely answered "None."

216. Respondent's second false statement in his Praecipe was his statement that the Lincoln Road rental property had "a debt of $67,000 to Geneva McGee [Respondent's mother-in-law]." RX 15 at 13 ¶ 4; *see* DCX 34 at 17 (Respondent confirms that Ms. McGee was his mother-in-law). The court's questioning at the December 5, 2012 show cause hearing described below compelled Respondent to admit that this was a false statement, because there was no mortgage or other indebtedness to Ms. McGee burdening this property. FF 218, 220-221.

The December 5, 2012 Show Cause Hearing

217. At the December 5 Show Cause hearing, the court had an extensive discussion with Respondent about the inadequacy of the information and documents that he had provided in response to the court's orders dated November 5 and 27, 2012. DCX 34 (Tr. of Dec. 5, 2012 Hearing) at 30-54. Even though both orders by their terms required Respondent to produce documents as well as provide information, Respondent had produced only a handful of documents. DCX 13 (Reissued Order of Oct. 3, 2012, dated Nov. 5, 2012) at 4 (Respondent ordered to "produce the following *information and documents* regarding . . . his assets, income,

and liabilities") (emphasis added). Because Respondent's production was deficient and incomplete in numerous other, significant respects, the court directed him to appear on December 10, 2012, and produce all the responsive documents and information that he had previously failed to produce. *Id.* at 54-57.

218. During the course of the December 5 hearing, Respondent reluctantly acknowledged that some of the information that he had provided in his Praecipe was false and misleading.

219. Paragraph 4 of the court's November 5 order required him to produce to First Washington's counsel:

> [T]he following information and documents regarding both his current assets, income, and liabilities, and his assets, income, and liabilities as of December 2, 2009 . . . whether held individually or jointly with his wife, . . .
>
> . . . .
>
> [4] The equity in the 1609 Lincoln Road, NE, Washington, D.C. 20002 property, including any mortgages or indebtedness *on that property*, and the name and address of any mortgagee/creditor.

DCX 13 at 4-5 (emphasis added).

220. In his unsworn Praecipe, Respondent claimed he did "not know what, if any, equity there is in the property [the Lincoln Road rental property]," that the "Real Property Tax Bill Assessment is $352,150," and that "[t]he property has a Wells Fargo mortgage in the amount of $299,760.81 *and debt of $67,000 to Geneva McGee*," Respondent's mother-in-law. RX 15 (Praecipe: Notice of George W. Crawford's Compliance with Court Order, dated Nov. 26, 2012) at 13 (emphasis

added). By including the alleged $67,000 debt to his mother-in-law as an indebtedness on this property, Respondent's response suggested that the total indebtedness on the property was $366,760.81 ($299,760.81 plus $67,000), an amount that was the greater than the property's assessed value ($352,150).

221. In fact, as Respondent was forced to admit in response to the court's questions, there was no mortgage, lien, or other encumbrance on the property securing an obligation to his mother-in-law in any amount. DCX 34 at 50 (Respondent agrees that that "[t]he property does not have that debt" to Ms. McGee); *see id.* at 47 (the claimed obligation to his mother-in-law was a personal loan, not a liability on the property). Contrary to Respondent's representation, "the property" did not have a debt of $67,000 or any other amount owed to Ms. McGee. As the court recognized, Respondent's Praecipe was neither accurate nor truthful in this respect. *Id.* at 50.

222. Respondent was an experienced real estate lawyer. *See* FF 2-3. He well knew the difference between an unsecured debt and a debt secured by an encumbrance on real property. His statement in his Praecipe that the Lincoln Road rental property had a debt of $67,000 to Ms. McGee was a knowingly false statement to the court, a statement that Respondent intended that the court and the parties would rely upon.

223. Also, despite his repeated claims of inability to pay any amount of the sanctions previously ordered, Respondent revealed in his Praecipe that he had recently purchased jointly with his wife a new 2012 Ford Escape on which there was

a balance due of $29,740.31. RX 15 (Praecipe: Notice of George W. Crawford's Compliance with Court Order, dated Nov. 26, 2012) at 14. DCX 34 at 31-32. Thus, at the time that Respondent purchased this new vehicle, he had already been ordered to pay the Omnibus Order Sanctions ($30,517.35) (*see* FF 125), and had already failed to meet the June 29 and September 19 deadlines to pay these sanctions.

224. At this hearing, Respondent again contended, based on *Cropp*, 841 A.2d 328, that, if he signed either of the First Washington-provided promissory notes, he would lose his right to appeal, because there would no longer be a "case or controversy" for the Court of Appeals to decide. DCX 34 at 52. He expressly told the court that, based on his reading of the *Cropp* case, he refused to execute either of the First Washington-provided promissory notes. DCX 34 (Tr. of Dec. 5, 202 Hearing) at 9 ("I refuse to execute either of those promissory notes"). The court was again unpersuaded. *Id.* at 52-53.

225. On December 8, 2012, Respondent filed a notice of appeal (docketed as No. 12-CV-1956) from the orders entered on May 31, June 4, June 18, August 21, August 27, November 5, and November 27, 2012. DCX 8 at 7; DCX 49. This appeal was time-barred as to all of the orders appealed from except the orders dated November 5 and 27, 2012. *See* n.15 above.[17] It also was frivolous because it appealed

[17] Even though Respondent had filed his notice of appeal more than 30 days after the November 5 order was entered, it was still timely as to that order under Rule 4(a)(6) of the D.C. Court of Appeals Rules. Under this rule, unless the order is signed or decided in the parties' presence, the order is not considered entered, for purposes of calculating the time for filing a notice of appeal, until the fifth day after the clerk makes an entry on the docket reflecting service of notice of the order by the clerk. Since the November 5 order was entered on the docket that same day, the 30-

from interlocutory orders that were non-appealable because none of the orders disposed of all claims against all parties and the court did not make the Rule 54(b) certification otherwise required for the Court of Appeals to have appellate jurisdiction. The Court of Appeals later dismissed this appeal as moot. DCX 54 (Order, dated Nov. 13, 2014).

The December 10, 2012 Hearing and Respondent's First Incarceration

226. On December 10, 2012, the court held a further hearing. At the beginning of the hearing, Respondent produced certain documents to First Washington's counsel. DCX 35 (Tr. of Dec. 10, 2012 Hearing) at 2. According to the documents that Respondent produced, the Troy Property (the property that Respondent had owned in his sole name and had conveyed to his son for no consideration in June 2012) had an assessed value for tax purposes of $61,950. *Id.* at 4-5.

227. At the hearing, Respondent contended that he did not have the ability to pay the sanctions, arguing that he did "not have $30,000 in liquid assets anywhere." *Id.* at 13. After reviewing at some length the evidence that Respondent himself had provided regarding his financial condition (including Respondent's annual salary of $113,374, and his transfer of the Troy Property with an assessed value of $61,950 to his son after Respondent had been ordered to pay the Omnibus

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day appeal period would not expire until December 10, two days after Respondent filed his notice of appeal from that order.

Order Sanctions), the court rejected Respondent's inability-to-pay argument. *Id.* at 12-14; *see* Schedule attached to Supplemental Aff. at 4.

228. The court noted that Respondent had not paid or even attempted to pay any amount of the sanctions the court had ordered.

> Mr. Crawford, your contempt for this Court and this Court's orders have just been unbelievable. I've never seen anything like this at all, Mr. Crawford, in all of my years of practicing law here in the District of Columbia. I've never seen anyone do what you have done.
>
> You've been very respectful, Mr. Crawford, but you have made it very, very clear, not only when you were before Judge Holeman but certainly during the time that you've been before me, that you do not intend to ever, ever comply with any of the orders of this Court; that you do not intend to pay any of the sanctions that have been imposed by this Court. You just don't.
>
> You've made it very clear, Mr. Crawford. You've been as contemptuous as anyone who would stand in front of this Court and yell and scream and curse. You've been polite about it, Mr. Crawford. You've been arguably professional about it, Mr. Crawford, But you've made your attitude and your position very, very clear.
>
> And Mr. Crawford, I have been extremely patient and very reluctant to take this step [of incarcerating him]. I have given you every chance that I felt I could to get you to comply, to even attempt to comply. That's the thing, Mr. Crawford, *you have not paid one single dollar, not one dollar* pursuant to the orders of this court.

DCX 35 at 12-13 (emphasis added). During the course of the hearing, Respondent told the court that it was "pretty clear" that the Court of Appeals would reverse the order of incarceration under the authority of *Estate of Bonham*, 817 A.2d 192 (D.C.

2003), and accused the court of issuing orders specifically in order to create the "exceptional circumstances" that, under the authority of that case, would give the court the authority to incarcerate Respondent. *Id.* at 11.

229. The court directed the U.S. Marshal to take Respondent into custody, and ordered that Respondent be conditionally incarcerated for his contempt of court until he purged his contempt. DCX at 17 (Order, dated Dec. 14, 2012) at 1; DCX 35 at 14.

Respondent's Third Unsuccessful Appeal

230. On December 11, 2012, Respondent filed a notice of appeal (docketed as No. 12-CV-1957) from the order incarcerating him and also filed a motion for stay. DCX 52 (Docket Sheet for Appeal No. 12-CV-1957) at 2. The Court of Appeals denied Respondent's motion for stay two days later. DCX 17 at 9 n. 12. On March 5, 2013, the Court of Appeals granted First Washington's and First American Title's motions to dismiss Respondent's appeal. DCX 52 at 1.

The Superior Court's December 14, 2012 Order

231. In an order dated December 14, 2012, the court documented its careful consideration of, and reasons for rejecting, Respondent's claim that he was unable to pay any of the sanctions. The court referred to Respondent's "abhorrent pattern of non-compliance" with the court's orders. DCX 17 (Memorandum Opinion and Order, dated Dec. 14, 2012) at 1. The court noted that Respondent had an annual salary of $113,374, and a monthly Civil Service Retirement pension of $2,782.72. DCX 17 at 12. In addition, Respondent had had 100% ownership of property in

Alabama (the Troy Property) that had a tax-assessed value of $61,950, which he had transferred to his son after he had been ordered to pay sanctions. Finally, the court noted that Respondent owned (jointly with his wife) two properties in the District of Columbia with a total tax-assessed value in excess of $800,000. *Id.* For this reason, the court held that Respondent had failed to meet his burden of proving that he was unable to pay the sanctions. *Id.*

232. The court also noted that, even apart from Respondent's failure to pay the required sanctions, he had never complied with other requirements of the court's orders. Specifically, despite the court's order to sign one of the First Washington-provided promissory notes, Respondent had never signed either note. *Id.* at 11-12. For this reason, Respondent's testimony before the Hearing Committee that the "only thing" he was incarcerated for in December 2012 was his failure to pay the sanctions was not true. *See* Tr. at 297 (Respondent).

233. In its December 14 order, the court again rejected Respondent's argument that his incarceration would violate the Court of Appeals' decision in *Estate of Bonham*, 821 A.2d 192, which, as noted above, generally prohibited the use of incarceration to enforce payment of attorney's fees. 821 A.2d at 194-95; DCX 17 at 13-15. The court's primary rationale was that *Estate of Bonham* involved enforcement of a money judgment for the payment of attorney's fees, and there was no similar money judgment here. In addition, the court observed that the Court of Appeals itself had limited its holding in that case to the use of incarceration for civil contempt to enforce satisfaction of money judgments, noting that the Court of

Appeals had stated in its decision that the case did "not involve monetary sanctions imposed by a court pursuant to [Superior Court Civil] Rule 11 . . . and we express no opinion as to the availability of civil contempt as a means of enforcing compliance with orders to pay money based on [that rule]." *Estate of Bonham*, 821 A.2d at 196 n.7; *see also* DCX 17 at 13-14.

234. In addition, the orders that Respondent had violated were not limited solely to the payment of money. Instead, as noted, Respondent had refused to sign either of the First Washington-provided promissory notes that Respondent had been repeatedly ordered to execute. DCX 17 at 11-12.

235. The court concluded that Respondent had shown "a loathsome pattern of noncompliance," had "demonstrated bad faith throughout the proceedings before this Court" and had "facilitate[ed] needless litigation." *Id.* at 15. It reaffirmed its oral ruling at the December 10 hearing that Respondent was to be incarcerated until he purged his contempt by paying the outstanding Omnibus Order Sanctions ($30,517.35). *Id.*

The December 14, 2012 Hearing

236. On December 14, 2012, the court held a hearing to determine whether Respondent had made any effort to purge his contempt. Leonard Long, Esq. appeared for Respondent (who had previously represented himself *pro se* in this case). DCX 36 (Tr. of Dec. 14, 2012 Hearing) at 2-3. Mr. Long noted that he was appearing with the court's permission "solely for purposes of this hearing." *Id.* at 2.

237. At the hearing Mr. Long repeatedly requested that the court release Respondent so that he could attempt to come up with a plan to purge the contempt. *Id.* at 3, 4, 11, 13, 20, and 27. The court denied Mr. Long's requests, but said it would schedule a hearing the following week as soon as Respondent filed a payment plan. *Id.* at 33-35.

238. At the December 14 hearing, the court made clear that Respondent had never made any good faith effort to comply with the sanctions. *Id.* at 22 (Respondent never offered to pay $5 or $10 a week until the sanctions were paid, and never offered to pay anything, "never, ever, offered to pay one penny . . . ."). Instead, Respondent had persistently claimed he had no assets in his name that he could use to pay the sanctions. *Id.*

239. Respondent never asserted that the order to pay the Omnibus Order Sanctions and other sanctions orders were not valid orders, or that they did not impose valid obligations. Respondent never openly refused to comply with these orders on such a basis or any other legal basis. Instead, he claimed only that he lacked the resources to comply. *See, e.g.*, *id.* at 22; DCX 32 (Tr. of Aug. 17, 2012 Hearing) at 18-20; DCX 33 (Tr. of Sept. 19, 2012 Status Conf.) at 6.

The Court's Second Sanctions Award ($123,257.50)

240. On December 14, 2012, the court ordered Respondent to pay additional sanctions totaling $123,257.50 ($99,667.00 to First Washington and $23,590.50 to First American Title) by March 15, 2013. DCX 16 (Amended Order, dated Dec. 14, 2012) at 1-2. These sanctions covered attorneys' fees incurred in the period after the

period covered by the previous award of sanctions. DCX 18 (Memorandum Opinion, dated Apr. 29, 2013) at 2. (For convenience we will refer to these sanctions as the "December 2012 Sanctions.")

The December 19, 2012 Hearing

241. On December 19, 2012, the court held a further hearing to review a payment plan that Respondent had proposed in order to purge his contempt and obtain his release from jail. Respondent was again represented by Mr. Long at this hearing. Respondent's plan involved an immediate payment of $7,500, and then monthly payments of $500 until the sanctions were paid (in approximately 5 years). DCX 37 (Tr. of Dec. 19, 2012 Hearing) at 2, 5.

242. At the hearing, Respondent contended that he had no individual assets in his own name, because the two houses and four automobiles that he jointly owned with his wife were held as tenants by the entireties, which meant that he could not mortgage or otherwise encumber these properties without his wife's consent, and could not legally partition any of these assets. The court asked Mr. Long whether he could represent to the court that Respondent's wife (Mrs. Harriet Crawford) was prepared to mortgage the properties in order to satisfy the judgment and the sanctions. *Id.* at 22-23, 28.

243. Mr. Long responded that he did not have that information, but after a brief discussion with Respondent's wife, he told the court that she was willing to join with Respondent in applying for a mortgage on their marital home. *Id.* at 28. After an off-the-record conference with counsel, the court continued the case for two

days (to December 21, 2012) to allow the parties to discuss further a possible resolution of the case. *Id.* at 31.

244. At the December 19 hearing, Respondent repeated again the same arguments he had previously made challenging the order to sign one of the First Washington-provided promissory notes, including the alleged waiver of his right to have the judgment vacated, the alleged mooting of his appeal, and that the promissory notes contained terms that he had not specifically agreed to in the Settlement Agreement. *Id.* at 15-18. The court again rejected these arguments. *Id.*

The December 21, 2012 Hearing

245. On December 21, 2012, the court held a further hearing. Respondent was again represented by Mr. Long. Mr. Long proposed that Respondent would pay $7,500 that day plus the $7,500 previously proposed. The court ordered Respondent's release from incarceration on the understanding that the promised payments totaling $15,000 would be tendered that day, and that arrangements would be made to pay by January 17, 2013 the balance of the $30,517.35 Omnibus Order Sanctions. DCX 38 (Tr. of Dec. 21, 2012 Hearing) at 3, 9-10. Respondent paid a total of $15,000 of the sanctions that same day ($10,000 to First Washington and $5,000 to First American Title). DCX 39 (Tr. of Jan. 17, 2013 Hearing) at 4, 6-7; Stip. ¶ 12. Respondent was incarcerated for a total of 11 days during this first incarceration (from December 10 to December 21, 2012).

The Court's Referral to the Office of Disciplinary Counsel

246. On January 4, 2013, the court referred this matter to the Office of Disciplinary Counsel for its review. DCX 1.

The January 17, 2013 Hearing

247. On January 17, 2013, the court held a status hearing. That morning Respondent had tendered the amounts necessary to pay the remaining balance of the $30,517.35 Omnibus Order Sanctions previously ordered. DCX 39 (Tr. of Jan. 17, 2013 Hearing) at 3-4, 6; DCX 18 (Memorandum Opinion, dated Apr. 29, 2013) at 3. During the hearing, the court expressed its concern that, since Respondent's release from jail on December 21, neither he nor his counsel had responded to inquiries from counsel for First Washington and counsel for First American Title about possible resolution of the case in its entirety. DCX 39 at 10.

248. The court scheduled a status hearing for March 18, 2013, three days after the March 15, 2013 deadline the court had previously set for Respondent to pay the December 2012 Sanctions ($123,257.50). *See id.* at 16; DCX 37 (Tr. of Dec. 14, 2012 Hearing) at 5.

The March 18, 2013 Hearing

249. The court's March 15 deadline came and went without any payment by Respondent in any amount towards the outstanding December 2012 Sanctions ($123,257.50). DCX 40 (Tr. of Mar. 18, 2013 Hearing) at 2 (Respondent's admission that he had not paid any of these sanctions). At the March 18 hearing, Respondent advised the court that his wife had applied for a mortgage on the rental property that they jointly owned, but that the refinancing was complicated by the fact that he was

no longer employed, because he had lost his job as Chief Administrative Law Judge of the D.C. Department of Employment Services. *Id.* at 3; *see* Tr. at 139 (Neal). He admitted that neither he nor his counsel, Mr. Long (who had filed a motion for leave to withdraw as counsel), had communicated anything to counsel for First Washington or First American Title about this refinancing application. DCX 40 at 6-7.

250. At the March 18, 2013 hearing, Respondent again claimed that he did not have the ability to pay the sanctions. The court made clear that Respondent could comply with its order by agreeing to pay the amount of his monthly Civil Service Retirement pension each month to First Washington and First American Title until the outstanding sanctions were paid in full. *Id.* at 18-20.

251. The court scheduled a further hearing for April 15, 2013 and gave Respondent until that date to pay the outstanding sanctions (the December 2012 Sanctions) or enter into an agreement for the payment of the sanctions or resolving the case in its entirety. *Id.* at 22-24. The court made clear it would incarcerate him again if Respondent failed to pay the sanctions or agree on a resolution by that date. *Id.* at 26.

252. On April 2, 2013, Respondent filed another motion (in Appeal No. 12-CV-1956) asking the Court of Appeals to stay his imprisonment "to enforce payment of attorneys' fees." DCX 49 (Docket Sheet for Appeal No. 12-CV-1956) at 3. The Court of Appeals denied this motion on April 11, 2013. *Id.* at 2.

The April 15, 2013 Hearing and Respondent's Second Incarceration

253. Respondent did not pay any amount of the outstanding sanctions by April 15, 2013, nor did he enter into an agreement to pay them over time or otherwise resolve the case. At the April 15 hearing, Respondent's counsel (Mr. Long) told the court that Respondent's loss of his job had impaired his ability to make any payment towards the sanctions. DCX 41 (Tr. of Apr. 15, 2013 Hearing) at 12-13.

254. At this hearing, Mr. Long also made the same argument based on *Estate of Bonham* that he and Respondent had made previously (and the court had rejected) – namely, that the court lacked the power to incarcerate Respondent for failure to pay the sanctions because the sanctions were attorney's fees. First Washington's counsel informed the court that the parties had extensively addressed the *Estate of Bonham* issue in the briefing to the Court of Appeals on Respondent's motion to stay imprisonment, and the Court of Appeals had squarely rejected Respondent's argument. DCX 41 at 5-7, 12; *see id.* at 17 (First American Title's counsel confirmed that the Court of Appeals had denied Respondent's appeal on the merits). Respondent did not dispute this, or suggest that his *Estate of Bonham* argument had not been squarely raised with, and rejected by, the Court of Appeals.

255. First Washington's counsel advised the court that, when he had heard nothing from Respondent's counsel regarding a payment plan or possible resolution of the case, he had called Respondent's counsel a few days before the hearing, and was told that Respondent had no proposed resolution to offer. *Id.* at 8-9. Respondent's counsel did not dispute this fact. *See id.* at 11 *et seq.*

256. Mr. Long also referred to Respondent's wife's refinancing application as evidence of Respondent's efforts to resolve this. The court noted that, despite its previous criticism of Respondent for failing to communicate anything to First Washington or First American Title about his alleged efforts towards resolving these issues, Respondent had never told opposing counsel anything about this refinancing application. *Id.* at 23, 28.

257. At the hearing, the court again reviewed Respondent's financial condition, and noted that he had substantial assets (his home and separate rental property, as well as his pension income from his federal service, and his income from his private law practice). The court reviewed Respondent's financial situation and again concluded that Respondent had the ability to pay the outstanding sanctions. *Id.* at 24-25. We find that Respondent had the ability to pay the December 2012 Sanctions over time, using his monthly Civil Service retirement pension, even before he had the ability, after completing the refinancing of the Lincoln Road rental property described below, to pay the remaining sanctions in their entirety. *See* FF 321-23.

258. The court also referred to Respondent's transfer of the Troy Property that had a tax-assessed value of at least $60,000 to his son after Respondent had been ordered to pay the Omnibus Order Sanctions, and to Respondent's false assertion that the property had no value. DCX 41 at 20, 25-26. The court found that Respondent had been "dishonest," "disingenuous," "evasive," and "conniving." *Id.* at 14, 26.

259. The court rejected Respondent's argument based on *Estate of Bonham* yet again, and again ordered Respondent conditionally incarcerated for his noncompliance with court orders and his failure to pay the December 2012 Sanctions. *Id.* at 24. In its April 29, 2013 Memorandum Opinion, the court explained that it had ordered Respondent incarcerated because he had "failed to purge, or show good-faith efforts in an attempt to purge, the order of contempt." DCX 18 (Memorandum Opinion, dated Apr. 29, 2013) at 5. The court ordered that Respondent should remain in custody "unless or until (1) he pays, or demonstrates a good-faith effort to pay, the [sanctions], or (2) he demonstrates an inability to pay the award." *Id.* at 11.

260. Respondent never asserted that the December 14 sanctions order was not a valid order or that it did not impose a valid obligation. Respondent never openly refused to comply on that basis or any other legal basis. Instead, he claimed only that he lacked the resources to comply. *See* DCX 41 (Tr. of Apr. 15, 2013 Hearing) at 12.

The Court of Appeals Rejects Respondent's Motions for Release from Incarceration

261. That same day (April 15), Respondent filed a motion asking the Court of Appeals to stay his incarceration. The Court of Appeals denied that motion two days later. DCX 18 at 5 n. 2 (referring to *Crawford v. First Washington Ins. Co.*, No. 12-CV-1956 (Apr. 17, 2013)).

262. Ten days later, on April 25, 2013, Respondent filed a new appeal and also filed another emergency motion for release from incarceration. DCX 51 (Docket

for Appeal No. 13-CV-0431) at 1. This appeal was Respondent's appeal from the court's order dated December 14, 2012 and the April 15 order conditionally incarcerating him. DCX 8 at 5 (entry for Apr. 25, 2013). The appeal from the December 14 order was time-barred because Respondent had failed to file it within 30 days of the entry of the order. DCX 54 (Opinion, *Crawford v. First Washington Ins. Co.*, dated July 23, 2015) at 5 n.1. The Court of Appeals denied Respondent's emergency motion for release from incarceration on May 10, 2013. DCX 60 (Order, *Crawford v. First Washington Ins. Co.*, Nos. 12-CV-1956 and 13-CV-431 (D.C. May 10, 2013)).

263. In its order denying Respondent's motion for release from incarceration, the Court of Appeals stated:

> In this instance, appellant holds the ability to purge his contempt by payment of the sanctions imposed, or providing proof of his inability to pay, or presumably by entering into a settlement with appellees.

Id.

264. The Court of Appeals later dismissed Respondent's appeal from the April 15 order of incarceration as moot. DCX 54 (Opinion, *Crawford v. First Washington Ins. Co.*, dated July 23, 2015) at 4 *et seq.* By 2013 Respondent had filed a total of five appeals to the Court of Appeals from various orders entered by the trial court. None of his appeals were successful. Most were dismissed because the orders appealed from were not final orders and the trial court had not made the required determination under Super. Ct. Civ. R. 54 that would give the Court of Appeals jurisdiction over appeals from these non-final orders.

Respondent's Unsuccessful Appeals Challenging His Incarceration under *Estate of Bonham*

265. Respondent asked the Court of Appeals at least three times to release him from incarceration. Although none of the briefing on Respondent's motions is in the record, it is clear that he repeatedly argued that his imprisonment was illegal because it violated D.C. Code § 15-320(c) and *Estate of Bonham*. He told the Superior Court on numerous occasions that his incarceration was illegal under *Estate of Bonham*. *See, e.g.*, FF 194, 228.

266. Respondent's first unsuccessful *Estate of Bonham* appeal was on December 11, 2012, when he filed an "emergency motion for stay." The motion is not in the record before us, but the Court of Appeals' docket reflects that the court denied the motion two days later. DCX 52 (Docket Sheet for Appeal No. 12-CV-1957) at 2 (Dec. 13, 2012 entry: "Order Denying appellant's motion to stay – release from his civil contempt").

267. Respondent's second appeal based on *Estate of Bonham* was on April 15, 2013 (the day he was incarcerated the second time), when Respondent filed another motion for release from imprisonment. As noted above, the Court of Appeals denied this motion on April 17, 2013. DCX 49 (Docket Sheet for Appeal No. 12-CV-1956) at 2 ("Order Denying motion for release, construed as motion for stay").

268. His third appeal based on *Estate of Bonham* was on April 25, 2013, when Respondent filed another emergency motion for stay and release from imprisonment. DCX 51 (Docket Sheet for Appeal No. 13-CV-0431) at 1.

269. As previously noted, the Court of Appeals denied Respondent's April 25 motion by order dated May 10, 2013. DCX 60 (Order, dated May 10, 2013). The Court of Appeals wrote in its order that Respondent "holds the ability to purge his contempt by payment of the sanctions imposed or providing proof of his inability to pay, or presumably by entering into a settlement with appellees." *Id.* (citing *Baker v. United States*, 891 A.2d 208, 212 (D.C. 2006)).

270. If the Court of Appeals had agreed with Respondent that his incarceration for contempt was illegal under *Estate of Bonham* or otherwise, it would never have reminded him in its order of the black letter law regarding the various ways he could have purged his contempt and secured his release from incarceration.

271. Respondent acknowledged in his testimony before the Hearing Committee that the Court of Appeals never agreed with his interpretation of *Estate of Bonham*. Tr. at 367 (Respondent).

The Court's April 29, 2013 Memorandum Opinion

272. In a Memorandum Opinion issued on April 29, 2013 (DCX 18), the trial court spelled out in more detail its rationale for conditionally incarcerating Respondent for a second time. The court found that Respondent had not "engaged in any good-faith efforts in an attempt to purge the order of contempt." DCX 18 at 1. The court reviewed the course of proceedings to date and reiterated that the December 2012 Sanctions ($123,237.50) it had assessed were reasonable under the governing legal standards in light of Respondent's "evasive conduct and intransigence" that had caused opposing counsel to expend so much time and effort.

Id. at 8, 10-11. The court added that Respondent's "obstinateness finds no analog in this Court's experience; nor in that of counsel for First Washington and First American [Title]." *Id.* at 10.

273. And, as explained above (FF 259), the court ordered that Respondent "shall remain in custody unless or until (1) he pays, or demonstrates a good-faith effort to pay, the [sanctions], or (2) he demonstrates an inability to pay the award." *Id.* at 11.

The April 30, 2013 Hearing

274. The court next held a hearing on April 30, 2013. Mr. Long appeared for Respondent, who was also present. Mr. Long told the court that Respondent was prepared to pay $500 per month towards the sanctions and execute a quitclaim deed conveying the Troy Property (the property with a tax-assessed value in excess of $60,000) to First Washington and First American Title, and that Respondent and his wife had made arrangements to refinance their primary residence (in order to achieve a more favorable debt-to-income ratio in order to refinance their Lincoln Road rental property). DCX 42 (Tr. of Apr. 30, 2013 Hearing) at 5-6. None of this had been communicated to opposing counsel, however, and no payment of the December 2012 Sanctions had been made in any amount. *Id.* at 4, 6. The court encouraged Mr. Long and Respondent to communicate with opposing counsel about their efforts. *Id.* at 7.

275. At this hearing, the court also reviewed Respondent's financial condition at length and again determined that Respondent had the ability to pay the

sanctions. *Id.* at 19-20, 22, 28-29. The court rejected Mr. Long's request that the court release Respondent for a week to work on the refinancing. *Id.* at 18 ("No, no, because I don't trust Mr. Crawford . . . . So, I don't trust Mr. Crawford to do, to do anything to follow up in any way.") The court acknowledged that it did not have the power to order Respondent to sell the rental property that he jointly owned with his wife as tenants by the entireties (*id.* at 14), but, after considering all of Respondent's various assets, specifically found that Respondent did "have the ability, the [wherewithal], . . . to pay" the outstanding sanctions. *Id.* at 29.

276. During this hearing, Respondent again repeated the same arguments he had previously made about his objections to the promissory notes that First Washington had provided and to the required disclosure of his assets (including assets he jointly owned with his wife). *Id.* at 23-27. The court again rejected these arguments, and ordered Respondent returned to jail. *Id.* at 31-32.

The May 28, 2013 Hearing

277. The court held a further hearing on May 28, 2013. Mr. Long appeared for Respondent, who was present along with his wife and son. The court recessed briefly for an off-the-record discussion with counsel regarding possible steps by which Respondent could pay the sanctions, including steps to be taken by his wife and by his son (the owner of the Troy Property). DCX 43 (Tr. of May 28, 2013 Hearing) at 5-6. The discussion regarding possible payment approaches then proceeded in open court. *See, e.g.*, *id.* at 5-9.

278. The court noted that it had nothing in writing from Respondent that reflected the various commitments that Respondent, his wife, and his son were allegedly willing to make. *Id.* at 14.

279. The court expressed this concern again:

> [Y]ou haven't actually technically given me anything because you haven't filed anything with the Court. You have proposed an outline. I don't have anything formally in writing. I don't have a proposed order, I don't have anything that, in any way, before me, binds anybody to do anything with respect to the payment or assignment of monies or interest in property, or any of that.

Id. at 17. The court stated that such a written proposal was necessary because Respondent had not acted "with integrity with respect to this process." *Id.* at 18.

280. During the hearing, Respondent acknowledged that the Court of Appeals had rejected his argument based on *Estate of Bonham*, and had held that he could be incarcerated for civil contempt for failure to pay attorney fee sanctions. *Id.* at 24. The court ordered that Respondent remain incarcerated but scheduled another hearing for two days later (May 30, 2013). *Id.* at 27-29.

Respondent's Proposed Payment Plan

281. On May 29, 2013, Respondent's counsel (Mr. Long) served on opposing counsel and provided to the court a document entitled "Defendant, Crawford's Petition for Release from Incarceration and Submission of Payment Plan

to Purge Civil Contempt" (DCX 27).[18] In his Petition, Respondent proposed a payment plan, under which (1) Respondent's son would list and sell the Troy Property and pay the proceeds to First Washington and First American Title in partial payment of the December 2012 Sanctions ($123,257.50); (2) Respondent and his wife would complete "necessary repairs" to the Lincoln Road rental property that Respondent and his wife jointly owned and file a refinancing application by July 1, 2013, and use the proceeds from the refinancing of that property to pay the outstanding balance of the sanctions. DCX 27 at 1-2.[19]

282. In his Petition, Respondent stated without qualification: "The funds received from the refinancing of the Lincoln Road [rental] property will be used to pay the outstanding balance on the $123,257.50 civil contempt sanction." DCX 27 at 2 ¶ 3.

283. The Petition stated that it was "estimated" that this refinancing would be completed on or before September 30, 2013, and that it was "anticipated" that the proceeds from the sale of the Troy Property and the refinancing of the Lincoln Road

[18] The docket sheet does not reflect that Respondent ever filed his Petition with the court, however. DCX 8 at 4 (no entry for Petition).

[19] As Respondent explained to the Hearing Committee, his payment proposal actually involved two separate refinancings. It was necessary for him and his wife first to refinance their residence and use the proceeds of that refinancing to pay off some of their consumer debts (including Ford Credit, Bank of America and various credit cards (Citicorp, Discovery, and American Express)). Tr. at 289 (Respondent). According to Respondent, this step was necessary in order to reduce the debt-to-income ratio, a requirement for the second proposed refinancing – the refinancing of the Lincoln Road rental property. *Id.* at 289-90 (Respondent).

rental property would "be sufficient to pay the civil contempt sanction . . . *in its entirety*." *Id.* at 2 (emphasis added); see Stip. ¶ 16.

284. Respondent's Petition added that, if the proceeds from the sale of the Troy Property and the refinancing of the Lincoln Road rental property were not enough to cover the total amount of the sanctions, beginning on or about September 30, 2013, Respondent would pay $2,500 per month to First Washington and First American Title until the sanctions were paid in full. DCX 27 at 2 ¶ 4. The Petition asked the court to enter an order releasing Respondent from incarceration forthwith and "accepting [Respondent's] payment plan to purge civil contempt." *Id.* at 3.

285. Respondent attached to his Petition a proposed order that he asked the court to enter. Under the language of Respondent's proposed order, the court would have: "**ORDERED**, that *any and all proceeds* realized from the refinance of [the Lincoln Road rental property] shall be tendered to First Washington Insurance Co. and First American Title Insurance Co. in payment of the amount then due and owing on Court[-]imposed sanctions; . . ." DCX 27 (proposed Order) at 2 (bold typeface in original, italics added).

The May 30, 2013 Hearing

286. The court held a further hearing on May 30, 2013. Mr. Long appeared for Respondent. Respondent was present along with his wife. DCX 44 (Tr. of May 30, 2013 Hearing) at 2, 11.

287. As we find below, at this hearing, in order to secure his release from incarceration, Respondent through counsel unequivocally represented to the court

that, if the court released him from incarceration, his intention was that he and his wife would complete two separate refinancings (the first, the refinancing of their residence, and the second, the refinancing of the Lincoln Road rental property[20]) and that he would then use the entire net proceeds from the Second Refinancing to pay the outstanding sanctions. And, as we also find below, upon his release from jail, Respondent and his wife did complete the Second Refinancing (realizing approximately $118,000 of net proceeds), but, despite his professed intention, he did not use any of these proceeds to pay any amount of the outstanding sanctions. FF 324.

288. For the reasons set forth below, we find by clear and convincing evidence that Respondent's representation through counsel at this hearing regarding his intention was knowingly false.

289. Because it is necessary to understand the context of Respondent's false representation to the court through counsel at this May 30 hearing, we will describe what happened at this hearing in some detail.

290. The hearing began with a discussion of the payment plan that Respondent had proposed in his Petition the day before. Counsel for First Washington and First American Title objected to the proposed payment plan because

[20] For convenience, we will refer to the proposed refinancing of the Lincoln Road rental property as the "Second Refinancing." Also, any reference to the "entire proceeds" refers to the entire net proceeds of the refinancing, not to the total amount borrowed in the refinancing.

(1) it was subject to multiple contingencies and ways that Respondent could avoid paying the outstanding sanctions (for example, by failing to get the proposed refinancing), and (2) the court did not appear to have any way to enforce Respondent's wife's and son's obligations under the plan (since they were not parties to the lawsuit, and the court arguably would not have jurisdiction over them). DCX 44 (Tr. of May 30, 2013 Hearing) at 5-7, 8-9; *see id.* at 18 (court acknowledges it has "no authority or jurisdiction over" Mrs. Crawford).

291. First Washington's counsel also asserted, without any contradiction from Respondent or his counsel, that Mrs. Crawford had stated that the combined equity in their two D.C. properties (their residence and the Lincoln Road rental property) was between $500,000 and $650,000. *Id.* at 7.

292. In response to these objections, Mr. Long assured the court that, through this plan, Respondent and his wife would use the equity to pay the sanctions:

> This is a good faith effort . . . . Counsel talks about hundreds and hundreds [of thousands] of equity to properties. Through this payment plan [Respondent] along with his wife *will access the equity to pay the fees owed and to purge the contempt*.

Id. at 9-10 (emphasis added).

293. The court then asked what authority it would have to compel Respondent's son if the son decided not to sell the Troy Property. *Id.* at 10. Mr. Long assured the court that Respondent's son had indicated that he would subject himself to the authority of the court and would be subject to incarceration if he failed to comply with the court's order. *Id.* at 11 (If Respondent's son failed to comply, he

"could potentially find himself in the same place his father is in [*i.e.*, jail] and the same with [Respondent's wife.]"). The court explored with Mr. Long whether Mr. Long could properly advise Respondent's wife and son given the potential conflict of interest, such as Mrs. Crawford's interests in the marital property and the Lincoln Road rental property that could be affected even though she was not a party to the case. *Id.* at 11-14.

294. Mr. Long noted that Respondent had repeatedly argued that he could not do anything with his jointly-owned house or rental property without his wife's consent. *Id.* at 14. The court explained that its position had always been that Respondent had other means (besides the two jointly-owned real properties) by which he could have paid the sanctions, but that Respondent had "just flat out refused to pay." *Id.* at 14-15. The court did not dispute Mr. Long's assertion that it could not order Respondent to sell or encumber the jointly-owned property held as tenants by the entireties without his wife's consent. *Id.* at 13.

295. The court then took pains to ensure that Respondent's wife was aware of the potential conflict of interest. It asked whether she would like to obtain independent legal advice regarding the obligations she was proposing to undertake, and carefully explained how undertaking these obligations might expose her to potential liabilities. *Id.* at 18-23.

296. The court also expressed uncertainty about whether it had the power to order Respondent to pay the sanctions in a certain way. *Id.* at 17-18.

297. The court then asked the parties (including Mrs. Crawford) to move to the jury room for an off-the-record discussion. *Id.* at 23. When the parties returned to the courtroom, First Washington's counsel reported that no progress had been made, and that Respondent's proposed payment plan remained unacceptable. *Id*. at 23-24. First Washington's counsel then made the undisputable point that it was for the court – and not counsel – to decide whether to accept Respondent's proposal. *Id.* ("The proposal, at the end of the day it is up to you [the court] . . . . It is not up to me but I think this proposal is absolutely unacceptable . . . .").

298. In response, Mr. Long asked the court to accept Respondent's proposal and release Respondent so he could start taking the actions listed in the proposal (*i.e.*, complete the two refinancings and use the entire net proceeds of the Second Refinancing to pay the sanctions). Mr. Long told the court that Respondent and his wife were scheduled to close the next day (May 31, 2013) on the first of the two promised refinancings (the refinancing of their residence). *Id.* at 24, 26.

299. Even after First Washington had said that Respondent's proposal was unacceptable, the court continued to discuss aspects of the proposal with counsel for the parties. The court ultimately accepted the core of Respondent's proposal – that Respondent would complete both refinancings and use the entire net proceeds of the Second Refinancing to pay the sanctions. *See id.* at 24-32.

300. Thus, the court asked whether Respondent would be willing, as a sign of good faith, to assign the proceeds of his Civil Service retirement pension ($2,828 per month) to First Washington and First American Title in partial payment of the

sanctions. Mr. Long responded that Respondent would be willing to assign not the full amount, but $2,500 of his pension proceeds. *Id.* at 27. The court said it would issue an order to this effect. *Id.* at 30.

301. First Washington's counsel then asked the court to confirm that Respondent still had to refinance both properties as he had promised and use the proceeds of the Second Refinancing to pay off the sanctions. Referring to the $2,500 monthly payment plan to which Respondent had just agreed, counsel asked:

> Mr. Neal: Again, a very good start but what do we do about the rest? I don't want them to think that by paying $2,500 a month now they don't have *to refinance and get us the rest*.
>
> The Court: Well, *true* and so, if the balance is not paid off by, well, let me ask. One way to do this would be that if the balance is not paid by a date certain, then additional penalties accrue.

Id. at 30 (emphasis added). In this way, the court confirmed its acceptance of Respondent's proposal to complete both refinancings and use the Second Refinancing proceeds to pay the sanctions.

302. The court then discussed with counsel the deadline for Respondent to pay the sanctions in full, and decided to order him to pay the sanctions in full no later than December 1, 2013. *Id.* at 30-31.

303. Significantly, neither Mr. Long nor Respondent objected to, or disputed in any way, either First Washington counsel's statement or the court's confirmation that Respondent had to complete both of the proposed refinancings and use the entire net proceeds of the Second Refinancing to pay the sanctions. Nothing was said by

either Respondent or his counsel that suggested that Respondent had changed his mind, or that he no longer had his stated intention. Instead, their silence confirmed and reaffirmed Respondent's previously stated intent to use the entire proceeds of the Second Refinancing to pay the sanctions.

304. Further, during the May 30, 2013 hearing, neither Respondent nor his counsel ever stated or suggested in any way that Respondent was withdrawing his representation about his stated intention to use the entire net proceeds of the Second Refinancing to pay the sanctions. Nothing in the discussion at the May 30, 2013 hearing suggested that the court understood or believed that Respondent had withdrawn his proposal regarding the Second Refinancing or that he no longer intended to honor it. In fact, as noted above, the court confirmed its acceptance of Respondent's proposal regarding the Second Refinancing proceeds, and neither Respondent nor his counsel gave any indication that the proposal was withdrawn, off the table, no longer in full force and effect, or not a proposal that the court could reasonably rely upon.

305. Neither Respondent nor his counsel ever informed the court – either during the May 30, 2013 hearing or at any later time – that circumstances had changed, or that Respondent had changed his mind or formed any different or contrary intent.

306. When the court decided to order Respondent to pay the sanctions within six months, it noted that "[i]t is not for [the court] to order [Respondent] in terms of

how he pays." *Id.* at 31. The court recognized that, in this way, it would not have to put Respondent's wife or his son "in a bind." *Id.*

307. At the May 30, 2013 hearing, the court released Respondent from custody based upon his representation through counsel that (1) he intended to use the entire net proceeds from the Second Refinancing to pay the sanctions, and (2) if those refinancing proceeds were not sufficient to pay off the sanctions, Respondent would continue to pay $2,500 per month until the sanctions had been paid in full. FF 301. Respondent was incarcerated in his second incarceration for a total of 45 days (from April 15 to May 20, 2013).

308. Based upon Respondent's representations through counsel, and with Respondent's agreement, the court orally directed Respondent to pay the entire amount of the outstanding December 2012 Sanctions ($123,257.50) by December 1, 2013, and scheduled a further hearing for December 12, 2013. DCX 44 at 31-32; DCX 19 (Order Setting Conditions of Defendant's Release, dated June 3, 2013) at 2.

309. Respondent clearly and unequivocally represented to the court through counsel at this hearing that he intended and agreed to use every penny of the net proceeds from the Second Refinancing to pay off the sanctions.

310. In his testimony before the Hearing Committee and his response to the Office of Disciplinary Counsel's inquiry, Respondent confirmed that the court had accepted his proposal to refinance his two D.C. properties and devote the entire net proceeds of the Second Refinancing to the payment of the outstanding sanctions. As

Respondent testified, the court "said what [it] wanted me to do – and [it] issued an order to this effect" with the agreement of First Washington and First American Title that "they would accept the refinancing and that was the extent of it." Tr. at 283-84 (Respondent). Respondent's response to the Office of Disciplinary Counsel's inquiry (discussed at FF 356-357 below) further confirmed that, at the May 30, 2013 hearing, he had in fact represented through counsel to the court that he would use the entire net proceeds of the Second Refinancing to pay the sanctions.

311. Respondent also testified that the conditions of his release from custody that the court had set required him to complete both refinancings and use the entire net proceeds of the Second Refinancing to pay the sanctions by December 1, 2013. Tr. at 286 (Respondent); *see also* DCX 19 (Order Setting Conditions of Defendant's Release) at 2. And, finally, Respondent admitted in his Hearing Committee testimony that the court had released him from custody in reliance upon Respondent's representations through counsel regarding Respondent's intent to use the entire net proceeds of the Second Refinancing to pay off sanctions. Tr. at 337 (Respondent).

312. Respondent's wife also confirmed in her testimony before the Hearing Committee that, based upon Mr. Long's representations to the court at the May 30 hearing, she and Respondent had agreed to refinance the Lincoln Road rental property and apply the entire net proceeds of that Second Refinancing to the payment of the sanctions:

> Q. And you remember Mr. Long telling the court that you agreed to refinance the rental property and pay the

> proceeds of that refinance to pay back the [sanctions]?
>
> A. Yeah, he said something like that.
>
> Q. Okay. [Mr. Long] was not telling the truth?
>
> A. It was the intent at the time; it was the thinking at the time. That was prior to Judge Jackson telling me that I needed to get my own attorney and find out what my rights where [sic] because he didn't know if my rights were being protected.
>
> Q. Okay. But when Mr. Long said that to the court, that was your understanding of what you and [Respondent] had agreed to do?
>
> A. *That was my understanding of what we agreed to do.*

Tr. at 467-68 (Mrs. Crawford) (emphasis added).

313. The court accepted Respondent's proposal that, if released, he intended to use the entire net proceeds from the Second Refinancing to pay the sanctions.

314. Other than the possibility of his son's selling the Troy Property (which Respondent repeatedly maintained had no value) and the modest $2,500 per month payment, Respondent had not proposed any means of paying the outstanding sanctions other than from the proceeds of the Second Refinancing. Applying the entire net proceeds of that refinancing was the most critical part of Respondent's proposal, since there was no assurance that the Troy Property would ever be sold, and it would take more than four years to pay off the outstanding sanctions amount ($123,257.50) at $2,500 per month.

315. In his testimony before the Hearing Committee, Respondent never claimed or suggested that there had been any change of circumstances after the May 30, 2013 hearing that had prevented him from carrying out his stated intention to use the entire net proceeds from the Second Refinancing to pay the sanctions. *See generally* Tr. at 341-43, 354-56, 363-65 (Respondent).

316. Respondent claimed in his testimony before the Hearing Committee that it was not misleading for him to make this representation to the court through counsel (that he would use the entire net proceeds of the Second Refinancing to pay the sanctions) and then not use the proceeds to pay any amount of the sanctions, because "[his] intent was to" do so. Tr. at 354-55 (Respondent). The clear and convincing evidence set forth above demonstrates otherwise: that he had no such intent, and that his representation to the court through counsel regarding his claimed intent was knowingly false.

The Court's June 3, 2013 Order

317. By order dated June 3, 2013, the court ordered Respondent, "*based on the agreement of [Respondent]* and the representations of his counsel," to pay $2,500 per month, starting in June 2013, and to pay the entire remaining amount of the December 2012 Sanctions on or before December 1, 2013. DCX 19 (Order Setting Conditions of Defendant's Release) at 2 (emphasis added). The court's order did not specify or identify the source or sources from which Respondent was to pay the $2,500 per month, and specifically did not require Respondent to use his monthly

Civil Service retirement pension to make the monthly payments, even though Respondent had expressly agreed through counsel to do so. *See id.*

318. The language of this order makes clear that the court was relying upon Respondent's representations that he would apply the entire net proceeds of Second Refinancing to the payment of the outstanding sanctions. The only specific payment that the court ordered before the final deadline of December 1, 2013 ($2,500 per month starting in June) would have reduced the total amount of the sanctions at most by only $15,000 (six payments by December 1), leaving a balance due on December 1 of $108,237.50 ($123,237.50 minus $15,000). The court clearly did not understand or intend that Respondent's only payment obligation would be to pay $2,500 per month for many months until the sanctions had been satisfied. If that had been the court's understanding or intent, it would never have ordered Respondent to pay the entire remaining balance of the sanctions by December 1.

319. The June 3 order did not order that Respondent's Civil Service pension be garnished in the amount of $2,500 per month. *See id.* The order is not an order of garnishment. No writ of attachment or garnishment was ever issued or served upon the entity paying Respondent's pension (the U.S. Office of Personnel Management). Moreover, the court entered the order based upon Respondent's explicit agreement (through counsel) at the May 30, 2013 hearing to make these payments. And, in fact, at that same hearing, the court specifically declined to specify the sources that Respondent would use to pay any part of his obligations. As noted above, the court

stated: "It is not for [the court] to order [Respondent] in terms of how he pays." DCX 44 (Tr. of May 30, 2013 Hearing) at 31.

Respondent's Appeal from the Order Setting Conditions of His Release from Incarceration

320. On July 1, 2013, Respondent appealed from the June 3 order (DCX 19 (Order Setting Conditions for Defendant's Release)). DCX 48 (Docket Sheet for Appeal No. 13-CV-0711); DCX 8 (Docket entry for July 1, 2013 in -5890 Action). Respondent's appeal was frivolous for two reasons. First, Respondent had expressly agreed to the terms of the order. Second, the order was an interlocutory order that was not an appealable order. The D.C. Court of Appeals dismissed this appeal (No. 13-CV-0711) as moot by order dated November 13, 2014. DCX 54 (Order, dated Nov. 13, 2014) at 1. Although Respondent received multiple extensions, he never filed a brief in support of his appeal. DCX 48 (Docket Sheet for Appeal No. 13-CV-0711) at 1-2.

Respondent Completes the Second Refinancing But Fails to Use Any of the Proceeds to Pay the Sanctions

321. Respondent and his wife completed the first promised refinancing (the refinancing of their home) on May 31, 2013, the day after the May 30, 2013 hearing. Tr. at 289 (Respondent). The proceeds of this refinancing were more than $60,000. Tr. at 462 (Mrs. Crawford). Respondent and his wife used all of the proceeds of this first refinancing to pay off their consumer debts in order to lower their debt-to-income ratio to qualify for the Second Refinancing (the refinancing of the Lincoln Road rental property). Tr. at 289-90 (Respondent); Tr. at 462 (Mrs. Crawford).

322. In September 2013 Respondent and his wife completed the Second Refinancing (the refinancing of the Lincoln Road rental property). Tr. at 462-63 (Mrs. Crawford). The net proceeds of this refinancing were $118,000.[21] *Id.* at 463.

323. When the $118,000 in refinancing proceeds was received, Respondent had the financial resources to pay the entire amount of the December 2012 Sanctions, which at that point would have totaled $113,257.50 (the original amount of $123,257.50 minus $10,000 (four monthly payments from June through September)).

324. Contrary to Respondent's representations through his counsel to the court at the May 30, 2013 hearing, however, he did not use any of these proceeds to pay any amount of the sanctions. Tr. at 365 (Respondent); Tr. at 172-73 (Neal) ("not a penny" of sanctions paid after May 30 hearing except for the $2,500 monthly payments).

325. On the day in September 2013 on which the proceeds of the Second Refinancing became available in Respondent and his wife's joint bank account, his wife transferred at least $70,000 from that account into a separate bank account in her sole name. Tr. at 463 (Mrs. Crawford) ($78,000 transferred); *but see* Tr. at 403-04 (Mrs. Crawford) (amount transferred was $70,000).

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[21] Respondent testified before the Hearing Committee that the amount of the proceeds from the refinancing of the Lincoln Road rental property was "around $100,000," but added that his wife would probably know the exact amount. Tr. at 364 (Respondent). For this reason, we find that the net proceeds from the refinancing of the Lincoln Road rental property were approximately $118,000, as Mrs. Crawford stated in her testimony. Tr. at 463 (Mrs. Crawford).

326. Mrs. Crawford's stated rationale for taking this amount from the joint account was to keep this amount from being spent on the sanctions and to keep it available in case it was needed for the future care of her mother (who was 94 years old and lived in the family home). Tr. at 404, 464 (Mrs. Crawford) (she transferred the money to pay "[b]ills and also in case [her] mother needed it for any other things that happened to her physically").

327. The remaining amount of the Second Refinancing proceeds was at least $40,000 ($118,000 minus $78,000). Mrs. Crawford used the entire amount of the remaining proceeds to pay various household expenses. Tr. at 464-65 (Mrs. Crawford) (she used the remaining proceeds to pay "household bills[,] [m]ortgages, gas, electric, water – bills").

328. In his testimony before the Hearing Committee, Respondent declined to provide any explanation about why none of the remaining $40,000 was used to pay any of the sanctions, saying only "My wife would have to answer that." Tr. at 368 (Respondent); *see also* Tr. at 369 (Respondent) (Respondent aware that his wife took at least $70,000 of the Second Refinancing proceeds and transferred that amount into one of her private accounts; "The remaining proceeds, how much it was, what she did with it, she would have to explain that").

329. Respondent then explained:

> As I said, at that point in time, I was unemployed. I had been unemployed for almost a year. The only income I had was the $300 or $400 in excess of the civil service retirement. My wife has always taken the lead on the financing, but when that happened, *I definitely acquiesced*

> *and allowed her* to take the full lead in terms of what should be done to handle our personal affairs.

Tr. at 368 (Respondent) (emphasis added).

330. In his testimony before the Hearing Committee, Respondent admitted that he had a joint interest in the proceeds of the Second Refinancing, and that his wife was not the sole person to decide what to do with those proceeds. Tr. at 375 (Respondent). Respondent's only explanation for his acquiescence, despite his joint interest in the proceeds, in his wife's diversion of the refinancing proceeds from the payment of the sanctions to the payment of other, alleged obligations was that he did not want to upset his wife:

> But you've heard the expression ["]happy wife, happy life?["] So my wife took the lead. *I wasn't going to upset her*, and I didn't need that kind of – I'd been to jail, you, know. You know, I felt that as a principal [sic] I was doing what was right. Legally, and as far as my wife was concerned, I was trying to do what was right by my family. Those are the first two things that come foremost in my mind, and that's doing what's right by my family, and that's how I felt, and how I feel today.

Tr. at 375-76 (Respondent) (emphasis added).

331. There is no evidence that Respondent objected in any way to his wife's diversion of at least $70,000 of the Second Refinancing proceeds into her own personal account or to her use of the remaining proceeds to pay bills and not the sanctions that the court had ordered. Nor is there any evidence that he made any efforts, either by discussion with his wife or otherwise, to apply any amount of the

Second Refinancing proceeds to the payment of the sanctions. *See, e.g.*, Tr. at 374-76 (Respondent).

332. In his testimony before the Hearing Committee, Respondent was asked about the approximately $40,000 refinancing proceeds that remained after his wife had diverted at least $70,000 of the proceeds into her own personal account. Specifically, he was asked whether he had ever suggested that some of the remaining $40,000 should be used to pay the outstanding sanctions. Respondent answered: "I don't recall whether we discussed that in detail, no, I don't." Tr. at 368-69 (Respondent).

333. As noted above, Respondent never gave any indication to the court or to opposing counsel that, because of changed circumstances or any other reason, he had changed his mind and no longer intended to use the entire Second Refinancing proceeds to pay the sanctions. *See, e.g.*, DCX 45 (Tr. of Dec. 12, 2013 Hearing) at 16-18.

334. Mrs. Crawford testified before the Hearing Committee that the reason that she had changed her mind and decided not to use any of the proceeds of the Second Refinancing to pay any of the sanctions was that she had received a further order from the court imposing additional sanctions. Tr. at 468-71 (Mrs. Crawford) ("I was still going to pay those bills [*i.e.*, the sanctions previously ordered] until I saw that sanction from Judge Jackson."). She testified that it was her "understanding" in September when the proceeds of the Second Refinancing became available that "it was [her] right not to have to pay" any of the sanctions, either the

December 2012 Sanctions ($123,237.50) previously ordered or the later additional sanctions (*see* FF 337, 339), because "[w]e were trying to cover what had already been sanctioned" and it seemed to her it would be impossible to pay if the court kept increasing the amount of the sanctions. Tr. at 469-70 (Mrs. Crawford).

335. There is no evidence that supports Mrs. Crawford's claimed understanding, and her testimony on this point is not credible.

336. Mrs. Crawford also claimed in her testimony that she had never told the court that she would use the Second Refinancing proceeds to pay the sanctions. Tr. at 487 (Mrs. Crawford); *see also* Tr. at 488 ("[I]t wasn't like I even promised to do anything with the [refinancing] money specifically. It was [Mr. Long] trying to say this is what we should do."). She added that it was her understanding that the court had released Respondent from incarceration because there was a "possibility" that the refinancing proceeds "could" be used to pay the sanctions, not that the proceeds would be used in this way. Tr. at 489-90 (Mrs. Crawford). Her purported "understanding" has no basis in the evidence of record, and her testimony to this effect is not credible.

337. In fact, her claimed understanding was contrary to the court's November 20, 2013 order (DCX 20) imposing additional sanctions. In that order, the court described its decision to release Respondent from custody as follows: "Based on the proposals put forward by [Respondent], the agreement of [Respondent], and representations of his counsel, the Court ordered that [Respondent pay $2,500 per month] . . . and that [Respondent] purge the contempt by paying all

plaintiffs their respective shares of the outstanding sanctions by, or before, December 1, 2013." DCX 20 at 1-2. The court clearly did not release Respondent from custody based on the mere *possibility* that Respondent *might* use the refinancing proceeds to pay the sanctions. Mrs. Crawford's claimed understanding is also contrary to her own testimony before the Hearing Committee that she understood that she and Respondent had agreed to use the refinancing proceeds to satisfy the sanctions. See FF 312.

338. Mrs. Crawford's explanation and justification are contradicted by the record in another respect as well. The additional sanctions she was referring to were not ordered until November 20, 2013, two months after the proceeds of the Second Refinancing had become available to her and Respondent (in September 2013). *Compare* DCX 20, *with* Tr. at 482 (Mrs. Crawford) (second refinancing took place in September 2013)

339. By order dated November 20, 2013, the court ordered Respondent to pay a total of $89,116.33 in additional sanctions ($72,788.08 to First Washington and $16,328.25 to First American Title). DCX 20 (Memorandum Opinion, dated Nov. 20, 2013) at 5. This order covered attorney's fees and costs for the period from October 2012 to November 2013. *Id.* at 2. This order was the only award of sanctions made after the May 30 hearing.

340. With the November 20, 2013 sanctions, the total amount of sanctions awarded against Respondent was $242,891.18. This includes the Omnibus Order Sanctions ($30,517.35), the December 2012 Sanctions ($123,257.50), and the

November 2013 Sanctions ($89,116.33). Respondent paid a total of $45,517.35 of these sanctions. He paid the Omnibus Order Sanctions in full (after his release from his first incarceration), paid only $15,000 of the December 2012 Sanctions (after his release from his second incarceration), and never paid any amount of the November 2013 Sanctions.

341. Respondent and his wife received the proceeds of the Second Refinancing in September 2013, two months before the court awarded additional sanctions on November 20, 2013. Without any objection from Respondent, his wife diverted the entire Second Refinancing proceeds to the payment of other claimed obligations, and did so before the additional (November 20) sanctions were ever ordered. The additional sanctions, therefore, could not have been the reason for her and Respondent's failure to use the Second Refinancing proceeds to pay the sanctions as Respondent had promised.

Respondent's Six Monthly Payments of the December 2012 Sanctions

342. After he was released from jail on May 30, 2013, Respondent made six monthly payments of $2,500 (totaling $15,000) as directed by the court until he filed for bankruptcy on December 11, 2013. DCX 45 (Tr. of Dec. 12, 2013 Hearing) at 9. Apart from these payments, Respondent did not pay any amount of the December 2012 Sanctions ordered by the court before (or after) his bankruptcy filing. *See* Tr. at 172-73 (Neal).

Respondent's Bankruptcy Filing

343. On the evening of December 11, 2013, the day before the December 12, 2013 hearing that the court had previously scheduled, Respondent filed a voluntary chapter 7 bankruptcy proceeding in the United States Bankruptcy Court for the District of Columbia (Docket No. 13-00759). DCX 55 (Bankruptcy Docket Sheet) at 1.

The December 12, 2013 Hearing in Superior Court

344. At the December 12 hearing the next day, Respondent's counsel (Mr. Long) confirmed that none of the proceeds of the Second Refinancing had been used to pay any part of the outstanding December 2012 Sanctions. Instead, these proceeds had been used to pay other household expenses. DCX 45 (Tr. of Dec. 12, 2013 Hearing) at 18 (Mr. Long) ("The second refinancing monies owed went to repayment of outstanding loans owed to [Respondent's mother-in-law] . . . and since [Respondent] is not working there is no income. So family expenses have to be taken care of.").

345. The court reminded Mr. Long that, at the May 30 hearing, Respondent through counsel in open court had represented to the court that he was willing to do certain things (the two refinancings) and "take certain action in order to make sure that" the sanctions would be paid in full by December 1. DCX 45 at 13-14. The court made clear that it had released Respondent from custody because it had taken "[Respondent's] representations and [Mr. Long's] representations on his behalf in

good faith . . . .") The court concluded that Respondent had lied to the court. *Id.* at 14 ("So, he lied to the Court . . . . It sounds to me like he lied to the Court.").

346. In response, neither Mr. Long nor Respondent disputed that, at the May 30, 2013 hearing, in order to secure Respondent's release from incarceration, Respondent had represented to the court through counsel that he would use the entire net proceeds of the Second Refinancing to pay the outstanding sanctions.

347. Instead, Mr. Long argued that, because Respondent had used the proceeds of the Second Refinancing for other purposes than the payment of the sanctions, Respondent had no money left to pay the sanctions. As a result, according to Mr. Long's remarkably brazen argument, the court could no longer find that Respondent had the financial ability to pay the sanctions and the court therefore could not properly incarcerate him again. DCX 45 at 16.

348. When the court told Mr. Long that Respondent's diversion of the refinancing proceeds was contrary to Respondent's undertaking in his Petition (which had secured Respondent's release), Mr. Long's only response was to suggest that, at the May 30, 2013 hearing, he had told the court that the plan was "ambitious." *Id.* at 17. In fact, at that May 30 hearing neither Mr. Long nor Respondent ever suggested that there was anything at all that was "ambitious" about the plan to apply the entire net proceeds of the Second Refinancing to the payment of the sanctions. Instead, as noted above (FF 287, 292, 309), Mr. Long assured the court without qualification or equivocation that, through the proposed payment plan, Respondent

would access the equity in his properties "to pay the fees owed and to purge the contempt." DCX 44 (Tr. of May 30, 2013 Hearing) at 10.

349. Mr. Long contended that the proceeds of the Second Refinancing had been exhausted by Respondent's paying off an alleged loan to Respondent's mother-in-law and paying "family expenses" because Respondent was not working and earning income. *Id.* at 18. But there was nothing unexpected about these expenses. They did not suddenly crop up and interfere with Respondent's ability to pay the sanctions with the Second Refinancing proceeds. They were completely predictable at the time Respondent had proposed, and the court had accepted, Respondent's payment plan. If what supposedly made Respondent's payment plan "ambitious" was that it was premised upon Respondent's paying the sanctions and not paying routine family living expenses, the court was entitled to know that at the May 30 hearing, before it released Respondent from custody. Neither Mr. Long nor Respondent ever suggested to the court that the plan was ambitious because the sanctions would only be paid if Respondent ignored the routine family living expenses he obviously planned to continue to pay if the court were to release him from custody.

The Court's December 16, 2013 Memorandum Opinion

350. On December 16, 2013, the court issued a Memorandum Opinion in which it found that Respondent remained in contempt, but that, because of the automatic stay provisions triggered by Respondent's bankruptcy filing, further

proceedings had to be stayed until Respondent's bankruptcy proceeding was resolved. DCX 21 (Memorandum Opinion, dated Dec. 16, 2013) at 2-3.

351. There is no evidence other than Respondent's self-serving assertion that, at the time of the May 30 hearing, he intended to use the entire proceeds of the Second Refinancing to pay the sanctions the court had ordered. Tr. at 354-55 (Respondent). Given Respondent's years-long campaign to frustrate the settlement and avoid paying any amount of the settlement or the sanctions, it is clear that, at the time of the May 30 hearing, he had no intention to use the proceeds of that refinancing to pay any part of the sanctions, and that his representation through counsel that he had such an intent was knowingly false.

352. On October 1, 2014, the court held a status hearing. By that time, Respondent's debt for sanctions owed to First Washington had been discharged in bankruptcy, but proceedings regarding Respondent's obligation to pay the sanctions owed to First American Title were continuing. See FF 364-66.

353. Respondent's campaign of frustration, delay, and intransigence required the Superior Court to conduct no fewer than 17 separate hearings between May 28, 2010 and October 1, 2014. *See* DCX 30-DCX 47; *see also* Appendix A: Court Proceedings Required to Address Respondent's Recalcitrance.

354. According to the final entries in the court's docket in the hearing record (DCX 8, which was created on March 24, 2016), the court was required to conduct a further hearing on October 1, 2014 and to schedule a further hearing for April 6,

2016 to deal with Respondent's failure to pay the sanctions awarded to First American Title. DCX 8 at 1-2.

355. From December 1, 2009 to December 16, 2013, the court was required to issue at least 15 orders, including several memorandum opinions. *See* DCX 6; DCX 9-DCX 22. We list in the attached Appendix A the various hearings the court was required to conduct in these actions (both the -5890 Action and the -6309 Action) because of Respondent's recalcitrance. Appendix A: Court Proceedings Required to Address Respondent's Recalcitrance.

Respondent's Implicit Admission in Disciplinary Proceeding

356. On April 2, 2015, before the Specification of Charges was filed in this proceeding, Disciplinary Counsel wrote to Respondent and asked him to respond the assertion that:

> At [the May 30, 2013 hearing], your counsel, Mr. Long, represented to the court that you and your wife had agreed to refinance your rental and home properties and to use those funds to pay off the sanctions and the debt in compliance with the court orders to pay . . . .
>
> It appears that you did refinance the two properties but that the funds were not used to pay the sanctions and debt as ordered by the court.

DCX 3 (Letter dated Apr. 2, 2015 from Disciplinary Counsel to Respondent) at 1. Disciplinary Counsel asked Respondent to "state why your failure to use the funds as you represented to the court is not dishonesty and conduct seriously prejudicial to the administration of justice (Rules 8.4(c) and 8.4(d))." *Id.* at 1.

357. In his response to Disciplinary Counsel's letter, Respondent never disputed that his counsel had represented to the court at the May 30 hearing that Respondent and his wife would refinance their properties and use the proceeds to pay off the sanctions. Instead, Respondent denied that he was required to "follow through with" his counsel's representations because they were allegedly "elicited by Judge Jackson under duress of potential imprisonment and the threat of additional monetary sanctions." DCX 4 (Letter dated Apr. 15, 2015 from Respondent to Ms. Herman) at 2.

358. In that same letter to Disciplinary Counsel, Respondent also falsely stated that he had already "paid off the settlement amount [$10,000]." *Id.* In fact, Respondent never paid the settlement amount. *See* FF 169 (Respondent paid only $2,000 of the settlement amount).

Respondent's Bankruptcy Proceeding

359. At his Section 341 examination in his bankruptcy proceeding, Respondent testified under oath that "[t]here is no judgment of [$]1.1 million outstanding against me." DCX 57 (Tr. of Section 341 Meeting of Creditors, Jan. 17, 2014) at 46-47. According to Respondent, the $1.2 million judgment "was settled." *Id*. at 47. This testimony was false. Due to Respondent's many efforts to avoid complying with the Settlement Agreement described above, the settlement never became effective and the judgment was never vacated. FF 193. Instead, the judgment remained outstanding at all times until it was later discharged in bankruptcy as part of Respondent's general discharge in bankruptcy. *See* Tr. at 173-75 (Neal).

360. In his testimony at the Section 341 examination, Respondent denied under oath that, at the May 2013 hearing Respondent's counsel (Mr. Long) had "told the judge that you [Respondent] were going to refinance both properties and you were going to use those moneys to pay the sanctions." Respondent testified:

> I don't believe that's what Mr. Long said. I don't believe he said that. I believe he said that my wife and I were *doing everything we could* to try to get the money to pay.

DCX 57 (Tr. of Section 341 Meeting of Creditors, Jan. 17, 2014) at 55-56 (emphasis added). Given that Respondent had been in the courtroom and had heard everything that Mr. Long had said to the court at the May 2013 hearings (FF 286), and that the court had told him just a month before that he had "lied to the court" at those hearings (FF 345), Respondent could not reasonably have believed that all that Mr. Long had told the court in effect was that Respondent and his wife were doing their best to pay the sanctions. Respondent's testimony to this effect at the Section 341 meeting of creditors was knowingly false.

361. On March 5, 2015, the Bankruptcy Court specifically rejected Respondent's claim that the $1.2 million judgment had been eliminated by the settlement. DCX 56 (Memorandum Decision Overruling Debtor's Objection to Claim of First Washington Insurance Company, dated Mar. 5, 2015) at 9 (court's detailed review of the Superior Court litigation history "reflects that [Respondent's] contention that the judgment was reduced to $10,000 by virtue of the settlement is incorrect"). The Bankruptcy Court added that it was "beyond any doubt that the

amended judgment [the $1.2 million judgment] was a valid and existing debt of [Respondent's] as of the commencement of this bankruptcy case." *Id.* at 10.

362. When Respondent received his discharge in bankruptcy, First Washington's $1.2 million judgment against Respondent and the sanctions awarded to First Washington against Respondent were all discharged in bankruptcy. Tr. at 173-75 (Neal). Unlike First American Title, First Washington did not object to the discharge of the sanctions debt the court had awarded. *See* Tr. at 175 (Neal).

363. As a result, Respondent's years-long campaign to avoid the judgment and the settlement and the payment of the sanctions awarded to First Washington was largely successful. *See* DCX 10 at 12; DCX 16 at 1; DCX 20 at 5.

364. First American Title asked the Bankruptcy Court to find that Respondent's sanctions debt to First American Title was nondischargeable in bankruptcy because the sanctions were awarded for Respondent's willful, intentional, and bad faith conduct. DCX 59 (Memorandum Decision re Motion for Summary Judgment, *In re Crawford*, No. 13-00759, Adv. Proceeding No. 14-10035, dated Feb. 5, 2016) at 2. The Bankruptcy Court rejected Respondent's argument that the Superior Court's imposition of sanctions against him was unwarranted and the product of the judge's misunderstanding of the law. *Id.* at 22-24. The Bankruptcy Court held, based on collateral estoppel, that Respondent had the ability to comply with the court's orders, but had failed to do so. *Id.* at 17; *see also id*. at 25 (this case "presented a classic case of civil contempt"). Accordingly, the Bankruptcy Court

granted First American Title's motion and held that Respondent's sanctions debt to First American Title was nondischargeable. *Id.* at 25.

365. After the Bankruptcy Court's decision that the sanctions debt that Respondent owed to First American Title was nondischargeable, First American Title made further attempts to force Respondent to pay the sanctions he owed. These efforts were continuing at the time of the hearing before the Hearing Committee in this case. Tr. at 175 (Neal); FF 354.

366. In Respondent's bankruptcy proceeding, Respondent's wife agreed to pay $50,000 to the bankruptcy estate to resolve the Bankruptcy Trustee's claims to set aside various pre-petition transfers, including her diversion of the Second Refinancing proceeds for her mother's benefit. DCX 58 (Motion to Approve Compromise of Controversy Pursuant to Fed. R. Bankr. P. 9019, filed June 6, 2014, Ex. A (Letter Agreement)) at 7-16; *see also* Tr. at 343 (Respondent). The Bankruptcy Court approved this compromise. DCX 55 at 13 (docket entry for July 9, 2014).

Findings Relating to Respondent's "Open Refusal" Defense to the Charged Rule 3.4(c) Violations

367. Disciplinary Counsel has charged that Respondent violated Rule 3.4(c) when he knowingly disobeyed orders (1) to sign one of the First Washington-provided promissory notes, (2) to pay the sanctions the court ordered, and (3) to provide an affidavit disclosing all of his assets and liabilities (as required by the parties' Settlement Agreement). ODC Br. at 42. Respondent never asserted that any of these orders was void or imposed no valid obligation. FF 188.

368. Instead, Respondent claimed only that the orders to sign one of the promissory notes were erroneous because (1) they were inconsistent with the parties' Settlement Agreement, and (2) would improperly require him to waive his right to have the $1.2 million judgment against him vacated and his right to challenge the orders on appeal. FF 172-73, 188, 210. He never contended the orders were void or that they did not impose a valid obligation.

369. Respondent challenged the sanctions orders only on the ground that he lacked the ability to pay the sanctions. FF 165-67, 227. He never contended the orders were void or that they did not impose a valid obligation.

370. Respondent's objections regarding the orders to provide an affidavit disclosing all his assets and liabilities did not go beyond the claim that the orders were erroneous because they required him to provide information (primarily, information about his interests in property he jointly held with his wife) that was not required by the parties' Settlement Agreement. FF 96-97, 146, 210. He never claimed that the affidavit orders were void or did not impose a valid obligation.

Findings Bearing on Respondent's Credibility and Appropriate Sanction

371. In his testimony before the Hearing Committee, Respondent claimed that he had never received any notice of a show cause hearing. Tr. at 295 (Respondent). This testimony is contradicted by the record. The court's November 27, 2012 order specifically ordered the parties to appear for a "show cause" hearing on December 5, 2012. DCX 14 (Order, dated Nov. 27, 2012) at 2 ("**ORDERED**, that the parties shall appear for a Show Cause Hearing on [Dec.] 5, 2012 . . . .")

(emphasis in original). In addition, in his May 31, 2012 Omnibus Order, Judge Holeman had specifically warned that, if Respondent failed to comply with the requirements of that order, "he shall be required to *show cause* why he should not be held in contempt of Court; . . ." DCX 10 at 12 (emphasis added).

372. Further, although the exact words "show cause" may not have been used, Respondent had more than adequate notice before every hearing that the issue before the court was whether Respondent should be held in contempt (as First Washington and First American Title had urged in motions they were repeatedly forced to file), and, after Respondent had been held in contempt, whether Respondent had purged his contempt and, if not, what sanctions were appropriate. *See* DCX 8 at 10, 13, 15 (showing motions to enforce settlement and for contempt). FF 106, 162.

373. It is clear that Respondent is not aware of his violations of the disciplinary rules or of the seriousness of his misconduct. In his testimony before the Hearing Committee, Respondent denied that he had committed any wrongdoing in the Superior Court action, and denied that he had committed any violation of any disciplinary rule. Tr. at 309 (Respondent).

374. In addition, in a lengthy aside during his Hearing Committee testimony, Respondent maintained that it would have been a "national scandal" if his college classmates from Morehouse College (including "judges that sit on the bench that I went to undergrad school with," "human rights attorneys," and "[g]uys in the media,

Jet company magazine") had "gotten wind of" "what was going on," referring to his incarceration by the court. Tr. at 277-78 (Respondent).

375. In his testimony before the Hearing Committee, Respondent repeatedly asserted that he had seen an entry in the docket sheet for the September 19, 2012 status conference that stated that the settlement had been voided. Tr. at 246-47 (Respondent) ("The clerk's entry says settlement voided"); *id.* at 334 (Respondent). In fact, there is no such docket entry. The relevant portion of the docket entry states only that "[p]arties are to submit a proposed order setting out info needed for collection on the judgment." DCX 8 at 8 (docket entry for Sept. 19, 2012).

376. Respondent testified before the Hearing Committee that in December 2012 he had no liquid assets, only property. Tr. at 256-57 (Respondent). This, too, was contradicted by the record and by his own testimony. In fact, the financial documents that Respondent finally submitted to the court showed that he had an ING account in his own name that had an account balance of more than $2,400 as of September 30, 2012. RX 24 (Account Statement from ING for DC 457 Deferred Comp Plan—DCPLUS, attached to Praecipe: Notice of George W. Crawford's Compliance with Court Order, dated Nov. 26, 2012) at unnumbered page 109 (reflecting $2,420.87 account balance). According to Respondent's own testimony, he used $2,400 from this account in January 2013 as part of the total amount of $15,000 that he paid in partial payment of the Omnibus Order Sanctions in January 2013. Tr. at 268 (Respondent); see FF 245, 247. Despite Respondent's denials, therefore, the record is clear that he had at least $2,400 in available funds in his own

name in December 2012. There is no evidence that Respondent made any effort before January 2013 to access any of his personal funds in his ING account to pay the sanctions.

377. Respondent testified that the Court of Appeals never made a "substantive" or "specific" ruling that upheld the legality of his incarceration. Tr. at 271-72 (Respondent); *id.* at 311-13 (Respondent). In fact, as previously noted, in its May 10, 2013 order denying Respondent's motion for release from incarceration, the Court of Appeals made clear that it did not regard Respondent's incarceration as illegal or unlawful. After denying the motion, the Court of Appeals stated:

> In this instance, [Respondent] holds the ability to purge his contempt by payment of the sanctions imposed, or providing proof of his inability to pay, or presumably by entering into a settlement with appellees.

DCX 60 (Order, dated May 10, 2013) at 1 (citations omitted). The Court made very clear its holding that Respondent's incarceration was not illegal by suggesting three ways that Respondent could "purge his contempt." If, as Respondent contended, his incarceration was illegal under *Estate of Bonham*, the Court of Appeals would have so held and reversed the order incarcerating him for his contempt of court. It did not do so.

378. Respondent filed a total of six appeals challenging the Superior Court's various orders. Every appeal was rejected. We set out in the attached Appendix B Respondent's various appeals, the orders appealed from, and the court's disposition. Appendix B: Respondent's Unsuccessful Appeals to the District of Columbia Court

of Appeals. There are 14 pages of docket entries for these frivolous appeals. DCX 48, 49, 50, 51, and 52.

379. Significantly, Respondent repeatedly argued in his appeals that the court's orders incarcerating him were unlawful under the holding in *Estate of Bonham*. Although the Court of Appeals never specifically mentioned the *Estate of Bonham* case in any of its orders, it necessarily rejected the argument by repeatedly sustaining the orders incarcerating Respondent for failure to pay the sanctions that the trial court had awarded. Tr. at 175-78 (Neal); *see* DCX 60; *see also* FF 265-71.

380. Respondent claimed that the only reason he was incarcerated the first time was because he had failed to pay attorney's fees ordered by the court. Tr. at 297 (Respondent). In fact, that was not Respondent's only failure. As the court noted in its December 14, 2012 order, Respondent had never "executed either a promissory note or an affidavit as required by [Judge Holeman's Omnibus Order, dated May 31, 2012]." DCX 17 (Memorandum Opinion, dated Dec. 14, 2012) at 11-12. For that reason, the court found no reason to reconsider its oral ruling at the August 17, 2012 hearing holding Respondent in contempt of court. *Id.* at 12.

381. Respondent's testimony before the Hearing Committee on this point is very misleading. He claimed that he actually did provide the affidavit required by the court. *See, e.g.*, Tr. at 227, 232, 238-45. That is plainly not the case, because, as set forth above in FF 123, 184, 210, 217, both Judge Holeman and Judge Jackson found that the affidavits Respondent provided did not comply with the court's

orders, and he never did sign one of the First Washington-provided promissory notes.

382. In his testimony before the Hearing Committee, Respondent acknowledged that, as an attorney, he was required to comply with a court order unless the order was reversed on appeal or modified by the court on reconsideration. Tr. at 320-22 (Respondent). Respondent also admitted that, nonetheless, he had never complied with the court's order to execute one of the promissory notes that First Washington's counsel provided. Tr. at 322-23 (Respondent).

383. Respondent testified before the Hearing Committee that the court had found only one of his motions frivolous, and had never provided any explanation as to why it was frivolous. Tr. at 250 (Respondent) (referring to Respondent's motion to vacate judgment that Judge Holeman denied at the May 28, 2010 hearing). This testimony was misleading and incorrect. In fact, the court explained at length why Respondent's motion to vacate judgment was frivolous and meritless, primarily because Respondent's claims of fraud and concealment were based on other parties' failures to investigate and pursue his claims for him. DCX 30 (Tr. of May 28, 2010 Hearing) at 49-51.

384. The court also found that other motions made by Respondent were frivolous. For example, the court denied Respondent's motion for Rule 11 sanctions against First Washington and its counsel because the motion was based on the same frivolous and meritless claims that Respondent had made in his motion to vacate the judgment. DCX 10 (Omnibus Order, dated May 31, 2012, at 10 (court "will not

ignore that [Respondent's arguments in his Rule 11 motion] were rejected as 'frivolous' and 'meritless' [at the May 28, 2010 hearing]").

III. CONCLUSIONS OF LAW

A. Respondent's Motion to Dismiss the Specification of Charges Should be Denied

On June 20, 2016, the first day of the hearing, Respondent orally moved to dismiss the Specification of Charges on grounds that it was insufficiently clear or specific to meet the standard set forth in Board Rule 7.1.[22] Tr. at 24-25. Disciplinary Counsel opposed the motion, contending that Respondent could have filed a motion for a bill of particulars or talked to Disciplinary Counsel about its theory of the case in advance of the hearing but had failed to do so. Tr. at 29-31.

We recommend that the Board deny Respondent's motion to dismiss because it was untimely and without merit.[23]

Rule 7.14(a) requires that all motions (including motions to dismiss) must be filed no later than seven days after the time prescribed for filing an answer to a petition, unless the Chair of the Hearing Committee provides otherwise. In this case, the petition was served on or about November 9, 2015. Respondent timely served his answer to the petition on November 30, 2015 (the twenty-day deadline for filing

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[22] Board Rule 7.1 requires that the petition be (i) "sufficiently clear and specific to inform respondent of the alleged misconduct and the disciplinary rule or rules alleged to have been violated[,]" and (ii) "based on probable cause to believe that respondent has . . . violated the rules of professional conduct."

[23] The Board Rules direct the Hearing Committee to "include in its report to the Board a proposed disposition and the reasons therefor." Board Rule 7.16(a).

an answer fell on Sunday, November 29, 2015). Thus, at the latest, Respondent's motion to dismiss was due seven days later (on December 7, 2015). Respondent did not make his motion to dismiss until June 20, 2016, the first day of the hearing. This was more than seven months after the motion was due under the Rules.

At the hearing, Respondent made no effort to justify or explain his failure to timely file his motion to dismiss. Tr. at 25 *et seq.* Perhaps recognizing the weakness of his motion, Respondent made clear that he was moving to dismiss in order to get more time to get a "more definite statement of the specification of charges." Tr. at 28 (Respondent's counsel). As Disciplinary Counsel pointed out, however, Respondent could have filed a motion for a bill of particulars or asked Disciplinary Counsel to discuss its theory of the case, but did neither. *Id.* at 30. Nor is the delay due to Respondent's failure to retain counsel in this matter until May 11, 2016, six days before the first scheduled hearing date. After we granted in part Respondent's motion for a continuance (postponing the hearing by more than a month), Respondent still did not make his motion to dismiss until the first day of the hearing. Therefore, the motion should be denied as untimely.

Respondent's motion should also be rejected on the merits. Rule 7.1 requires that the petition must be "sufficiently clear and specific to inform respondent of the alleged misconduct and the disciplinary rule or rules alleged to have been violated." The Specification of Charges is more than sufficient to meet this standard and give Respondent fair notice of the charges against him.

The Specification identifies (1) the proceedings in which the misconduct

occurred (the -5890 Action and the -6309 Action), (2) the orders imposing sanctions that Respondent violated (including the May 28, 2010 oral order enforcing the settlement agreement, the Omnibus Order dated May 31, 2012 (awarding the Omnibus Order Sanctions totaling $30,517.35), and the December 12, 2012 order (awarding the December 2012 Sanctions totaling $123,257.50), (3) the dates of the numerous hearings held by the court, (4) the orders incarcerating Respondent, (5) Respondent's representations through counsel regarding his intention to use the entire net proceeds of the Second Refinancing to pay the outstanding December 2012 Sanctions ($123,257.50), and his failure to do so, and (6) each of the Rules of Professional Conduct that Respondent allegedly violated. No greater specificity should be required. Respondent could not have had any doubt about what he was charged with or what he had to defend against. It is also significant that at no time during the hearing or thereafter did Respondent ever claim that he was surprised by the evidence or by Disciplinary Counsel's contentions, or request a continuance or any other relief on the basis of unfair surprise.

For both these reasons, therefore, we recommend that the Board deny Respondent's motion to dismiss.

B. Disciplinary Counsel's Motion to Invoke Collateral Estoppel Should be Granted in Part and Denied in Part

Disciplinary Counsel requests that that the Hearing Committee give collateral estoppel effect to the certain rulings made by the Superior Court in the -5890 Action. Specifically, Disciplinary Counsel requests that Respondent not be permitted to re-litigate that (1) he was subject to multiple court orders regarding sanctions; (2) he

had the ability to pay the sanctions the court imposed on him; and (3) he was not in compliance, or even substantial compliance, with the court orders. ODC Br. at 3. Respondent argues that, because his due process rights were allegedly violated, the Hearing Committee cannot properly determine that the "issues to be precluded were 'actually' or 'fully and fairly' litigated." R. Br. at 9. Further, he contends, the collateral estoppel doctrine cannot apply because the court's orders were void, and thus not valid. *Id.*

The party seeking to invoke collateral estoppel must demonstrate that: (1) the issue was actually litigated in a prior proceeding; (2) determined by a valid, final judgment on the merits; (3) after a full and fair opportunity for litigation by the parties or their privies; and (4) under circumstances where determination of the issue was essential to the judgment, not merely dictum. *In re Wilde*, 68 A.3d 749, 759 (D.C. 2013) (internal quotation marks omitted).

Collateral estoppel does not apply when the burden of proof in the prior action was less than the clear and convincing evidence standard applied in disciplinary cases. *In re Kennedy*, Bar Docket No. 229-88, at 3-4 (BPR July 15, 1991) (respondent was not collaterally estopped to challenge facts previously found by only a preponderance of the evidence), *recommendation approved,* 605 A.2d 600, 601 (D.C. 1992); *see also Order*, *In re Kennedy*, Bar Docket No. 229-88, at 4 (HC Aug. 22, 1990) ("Proof of a violation by a preponderance of the evidence does not collaterally estop Respondent from claiming that the clear and convincing standard

has not been met, just as proof of civil fraud by a preponderance of the evidence does not collaterally estop a defendant from contesting fraud in a criminal proceedings [sic], where the standard of proof is beyond a reasonable doubt."); *see In re Maxwell*, 798 A.2d 525, 530-31 (D.C. 2002); *see also In re Smith*, Bar Docket No. 259-04 (BPR Dec. 2, 2005) at 7 (collateral estoppel applies to finding of guilt in criminal case in disciplinary action involving the same conduct as the criminal case).

In addition, the law is settled that the doctrine of collateral estoppel (also known as issue preclusion) cannot preclude a party from relitigating in one action an issue decided in a previous action if the burden of persuasion has shifted in the later action. Thus, if the party objecting to issue preclusion had the burden of persuasion in the first action but the burden shifts in the second action to the party urging issue preclusion, issue preclusion does not apply. *Medtronic, Inc. v. Mirowski Family Ventures, LLC*, 571 U.S. 191, 200 (2014) (citing *Restatement (Second) of Judgments* § 28(4) (Am. Law Inst. 1982)).

According to the *Restatement*, issue preclusion does not apply when "the party against whom preclusion is sought had a significantly heavier burden of persuasion with respect to the issue in the initial action than in the subsequent action: [or] the burden has shifted to his adversary . . . ." *Id.* § 28(4). In *Medtronic*, the court explained that the "failure of one party to carry the burden of persuasion on an issue should not establish the issue in favor of an adversary who otherwise would have the

burden of persuasion on that issue in later litigation." *Medtronic*, 571 U.S. at 200 (quoting 18 C. Wright, A. Miller, & E. Cooper, *Federal Practice and Procedure* § 4422 (1980)); *see also* 18 James Wm. Moore *et al*., *Moore's Federal Practice* ¶ 132.02[4][b] (3d ed. 2020) ("[I]ssue preclusion should not apply if the party against whom preclusion is sought faced a significantly heavier burden of persuasion in the first action compared with the second.") (citations omitted).

In light of these principles, our analysis of the collateral estoppel/issue preclusion issue is not complicated. We have no difficulty in concluding that, under settled principles of collateral estoppel/issue preclusion, Respondent is precluded from relitigating in this disciplinary proceeding two of the three determinations that Disciplinary Counsel identifies: (1) that Respondent was subject to multiple court orders regarding sanctions and (2) that he was not in compliance, or substantial compliance, with these orders. But, because of the shift in the burden of persuasion on the ability-to-pay issue from Respondent in the Superior Court action to Disciplinary Counsel in this disciplinary proceeding, we cannot properly give preclusive effect to the court's finding regarding Respondent's ability to pay these sanctions.

Except for the effect of the shift in the burden of proof on the ability-to-pay issue, all of the required elements for collateral estoppel/issue preclusion are present for all three of the issues. Each of them was actually litigated, determined by a valid,

sufficiently final judgment on the merits, after more than a full and fair opportunity for litigation by Respondent, and the determination was essential to the judgment.[24]

Respondent contends, without citation to any authority, that collateral estoppel cannot be applied because the issues were not "actually" or "fairly litigated" (due to alleged "due process" problems) and that the orders were void and not valid. R. Br. at 9. As we find below, Respondent's due process and voidness arguments have no merit. *See* pp. 196-199 below.

No preclusive effect can be given to the court's finding on the ability-to-pay issue because there was a shift in the burden of persuasion on that issue. But, because there was no shift in the burden of persuasion on the first and third issues (that Respondent was subject to sanctions orders and failed to comply with them), we conclude that Respondent is precluded under principles of collateral estoppel/issue preclusion from relitigating these issues. The practical effect of precluding

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[24] We recognize that the court made these determinations in interlocutory orders and not in a final, appealable judgment. This is not dispositive, however. The test is whether the prior adjudication of the issue is "sufficiently firm to be accorded conclusive effect." *Davis v. Davis*, 663 A.2d 499, 503 (D.C. App. 1995) (citing *Restatement (Second) of Judgments* § 13 (Am. Law Inst. 1982)). In assessing the finality of the prior adjudication, the court should find preclusion if the decision was not "avowedly tentative" but was "adequately deliberated and firm," the parties were fully heard, and the decision was supported by a "reasoned opinion." *Restatement (Second) of Judgments* § 13 cmt. g. As the *Restatement* summarizes, the test of finality is whether the court's "conclusion in question is procedurally definite . . . ." *Id.* In this case, Respondent was fully heard (and reheard) on the sanctions orders, there is nothing about the orders that suggests they were tentative or not procedurally definite, and the court supported its determinations by reasoned opinions. FF 231-35, 259, 272.

Respondent from relitigating these two issues in this case is very modest, because the evidence that he was subject to the sanctions orders and failed to comply with them is well beyond clear and convincing; it is overwhelming.

The ability-to-pay issue is entirely different, however, because the burden of proof on that issue shifted from the Superior Court action to this disciplinary proceeding. The court made clear in its decision that it was Respondent who bore the burden of persuasion in the Superior Court action on the ability-to-pay issue. In its decision, the court noted that (1) before entering a civil contempt for violating an order to pay sanctions, the court had to find that the contemnor had the present ability to pay the amount ordered, and (2) the contemnor had the burden to prove his or her inability to pay. DCX 17 (Memorandum Opinion and Order, dated Dec. 14, 2012) at 10 (citing *Langley v. Kornegay*, 620 A.2d 865, 866 (D.C. 1993), and *Lopez v. Ysla*, 733 A.2d 330, 335 (D.C. 1999)).

The court applied these principles in determining that Respondent had the ability to pay the sanctions. The court wrote: "Nor does the Court find [Respondent's] argument that he lacks the ability to satisfy the order persuasive." DCX 17 at 12. In the very next sentence, the court reiterated that Respondent had the burden of proving his inability to pay, and again cited *Lopez* for this proposition. *Id.* Disciplinary Counsel's contention that the court found by clear and convincing evidence that Respondent had the ability to pay the sanctions is contrary to the

record. All that the court found was that Respondent had failed to establish his *inability* to pay.

In this disciplinary proceeding, however, the burden is on Disciplinary Counsel to demonstrate by clear and convincing evidence every element required to find the various violations of the Rules of Professional Conduct that Disciplinary Counsel alleges, including Respondent's ability to pay the sanctions. Respondent has no burden on that issue. Respondent's failure to satisfy his burden of showing his inability to pay in the Superior Court action does not, and cannot, establish by clear and convincing evidence in this disciplinary proceeding that he did in fact have the ability to pay.

Disciplinary Counsel has the burden to prove Respondent's ability to pay by clear and convincing evidence. We find below that Disciplinary Counsel satisfied that burden based on the evidence presented in the record. But we cannot relieve Disciplinary Counsel of its obligation to make that showing based on principles of collateral estoppel or issue preclusion. The shift in the burden of proof from Respondent in the Superior Court action to Disciplinary Counsel in this proceeding prevents our reaching such a conclusion.

C. Rule Violations

Disciplinary Counsel bears the burden of establishing by clear and convincing evidence that Respondent violated the Rules of Professional Conduct. *See In re*

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

D. Respondent's Argument Relating to Specific vs. General Rule Violations Is Irrelevant to This Case

Respondent contends that no violation of the general Rules 8.4(a), 8.4(c), or 8.4(d) can be found in this case unless a violation of the specific Rules 3.1, 3.3(a)(l), or 3.4(c) is also found. R. Br. at 8. Respondent bases his argument on the discussion in Comment 5 to the Scope section of the Rules.[25] Disciplinary Counsel disagrees,

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[25] Comment 5 to the Scope section of the Rules provides:

> In interpreting these Rules, the specific shall control the general in the sense that any rule that specifically addresses conduct shall control the disposition of matters and the outcome of such matters shall not turn upon the application of a more general rule that arguably also applies to the conduct in question. In a number of instances, there are specific rules that address specific types of conduct. The Rule of interpretation expressed here is meant to make it clear that the general Rule does not supplant, amend, enlarge, or extend the specific rule. So, for instance, the general terms of Rule 1.3 are not intended to govern conflicts of interest, which are

arguing that "[t]he focus of Comment [5] is to ensure that the attorney review[s] both the specific rule and the general rule and look[s] at the specific rule first" and that this language merely clarifies that "if the specific rule permits certain conduct then the general rule ordinarily will not 'overrule' that permission." ODC Br. at 31.

We need not address the merits of Respondent's argument in this case because we find below that Disciplinary Counsel has demonstrated by clear and convincing evidence that Respondent did violate each of the specific Rules in question (Rules 3.1, 3.3(a)(1), and 3.4(c)). As a result, Respondent's argument has no bearing on the proper disposition of this case.

The Court of Appeals has given a clear analysis of the discussion in Comment 5 of the Scope section of the Rules. As the court explained, although a finding that a lawyer's conduct did not violate a specific Rule might preempt a finding that the same conduct violated a more general Rule:

> There is no preemption, however, where, as here, the lawyer is found to have violated the more specific Rule. In that case it remains appropriate to determine whether the lawyer also transgressed the more general Rule.

Cater, 887 A.2d at 16 n.14. The Court added that, where a violation of a specific

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> particularly discussed in Rules 1.7, 1.8, and 1.9. Thus, conduct that is proper under the specific conflicts Rules is not improper under the more general rule of Rule 1.3. Except where the principle of priority stated here is applicable, however, compliance with one rule does not generally excuse compliance with other Rules. Accordingly, once a lawyer has analyzed the ethical considerations under a given rule, the lawyer must generally extend the analysis to ensure compliance with all other applicable Rules.

Rule was found, "it was irrelevant" that the charged violation of a more general Rule was "essentially duplicative" of other more specific Rule violations that were also found. *Id.* (citations omitted).

As Disciplinary Counsel points out, ample authority supports the proposition that the same conduct can violate both a specific Rule and a more general Rule, for example, Rule 3.3(a)(1) and Rule 8.4(c). *In re Ukwu*, 926 A.2d 1106, 1140-42 (D.C. 2007) (appended Board Report) (false submission to Board of Immigration Appeals violated both rules); *In re Vohra*, 68 A.3d 766, 781-83 (D.C. 2013) (appended Board Report) (submission of forged visa applications to Immigration and Naturalization Service violated both rules); *In re Samad*, 51 A.3d 486, 496 (D.C. 2012) (per curiam) (false statement to court violated both rules); *In re Cleaver-Bascombe*, 892 A.2d 396, 403-04 (D.C. 2006) (submission of false Criminal Justice Act voucher to court seeking payment for legal services violated both rules).

E. Respondent Violated Rule 3.1 by Filing Frivolous Motions

Disciplinary Counsel contends that Respondent violated Rule 3.1 by filing four motions that the court found were frivolous, repetitive, and without a legal basis. ODC Br. at 32. The four motions in question are:

1. Respondent's motion to vacate judgment (March 15, 2010);
2. His motion for clarification (November 14, 2012);
3. His motion for sanctions against First Washington (August 12, 2010); and
4. His motion for reconsideration (June 14, 2012).

In response, Respondent contends he had a reasonable basis for filing the

motion to vacate judgment because his fraud claim was "colorable." He claims that his motion for clarification was reasonable and that his motion for Rule 11 sanctions against First Washington and its counsel did not raise the same claim that the court had previously rejected. R. Br. at 26-33. Respondent made no defense of his June 14, 2012 motion for reconsideration because he addressed an entirely different motion. *See* p. 174.

We find that Disciplinary Counsel has proved by clear and convincing evidence that two of the challenged motions (Respondent's motion to vacate judgment and his motion for Rule 11 sanctions against First Washington) violated Rule 3.1 because Respondent had no non-frivolous basis in law and fact for these motions. We find that Disciplinary Counsel has failed to prove by clear and convincing evidence that Respondent's motion for clarification and his motion for reconsideration violated Rule 3.1.

1. The Legal Standard

Rule 3.1 provides that "a lawyer shall not bring or defend a proceeding, or assert or controvert an issue therein, unless there is a basis in law and fact for doing so that is not frivolous, which includes a good-faith argument for an extension, modification, or reversal of existing law." "The language of Rule 3.1 establishes that a lawyer has a broader obligation toward the system as a whole," as distinguished from the general competence requirement of Rule 1.1, which focuses on an attorney's obligations to individual clients. *In re Yelverton*, 105 A.3d 413, 424 (D.C. 2014) (citing *In re Spikes*, 881 A.2d 1118, 1120 (D.C. 2005) (attorney's filing of

defamation claim based on privileged complaint to Disciplinary Counsel and other privileged documents violated Rules 3.1 and 8.4(d)); *In re Pelkey*, 962 A.2d 268, 280 (D.C. 2008) (attorney's attempt to seek court's assistance to evade an arbitration agreement he had signed and his misrepresentation of the trial court's ruling against him on appeal violated Rules 3.1 and 8.4(d)).

In determining whether a claim or contention is only "weak," but not "frivolous," the Court of Appeals has relied in part on Superior Court Civil Rule 11, which calls for determining whether a claim is meritless by assessing (1) the "clarity or ambiguity of the law;" (2) the "plausibility of the position taken;" and (3) the "complexity of the issue." *Yelverton*, 105 A.3d at 424-425 (D.C. 2014); *see also In re Spikes*, 881 A.2d at 1125. The Court also considers the standard of Rule 38 of the Rules of the District of Columbia Court of Appeals. An action is frivolous under Rule 38 if, after "an objective appraisal of the legal merits of a position," a "reasonable attorney" would conclude that [an asserted position] is so "wholly lacking in substance" that it is "not based upon even a faint hope of success on the legal merits[.]" *Yelverton*, 105 A.3d at 425.

The Court of Appeals has reiterated that "[u]ltimately, a position is frivolous when it is wholly lacking in substance and not based upon even a faint hope of success on the legal merits." *In re Pearson*, 228 A.3d 417, 424 (D.C. 2020) (per curiam) (quoting *In re Spikes*, 881 A.2d 1118, 1125 (D.C. 2005) (internal quotation marks omitted)).

Applying this settled law, two of the four filings that Disciplinary Counsel challenges violate Rule 3.1: (1) Respondent's motion to vacate judgment and (2) his motion for Rule 11 sanctions against First Washington and its counsel. We will address each in turn.

2. Respondent's Motion to Vacate Judgment

Disciplinary Counsel has proved by clear and convincing evidence that Respondent's motion to vacate judgment was frivolous, as the court correctly found. The motion was wholly without substance and had not even a faint chance of success. It was frivolous for two principal reasons.

First, as we have found above, when Respondent entered into the Settlement Agreement embodied in the Praecipe of Partial Settlement, he had full knowledge of all of the facts relating to the claims of fraudulent misrepresentation and litigation misconduct upon which he based his motion to vacate judgment. FF 53-64. He made no claim at any time that he was tricked into agreeing to the Settlement Agreement by any alleged misrepresentation or misconduct. FF 69-70.

The law is clear that a valid settlement extinguishes all of the claims that were settled, and bars the settling party from reasserting any settled claim. "[T]he general rule is that a compromise and settlement agreement operates as a merger of and bars the right to recovery on any claim included therein." *Brown v. Hornstein*, 669 A.2d 139, 142 (D.C. 1996) (quoting *McGee v. Marbury*, 83 A.2d 157, 159 (D.C. 1951)).

Therefore, when Respondent entered into the Settlement Agreement, all of his claims were extinguished. He no longer had any claims of fraud or otherwise to

assert against any other party to that agreement. His attempt to reassert in his motion to vacate judgment the claims of fraud that he had previously settled was frivolous.

The second reason that his motion to vacate judgment was frivolous relates to defects in the motion itself. Respondent's motion was made under Superior Court Civil Rule 60(b)(3),[26] but failed to discuss, much less satisfy, any of the elements required for relief under that rule. Respondent's only discussion of the legal standard for relief under Rule 60(b)(3) was that it "provides that a Court may relieve a party from an order and final judgment for fraud, misrepresentation, or other misconduct of an adverse party, and any other reason justifying relief from the operation of the judgment." RX 11 (Motion to Vacate Judgment, dated Mar. 15, 2010) at 10.

Respondent's motion failed to meet either of the two established requirements for a Rule 60(b)(3) motion. To obtain relief under Rule 60(b)(3), the movant must demonstrate (1) that there was "fraud, . . . misrepresentation, or misconduct" (we will use the term "misconduct" broadly to include all of the bases for relief under Rule 60(b)(3)), and (2) that the misconduct prevented the movant from "fully and

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[26] Although Respondent never specified in his motion what part of Rule 60(b) he was relying upon, it is clear, because he sought relief based upon alleged "fraud, misrepresentation, and misconduct," that his motion was based on Super. Ct. Civ. R. 60(b)(3). This provision allows a court to grant relief from a judgment for "fraud . . . , misrepresentation, or misconduct by an opposing party." Superior Court Civil Rule 60(b)(3) is virtually identical to Rule 60(b)(3) of the Federal Rules of Civil Procedure. The Court of Appeals has confirmed that "[f]ederal court decisions interpreting the virtually identical counterpart of our Rule 60(b) are persuasive authority in interpreting the local rule." *Olivarius v. Stanley J. Sarnoff Endowment for Cardiovascular Science, Inc.*, 858 A.2d 457, 464 (D.C. 2004) (quoting *Clement v. District of Columbia Dep't of Human Servs.*, 629 A.2d 1215, 1219 n.8 (D.C. 1993) (internal quotation marks omitted)). Also, at page 28 of his post-hearing brief, Respondent refers to his motion as a Rule 60(b)(3) motion.

fairly presenting his case." *Brooks v. D.C. Housing Authority*, 999 A.2d 134, 146-47 (D.C. 2010) (citing and adopting the reasoning of *Jones v. Aero/Chem Corp.*, 921 F.2d 875, 878-79 (9th Cir. 1990) (internal quotation marks omitted)). *See Summers v. Howard University*, 374 F.3d 1188, 1193 & n.5 (D.C. Cir. 2004) (movant must show that the misconduct "foreclosed full and fair preparation or presentation of its case") (citations omitted). Both of these elements must be established by clear and convincing evidence. *Brooks*, 999 A.2d at 146; 12 James Wm. Moore *et al*., *Moore's Federal Practice* ¶ 60.43[4][a] & n.30 (3d ed. 2020) (party requesting relief under Rule 60(b)(3) "has the burden of proving fraud or misrepresentation by clear and convincing evidence") (citations omitted).

There is one additional requirement that must be met for relief under Rule 60(b)(3): the claimed misconduct must have occurred during the litigation itself that led to the challenged judgment, not before the litigation began. The law is clear that the only misconduct that Rule 60(b)(3) addresses is misconduct during the litigation itself, not in the transactions before suit is filed. As *Moore's Federal Practice* explains: "The fraud addressed in Rule 60(b)(3) involves unfair litigation tactics, something that occurs after the litigation has commenced and before judgment, something that is aimed at subverting the litigation process itself." 12 *Moore's Federal Practice* ¶ 60.43[1][e] (3d ed. 2020); *Optimal Health Care Services v. Travelers Insurance Co.*, 801 F. Supp. 1558, 1561 (E.D. Tex. 1992) (recognizing fraud claims that were sued upon as a basis for relief from judgment under Rule 60(b)(3) would "impermissibly give [the party asserting the fraud claims] a second

bite at the apple") (footnote omitted).

Respondent's motion to vacate judgment ignores all of these settled requirements. In his motion, Respondent devoted most of his argument to an attempt to show that he was defrauded and duped into agreeing to provide his personal guaranty of the promissory notes sued upon. RX 11 (MVJ Memo) at 1-2, 5-7. None of these allegations can provide any support for Respondent's motion, however, because none establish misconduct during the course of the litigation itself. They must all be ignored, therefore, for purposes of evaluating the merits of Respondent's motion to vacate judgment.

As a result, the only claims of misconduct that are relevant in this context are Respondent's claims of litigation misconduct. We have addressed his claims of litigation misconduct in detail in our findings, and found that they are baseless and unsupported by the record. FF 72-81. We will not repeat that discussion here. Respondent's failure to provide clear and convincing evidence of any litigation misconduct prevented his motion to vacate from having even a faint chance of success.

But even if we assume that Respondent had met his burden to establish the first required element (litigation misconduct) by clear and convincing evidence, his motion was still doomed because he failed to establish the second required element for relief under Rule 60(b)(3) – that the alleged litigation misconduct prevented him from "fully and fairly presenting his case." *Brooks*, 999 A.2d at 146. Because Respondent never addressed this or any of the other legally-required elements for

relief under Rule 60(b)(3), he never made any showing on this element. On the facts, however, it is clear that he had no chance of making this required showing.

Respondent's claim was that he was tricked into providing his personal guaranty for the loans sued upon by false representations made to him that First Washington would have first priority lien position on all the collateral properties, including the 9th and Upshur Property. RX 11 (MVJ Memo) at 7. To establish that claim he needed to prove all of the elements of fraud under D.C. law,[27] including that false representations were made to him that he relied upon in providing his personal guaranty. It is far from clear that any specific false representations were made to Respondent regarding First Washington's first priority lien position on the collateral properties, or that Respondent reasonably relied on any such representations that were actually made. The facts suggest that Respondent relied upon his understanding that First Washington would have first priority lien position based on what he believed First Washington would require, but never conducted any independent investigation himself, such as by asking to see the title report on the properties or running the title himself at the Recorder of Deeds. FF 62, 64, 87.

But the critical issue for purposes of Respondent's motion to vacate judgment

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[27] These elements are "(1) a false representation, (2) in reference to material fact, (3) made with knowledge of its falsity, (4) with the intent to deceive, and (5) action is taken in reliance upon the representation." *Bennett v. Kiggins*, 377 A.2d 57, 59 (D.C. 1977). *Frankeny v. District Hospital Partners, L.P.*, 225 A.3d 999, 1004 n.5 (D.C. 2020) (citing *Bennett v. Kiggins*, *supra*) (same)). In addition, the claimant's reliance must be "reasonable" or "justifiable." *Sibley v. St. Albans School*, 134 A.3d 789, 809 (D.C. 2016) (citing *Sundberg v. TTR Realty, LLC*, 109 A.3d 1123, 1131 (D.C. 2015)).

is whether the alleged litigation misconduct prevented him from "fully and fairly presenting his case." *Brooks*, 999 A.2d at 146. Respondent could not possibly have satisfied this requirement.

Respondent's claim was that he had been duped by false representations that First Washington would have first priority lien position on the 9th and Upshur Property. But he knew in October/November 2006 – less than five months after the loan closed – that First Washington did not have first priority lien position on the 9th and Upshur Property. FF 54-55. He did nothing at that point to investigate his claim or even document the alleged misrepresentations made to him. He still did nothing even after he was sued for $850,000 in August 2007 on his personal guaranty. FF 65. He learned at a deposition he attended in December 2007 of the two prior deeds of trust (the BB&T Financing Statement and the Sunshine DOT) that prevented First Washington from having first priority lien position on the 9th and Upshur Property, but did nothing to investigate. FF 56-58.

Despite his knowledge of these prior deeds of trust, when he attended the January 2008 deposition of Adam Abrahams, the First American Title employee who, according to Respondent, was the architect of the alleged fraud perpetrated upon him, and he questioned Mr. Abrahams for almost ten pages of transcript, he never asked him about any alleged misrepresentations other than on a D.C. recordation tax form (Form FP 7/C). FF 61. Finally, it was not until October 2009, a full three years after Mr. Schaeffer had told him that First Washington did not have first priority lien position on the 9th and Upshur Property, that Respondent

investigated and obtained copies of the two prior deeds of trust. FF 53, 64.

The alleged litigation misconduct (described above in FF 72-81) did not interfere in any way with Respondent's ability to fully and fairly present his fraud claims. First American Title's allegedly wrongful failure to produce the prior deeds of trust in discovery was at most an inconvenience for Respondent, because he found these instruments when he finally went to look for them in October 2009. Similarly, First American Title's allegedly false interrogatory answer about Mr. Shaeffer's conversation with Mr. Abrahams in October/November 2006 that purportedly concealed Mr. Abrahams' previous knowledge of these prior deeds of trust did not interfere with Respondent's ability to present his case. The best evidence of the irrelevance of First American Title's allegedly false interrogatory answers is that they were marked as an exhibit at Mr. Abrahams' deposition, and Respondent asked not a single question about them or, as far as the record reflects, about whether Mr. Abrahams had any prior knowledge of these prior deeds of trust. FF 61, 76. It is equally implausible that the remaining litigation misconduct that Respondent claims interfered in any way with his ability to fully and fairly present his case.

In short, the essence of Respondent's fraud claims was that false representations were made to him about First Washington's having first priority lien position on all the collateral properties. Nothing in the alleged litigation misconduct concealed the falsity of the representations allegedly made to him on this issue (the first priority lien position issue), or prevented him from fully investigating and fairly presenting his fraud claims. Respondent was not lulled into inaction by any of the

alleged litigation misconduct. He knew early on that the representations allegedly made to him were false, but simply failed to investigate them.

Rule 60(b)(3) does not reward the lazy litigant. "Rule 60(b) should not reward the *lazy litigant* who did not adequately investigate his or her case, or who did not vigorously cross-examine a witness." 12 *Moore's Federal Practice* ¶ 60.43 (3d ed. 2020) (emphasis added). As a result, relief under Rule 60(b)(3) has been denied in cases involving alleged witness perjury or fraudulent documents whenever the moving party had ample opportunity to uncover the alleged perjury or fraudulent documents. *Id.* (citations omitted). In those cases, the moving party was not deprived of the opportunity to fully and fairly present his case. This is just such a case.

a. Respondent's Argument in His Brief

In his brief to the Hearing Committee, Respondent contends that his motion to vacate judgment could not be found frivolous because he had a colorable claim of fraud and he filed his motion defensively because he believed in good faith that First Washington was repudiating the settlement. R. Br. at 27-28. Respondent's arguments are entirely unpersuasive, for several reasons.

First, as he did in his motion, in his brief Respondent again fails to discuss the legal requirements for relief under Rule 60(b)(3).[28] As we have noted above (*see* pp.

[28] Respondent's only argument in his brief about the legal standard for Rule 60(b)(3) relief simply quotes the undisputed proposition that failure to furnish relevant information "would *at best* form the basis for a Rule 60(b)(3) motion." *Olivarius*, *supra*, 858 A.2d at 466 (emphasis added) (quoting *United States v. Beggerly*, 524 U.S. 38, 46 (1998)). The Court of Appeals made this observation in rejecting the claim that failure to furnish information in discovery could form the basis for an independent action challenging the judgment, a remedy that Rule 60 specifically preserves for instances of far more serious litigation misconduct. *Id.* There is no suggestion in the excerpt that

157-58), a colorable claim of fraud in the underlying transaction is irrelevant. The misconduct must have occurred during the litigation itself, and must have prevented the party from fully and fairly presenting its case. Respondent never even attempted to demonstrate that the alleged litigation misconduct he relies on prevented him in any way from fully and fairly presenting his case. Nor could he, because, as we have seen above, he was aware of the alleged fraud for almost three years before he bothered to investigate and obtain the prior deeds of trust that were allegedly hidden from him (even though they were on the public record at all relevant times). FF 53, 64. Nor does Respondent dispute that, before he entered into the Settlement Agreement, he was fully aware of both his supposedly colorable fraud claim and every bit of litigation misconduct he alleged in his motion to vacate judgment, and nonetheless agreed to settle all of his claims. Because of the settlement, he had no fraud claim whatsoever, colorable or otherwise, when he filed his motion.

Respondent devotes most of his argument to an attempt to demonstrate that the alleged litigation misconduct actually occurred. We have determined above that Respondent failed to prove his claims of litigation misconduct by clear and convincing evidence (FF 72-81), and nothing in his brief persuades us otherwise. His brief is notable for its near total failure to provide any record citations for any of the facts he alleges. Instead, in his fact-intensive, six-page discussion of the motion to vacate judgment, he provides only three citations to the record, none of any

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Respondent quotes that failure to furnish relevant information, the misconduct alleged here, in and of itself would always constitute sufficient grounds for relief under Rule 60(b)(3).

significance. R. Br. at 26-31. For the remaining facts he simply provides his assertion with no citation whatsoever to any supporting evidence.

For example, he mischaracterizes First American Title's interrogatory answer regarding the Schaeffer-Abrahams conversation in October/November 2006, and claims the answer was false because First American Title "possessed" the BB&T loan documents and therefore already knew about the prior BB&T loan when it responded to the interrogatory. R. Br. at 29; *see* FF 76-77 above. There is no evidence that First American Title had the BB&T loan documents in its possession when it responded to the interrogatory. Respondent also seriously distorts the record when he claims that First Washington's counsel supposedly told the court that he agreed with Respondent that First American Title "'should have timely recorded all the [BB&T] closing documents.'" R. Br. at 30 (alteration in original) (quoting DCX 30 (Tr. of May 28, 2010 Hearing) at 25). In fact, First Washington's counsel was referring to First American Title's failure to timely record the closing documents for the *First Washington* loan, not the BB&T loan. DCX 30 at 25. First American Title was not involved in the BB&T loan transaction in any way and had no duty to record the closing documents for that loan.

Respondent's principal claim is that, because First Washington's counsel purportedly told the court that he thought that Respondent had a colorable fraud claim, Respondent's motion could not have been frivolous. R. Br. at 30. This argument must be rejected for two reasons. First, First Washington's counsel's statement was very unclear and ambiguous, and far from the concession that

Respondent claims. After rejecting Respondent's claims of fraud against him personally and against First American Title as "just wrong," First Washington's counsel continued: "Now, maybe he [Respondent] thought he should have had that and by the way there are certain documents which indicate he could have had that." DCX 30 at 21. The meaning of this statement, as transcribed, is anybody's guess. Counsel was certainly not admitting that there were certain documents that indicated that Respondent could have had a fraud claim against counsel himself. Counsel's statement is simply not the concession that Respondent claims.

And even if it had been such a concession, it could not give Respondent a colorable claim when he filed his motion to vacate judgment because, as we have seen above, he had already settled his claim, and a colorable claim of fraud in the underlying transactions can provide no basis for relief under Rule 60(b)(3). *See* pp. 155 *et seq.* above.

Respondent's remaining arguments are equally unpersuasive. For example, based on language in a February 8, 2010 e-mail from First Washington's counsel (for which Respondent provides no citation), Respondent claims that he had understood that First Washington was repudiating the settlement and therefore he acted reasonably as a defensive measure in moving to vacate the judgment. R. Br. at 28. Even apart from the fact that the e-mail in question and later e-mails make clear that First Washington wanted to enforce the settlement, not repudiate it (RX 14 at unnumbered pages 21-24), Respondent cannot dispute that when he filed his motion to vacate judgment, he knew that First Washington was not repudiating or

abandoning the settlement, but in fact had already filed two weeks before a motion asking the court to enforce it. FF 48-49. And, in any event, there is no exception in Rule 3.1 for frivolous filings that are supposedly defensive filings.

Respondent also claims that First Washington's counsel had "submitted the fraudulent FWIC loan-closing documents to the lower court in support of judgment." R. Br. at 29. The basis for this reckless claim is that when he filed the motion for summary judgment against Respondent, First Washington's counsel had "seen the 'undisclosed' BB&T closing documents and [First American Title's] contradictory interrogatory response." *Id.* Again, there is no evidence that First Washington's counsel had seen the BB&T documents as of January 2009 when he filed the summary judgment motion. In fact, counsel vehemently denied at the May 28, 2010 hearing that he had *ever* seen the BB&T and Sunshine loan documents. DCX 30 (Tr. of May 28, 2010 Hearing) at 21 ("I will swear on a stack of bibles I've never seen these documents. Never seen them.").

Therefore, we find that Disciplinary Counsel has proved by clear and convincing evidence that Respondent's motion to vacate judgment was frivolous. The motion was "wholly lacking in substance and not based upon even a faint hope of success on the legal merits." *Pearson*, 228 A.3d at 424 (quoting *Spikes*, 881 A.2d at 1125).

3. Respondent's Motion for Rule 11 Sanctions Against First Washington and Its Counsel

We next address Respondent's motion for Rule 11 sanctions against First Washington, Mr. Schaeffer, and their counsel (Mr. Neal). This was plainly a

frivolous motion. Respondent made this motion in August 2010. FF 109. He simply repeated in this motion the same arguments regarding alleged misconduct by First Washington, Mr. Schaeffer, and their counsel that the court had considered and rejected as "frivolous" and "meritless" when Respondent had made them less than three months before.[29] FF 87, 92. There is no evidence that Respondent advanced any arguments or factual allegations in his Rule 11 motion that he had not previously – and unsuccessfully – made in his motion to vacate judgment. And, although Respondent later moved for reconsideration of portions of the May 2012 Omnibus Order, he did not seek reconsideration, based on any allegedly new facts or argument, of the court's denial of his motion for Rule 11 sanctions. *See* DCX 12 (Order dated Aug. 21, 2012) at 3-4; DCX 32 (Tr. of Aug. 17, 2012 Hearing) at 7 (Respondent's only mention of his motion for reconsideration of the Omnibus Order refers to the order to sign one of the First Washington-provided promissory notes).

Respondent's argument that his Rule 11 motion was not frivolous is wholly unpersuasive. Respondent contends, with no citation to the language of either motion, that the Rule 11 motion had nothing to do with the allegations of misconduct

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[29] The court also denied the motion as untimely, citing *Ginsberg v. Granados*, 963 A.2d 1134, 1137 n.3 (D.C. 2009), and *Montgomery v. Jimmy's Tire & Auto Ctr.*, 566 A.2d 1025, 1032 (D.C. 1989). DCX 10 at 9-10. We do not rely on the untimeliness argument, because in *Montgomery*, the Court of Appeals rejected a timeliness challenge to a Rule 11 motion that had been filed after judgment and after the time to appeal from the judgment had expired. *Montgomery*, 566 A.2d at 1027, 1031. Later, in *Ginsberg*, the Court of Appeals stated in a footnote (without referring to its holding in *Montgomery*) that a Rule 11 motion had to be filed before the termination of the case. *Ginsberg*, 963 A.2d at 1137 n.3. We do not need to reconcile this apparent inconsistency because the other ground relied upon by the trial court (that the Rule 11 motion simply repeated arguments that the court had already rejected) is so compelling.

that he had previously made against First Washington and its counsel in his motion to vacate judgment. R. Br. at 31-32. Respondent attempts to distinguish "the substantive issue" in the motion to vacate judgment from Respondent's alleged right to seek sanctions for counsel's "litigating a false claim" against him. *Id.* Respondent ignores the fact that he had specifically argued in his motion to vacate judgment that First Washington's counsel had wrongfully pursued its claims against him with the knowledge that Respondent had been fraudulently induced to give his personal guaranty for the promissory notes. RX 11 (MVJ Memo at 9-10). This is precisely the same claim that Respondent made in his Rule 11 motion. FF 87, 92, 110.[30]

Accordingly, we find that Disciplinary Counsel has proved by clear and convincing evidence that Respondent's Rule 11 motion was frivolous in violation of Rule 3.1.

4. Respondent's Motion for Clarification

Disciplinary Counsel contends that Respondent's November 14, 2012 motion for clarification was frivolous and violated Rule 3.1. ODC Br. at 34-36. Respondent contends that his motion was not frivolous because he was genuinely confused about what orders were in effect. R. Br. at 32.

We find that Disciplinary Counsel has failed to prove by clear and convincing

[30] We also note that, despite Respondent's insistence in his brief that First Washington's alleged failure to comply with Rule 11's 21-day advance notice requirement required rejection of First Washington's motion for sanctions, there is no evidence of record or any certification establishing that Respondent served his own Rule 11 motion on opposing counsel at least 21 days before he filed it with the court. *See* FF 113.

evidence that Respondent's motion for clarification violated Rule 3.1.

Respondent's motion asked the court to clarify which of the oral rulings that Respondent contended the court had made at the September 19, 2012 status conference were still in force. DCX 28 (Respondent's Motion for Clarification, dated Nov. 14, 2012) at 4. When the Court of Appeals dismissed Respondent's frivolous appeal, it had ordered the trial court to re-enter all of the orders that the court had entered after Respondent had filed his notice of appeal (which he had filed on the morning of the September 19 status conference, before the status conference had begun). FF 203.

Respondent argued in his motion that the court had issued a number of oral orders at that status conference but had not re-entered them as the Court of Appeals had directed. DCX 28 at 3. He claimed that, at the status conference, the court had denied Respondent's motion to alter or amend judgment, had held him in contempt, had voided the Settlement Agreement as to him, and had reinstated the $1.2 million judgment against him. *Id.* at 4. According to Respondent, his motion asked the court to clarify whether these alleged oral orders that had not been re-entered were in effect, and whether he was required to comply with them before they were re-entered. *Id.* Respondent contended, without citation to any legal authority, that it would be a violation of the Court of Appeals' mandate if any party took any action in the proceeding before the court had re-entered all the oral orders it had allegedly made at the September 19 hearing. *Id.* at 3.

The court denied Respondent's motion. It said the motion appeared to be

Respondent's "most recent, and blatant, attempt to avoid the [$1.2 million] judgment," and stressed that it did not make any rulings at the hearing. DCX 14 (Order dated Nov. 27, 2012) at 2. *See also* FF 207.

Disciplinary Counsel contends that Respondent's motion was frivolous because, as found by the court, it had not issued any oral orders at the hearing. ODC Br. at 35.

Respondent counters that his motion was not frivolous because there was confusion about what the court had ordered at the September 19 hearing, and the court had previously criticized him for failing to seek clarification of its oral orders if he was unclear about what was required. R. Br. at 32-33. As a result, Respondent argues, it was not clear when he filed the motion that it "had absolutely no chance of success." *Id.* at 32 (quoting *Ruesch Int'l Monetary Servs. v. Farrington*, 754 A.2d 328, 331 (D.C. 2000)).[31]

We agree with the court that Respondent likely intended his motion to delay his obligation to comply with the one order that the court clearly did re-enter (the

[31] We cannot let pass without correcting one of Respondent's more disturbing distortions of the record. Respondent asserts that the "Court of Appeals required [the trial court] to reissue its orders because they were numerous and unclear . . . ." R. Br. at 32. Contrary to Respondent's contention, the Court of Appeals provided no rationale or explanation for its order to the trial court to re-enter all orders the trial court had issued after Respondent noted his appeal. More specifically, the court said nothing whatsoever about the trial court's orders being either "numerous" or "unclear." DCX 50 (Order dated Oct. 18, 2012) at 3. The most likely explanation for the re-entry order was the settled principle that filing a notice of appeal divests the trial court of jurisdiction over the matters appealed from, so that any orders the trial court had entered after the notice of appeal had been filed would be void unless the trial court re-entered them. *In re Estate of Green*, 896 A.2d 250, 253 (D.C. 2006) (timely-filed appeal divests the trial court of jurisdiction).

Reissued Order of October 3, 2012, dated Nov. 5, 2012 (DCX 13)). Whatever confusion Respondent might have had about the status of the other alleged oral orders that the court had not re-entered, he could have had no doubt that he was required to comply with that re-entered order. Further, there is no apparent basis for Respondent's concern that he would violate the Court of Appeals' mandate if he complied with that one order before all the other alleged oral orders had been re-entered. Nothing in the Court of Appeals' order required that all the alleged orders had to be re-entered at the same time, or provided that, until all such orders had been re-entered, Respondent had no obligation to comply with any orders that the court did re-enter (such as the November 5 order).

Nonetheless, recognizing the court's completely justifiable frustration at Respondent's attempt to delay complying with its order, we find that it was not unreasonable for Respondent to seek clarification about the discussion at the September 19 hearing and what orders were actually in effect. The discussion at the hearing was not clear about what had been ordered and what would be the subject of a further order.

At the hearing, First Washington's counsel suggested to the court that there were two different ways to proceed: the court could either (1) use contempt proceedings to continue to force Respondent to comply with the Settlement Agreement; or (2) recognize that Respondent would never comply with the Settlement Agreement and allow First Washington to enforce its $1.2 million judgment against him. DCX 33 (Tr. of Sept. 19, 2012 Status Conf.) at 24-26. Under

either approach, Respondent would be required to pay the outstanding sanctions required by the Omnibus Order. *Id.*

After a lengthy discussion with counsel and Respondent about Respondent's unpersuasive excuses for his many failures to comply with the court's orders, the court appeared to adopt the second option:

> So, it seems to me the easy answer here is to void the settlement agreement, let the judgment stand, and then allow you [First Washington] to get the information you need to then enforce the judgment. What I am prepared to do is have you submit to me a proposed order setting out the information that you need [Respondent] to provide in order for you to pursue collection on the judgment.

Id. at 61-62.

In response to questions from First Washington's counsel, the court confirmed that it was "going to void the settlement" as to First Washington, so that Respondent would no longer have to sign one of the First Washington-provided promissory notes or provide the affidavit regarding his finances, and the $2,000 that Respondent had paid towards the settlement would be applied against the judgment. *Id.* at 63-64. The court asked First Washington to submit a list of the specific information that Respondent had previously failed to provide that would enable First Washington to enforce its judgment, and said that it would order him to provide that information by a date certain. *Id.* at 61-64.

The discussion about the further order of the court concerned only the financial information and the payment of sanctions. There was no suggestion that voiding of the settlement would await the further order of the court. After the Court

of Appeals' order, the only order the trial court issued was the November 5 order. DCX 13 (Reissued Order of October 3, 2012, dated Nov. 5, 2012) at 4. That order was solely directed at the financial information Respondent was required to provide and said nothing about voiding the Settlement Agreement or relieving Respondent of the obligation to sign one of the promissory notes.

In its order denying Respondent's motion for clarification, the court noted that it "did *not* make any rulings" at the September 19 hearing. DCX 14 (Order dated Nov. 27, 2012) at 2 (emphasis in original).[32] We have no doubt that that was the court's clear understanding and intent. But, based upon the transcript of the hearing, we cannot find that it was either unreasonable or sanctionable conduct for Respondent to seek clarification because he allegedly did not have the same understanding as the court about what the court had ordered at the hearing.

Therefore, we conclude that Disciplinary Counsel has failed to demonstrate by clear and convincing evidence that Respondent's motion for clarification was frivolous and violated Rule 3.1.

5. Respondent's Motion for Reconsideration

The final filing that Disciplinary Counsel argues violated Rule 3.1 was Respondent's motion for reconsideration filed June 14, 2012. ODC Br. at 36. In this

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[32] It appears that the court actually did make one ruling orally at the hearing. It denied Respondent's motion to alter or amend the judgment. DCX 33 (Tr. of Sept. 19, 2012 Hearing) at 71. That oral order was specifically entered on the docket, however. DCX 8 (Docket Sheet) at 8-9. None of the other orders that Respondent argues the court made at the hearing were entered on the docket.

motion, Respondent sought reconsideration of the Omnibus Order's requirement that he execute one of the First Washington-provided promissory notes. DCX 12 (Order dated Aug. 21, 2012) at 3. Disciplinary Counsel contends that Respondent's motion was frivolous because, as the court found in its order denying the motion, Respondent's motion simply repeated the same arguments regarding the promissory notes that the court had twice considered and rejected. ODC Br. at 36 (quoting DCX 12 at 4).

Respondent's response is not clear. He appears to be referring to a different motion. He argues that his "motion to alter or amend the judgment denying his motion to vacate the judgment" was not frivolous. R. Br. at 31. But that is a different motion, not the motion for reconsideration that Disciplinary Counsel argues violated Rule 3.1. According to the docket, Respondent's motion to alter or amend the judgment was not filed until September 10, 2012. DCX 8 (Docket Sheet) at 9. The motion that Disciplinary Counsel has challenged as frivolous is Respondent's motion for reconsideration of the Omnibus Order, which was filed three months before, on June 14, 2012. Respondent's brief refers to the court's denial of the motion to alter or amend the judgment. R. Br. at 31. Assuming that Respondent intended to refer to his June 14, 2012 motion for reconsideration, he appears to contend that a motion for reconsideration that simply repeats the same arguments the court has already rejected could not be a frivolous filing that would violate Rule 3.1.

Although the issue is a close one, we find that Disciplinary Counsel has failed

to prove by clear and convincing evidence that Respondent's June 14 motion for reconsideration violated Rule 3.1, for two reasons. First, and most importantly, Respondent's motion for reconsideration is not in the record before us. Nor is Respondent's only other filing before the court at the time it entered the Omnibus Order in which it rejected Respondent's objections to the promissory notes. That filing was Respondent's opposition to First Washington's motion for contempt. (Opposition of Defendant George Crawford to Plaintiffs' Motion for Contempt, filed July 28, 2010). DCX 8 (Docket Sheet) at 13. Respondent's contempt opposition was the only occasion before his challenged motion for reconsideration on which he presented his objections to the First Washington-provided promissory notes. Without having both of these filings in the record and available for review, we have no basis to find by clear and convincing evidence, as Disciplinary Counsel urges, that Respondent's motion for reconsideration was frivolous because it merely repeated the arguments that Respondent had previously made in his contempt opposition and that the court had rejected in the Omnibus Order.

Second, even if we could review both filings and determine that Respondent's motion for reconsideration simply repeated the same arguments that the court had rejected in the Omnibus Order, it would not be reasonable, in our view, to hold that such a filing violated Rule 3.1.

The chronology is critical here. The record reflects that the only time before the August 2012 hearing that Respondent presented his objections to the First Washington-provided promissory notes either orally or in writing was in his

contempt opposition. We believe the court's statement in its August 21, 2012 order that the court had twice considered and rejected Respondent's arguments regarding the promissory notes (FF 183) was based on a misunderstanding of the record.

We know that Respondent did not present his promissory note objections in his opposition to First Washington's March 1, 2010 motion to enforce the settlement. In that opposition (which is in the record), Respondent argued only that the $1.2 million judgment against him and the resulting settlement should be vacated because of the fraud allegedly perpetrated upon him. DCX 26 (Opposition to Plaintiffs' Motion to Enforce Settlement or, in the Alternative, to Compel and Defendant First American Title Insurance Company's Motion to Enforce Settlement and for Sanctions against Defendant George Crawford, filed Mar. 15, 2010) at 1 *et seq.* Respondent never mentioned in this filing the First Washington-provided promissory notes or Respondent's objections to them.

We also know that Respondent did not raise his promissory note objections at the May 28, 2010 hearing because the court, in its Omnibus Order, specifically commented on Respondent's failure to raise them. DCX 10 (Omnibus Order, dated May 31, 2012) at 8 (". . . [Respondent's] failure to object or argue this issue [regarding the promissory notes] on the day of the Hearing renders his current arguments unavailing.").[33]

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[33] The only argument relating to the First Washington-provided promissory notes that Respondent made at the May 28, 2010 hearing related to timing, not to the specific provisions in the promissory notes. He contended that the Settlement Agreement did not require him to sign any promissory note until after First Washington had vacated the judgment against him. DCX 30 (Tr. of May 28, 2010 Hearing) at 59-60. In fact, the language of the Settlement Agreement provided the opposite

For these reasons we conclude that Respondent's June 14, 2012 motion for reconsideration was at most the first time – not the second time – that Respondent had made the arguments that the court had already rejected. In addition, as noted above, we cannot confirm that Respondent's arguments in his June 14, 2012 motion for reconsideration were in fact the same as the arguments that Respondent had made two years before, in his June 28, 2010 opposition to First Washington's motion for contempt. We cannot review these two filings to make this determination because neither of these filings is in the hearing record. Although we believe, based on the court's statements at the August 17, 2012 hearing and in its August 21, 2012 order, that it may be likely that Respondent did repeat the same arguments in both filings, that is not a sufficient basis for us to find by clear and convincing evidence that Respondent's motion for reconsideration was frivolous and violated Rule 3.1.

In addition, even if Respondent had raised in his motion for reconsideration the same arguments that the court had previously rejected, it is not clear that a single instance of seeking reconsideration with no new arguments would necessarily violate Rule 3.1. Both of the authorities that Disciplinary Counsel cites (ODC Br. at 36) involved multiple filings, not a single filing. And both found violations of this Rule because the attorney's multiple filings were both repetitious and frivolous, not repetitious only. The first case involved multiple filings that were both repetitious

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– that Respondent first had to execute the required promissory note before First Washington was required to release its $1.2 million judgment against him. DCX 23 (Praecipe of Partial Settlement) at 2 ("*Upon* [Respondent's] execution of the Affidavit and Promissory Note, Plaintiffs will release [him] from the Judgment entered against him.") (emphasis added).

and frivolous. *Yelverton*, 105 A.3d at 423. Similarly, the second case upon which Disciplinary Counsel relies involved 27 appeals and 12 federal court actions that were repetitious and frivolous. *In re Sibley*, 990 A.2d 483, 495 (D.C. 2010). We are aware of no authority finding a Rule 3.1 violation based on an attorney's filing a single motion for reconsideration that raised no new arguments. We reject such an extreme approach on the facts before us in this record.[34]

Therefore, we find that Disciplinary Counsel has failed to prove by clear and convincing evidence that Respondent's June 14, 2012 motion for reconsideration violated Rule 3.1.

F. Respondent Violated Rule 3.3(a)(1) by His Knowingly False Statements of Fact to the Court

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, unless correction would require disclosure of information that is prohibited by Rule 1.6." The obligation under Rule 3.3 to speak truthfully to a tribunal is one of a lawyer's "fundamental obligations." *Ukwu*, 926 A.2d at 1140 (appended Board Report). As the Board noted in *Ukwu*, it is important for the Hearing Committee to determine (1) whether

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[34] We recognize that at later hearings Respondent did repeat some of the arguments regarding the promissory notes that the court had previously squarely and unequivocally rejected. He did so briefly and he also added an additional argument based on *Cropp v. Williams*, 841 A.2d 328 (D.C. 2004) (per curiam). DCX 33 (Tr. of September 19, 2012 Hearing) at 14-17; DCX 34 (Tr. of Dec. 5, 2012 Hearing) at 9, 51-53. These brief and passing references (which the court quickly rejected) could not reasonably constitute a Rule 3.1 violation.

Respondent's statements or evidence were false, and (2) whether Respondent knew that they were false. *Id.* at 1140-41. The term "knowingly" "denotes actual knowledge of the fact in question" and this "knowledge may be inferred from the circumstances." *See* D.C. Rule of Prof. Conduct, 1.0(f); *see also In re Spitzer*, 845 A.2d 1137, 1138 n.3 (D.C. 2004) (Respondent could not "knowingly" violate Rule 8.1(b) without actual knowledge of a Disciplinary Counsel investigation).

Disciplinary Counsel contends that Respondent violated Rule 3.3(a)(1) by his representation to the court, through counsel, both orally and in writing, that he would refinance his two D.C. properties (his residence and the Lincoln Road rental property), and use the entire net proceeds from the refinancing of the Lincoln Road rental property (the Second Refinancing) to pay the outstanding sanctions. Instead, Disciplinary Counsel argues, Respondent completed both refinancings, but did not use any of the proceeds of the Second Refinancing to pay any amount of the sanctions. ODC Br. at 37 *et seq.* Disciplinary Counsel invites us to infer from Respondent's failure to use any of the Second Refinancing proceeds to pay the sanctions, and his other conduct throughout the course of the litigation, that Respondent never intended to use the Second Refinancing proceeds to pay the sanctions, and that his representation to the court that he would do so was knowingly false and violated Rule 3.3(a)(1).

Respondent contends that his representation to the court did not violate Rule 3.3(a)(1) for three reasons. First, he disputes the facts relating to his representation. He contends, without any citation to, or support in, the record, that at the May 30,

2013 hearing, the court rejected his proposal to use the proceeds of the Second Refinancing to pay off the sanctions because First Washington's counsel had rejected it. R. Br. at 24.[35] Therefore, according to Respondent, the only promise he made that the court relied upon in releasing him from custody was his promise to pay $2,500 per month against the outstanding sanctions. *Id.* at 24-25.

Second, Respondent contends that Disciplinary Counsel failed to prove by clear and convincing evidence that Respondent's statement of intention was "even a 'statement of fact.'" *Id.* at 25.

Finally, he contends that his representation to the court should be disregarded because it was made under duress or undue influence resulting from the court's allegedly unlawful order incarcerating him for failure to pay attorney fee sanctions. Respondent claims that this order was unlawful under *Estate of Bonham*, 817 A.2d 192 (D.C. 2003). R. Br. at 22-24.

We find that Disciplinary Counsel has proved by clear and convincing evidence that Respondent's representations to the court regarding his claimed intent violated Rule 3.3(a)(1).

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[35] It is not clear whether Respondent's reference in his argument to "refinanc[ing] his home" to try "to pay the sanctions" (R. Br. at 24) is a mischaracterization for tactical reasons or simply a mistake. The facts are clear, however. Respondent never proposed to refinance his home to pay the sanctions. Instead, he proposed to use the proceeds of the home refinancing to pay off his and his wife's consumer debts, in order to lower their debt-to-income ratio so that they would qualify for the Second Refinancing (of the Lincoln Road rental property). It was the proceeds of this Second Refinancing that Respondent proposed to use to pay off the outstanding sanctions. *See* FF 281 n.19, 321.

1. Respondent's Representation to the Court Concerning the Second Refinancing Proceeds

The record contradicts Respondent's various attempts to obscure the representations he made to the court through counsel at the May 30, 2013 hearing regarding his intent to use the entire net proceeds of the Second Refinancing (the refinancing of his Lincoln Road rental property) to pay the sanctions. Contrary to Respondent's contention, as we have found above (FF 287, 303-05, 307, 309), he clearly and unmistakably represented to the court through counsel that, if released, he intended to use the entire net proceeds of the Second Refinancing to pay the sanctions. His representation was definitely not limited to an intent to pay only $2,500 per month. It is equally clear that the court relied upon Respondent's misrepresentation in releasing him from custody.

As we describe in our findings (FF 281-84), Respondent initially proposed a somewhat complicated payment plan involving his son's sale of the Troy Property, the refinancing of both Respondent's residence and the Lincoln Road rental property, the use of the entire net proceeds of the Second Refinancing to pay the sanctions in their entirety, and, if the proceeds from the Second Refinancing and the sale of the Troy Property were not enough, the assignment of $2,500 of Respondent's monthly Civil Service retirement pension until the sanctions were paid in full. Although at the May 30, 2013 hearing First Washington rejected this proposal as unacceptable, the court itself never rejected it. Instead, the court continued to discuss the proposal and agreed with the core of the proposal – the use of the entire net proceeds of the Second Refinancing to pay the sanctions and Respondent's

payment of $2,500 of his monthly pension to First Washington in payment of the sanctions.

In response to a question from First Washington's counsel, the court unambiguously confirmed that Respondent had to use the entire net proceeds of the Second Refinancing to pay the sanctions. FF 301. Neither Mr. Long nor Respondent objected to, or disputed, this requirement. Neither suggested in any way that Respondent's proposal regarding the Second Refinancing proceeds had been withdrawn, or was in any way off the table or no longer available because First Washington had rejected it. FF 303-05. Respondent even acknowledged in his testimony before the Hearing Committee that the court had released him from custody based on his representation that he intended to use the entire net proceeds of the Second Refinancing to pay the sanctions. FF 311.

The court confirmed in its order releasing Respondent that it was relying upon Respondent's representation through counsel about his intention to use the Second Refinancing proceeds to pay the sanctions. The court's order recites that it was entered "[i]n accordance with the Court's instructions in open court, *based on the agreement of [Respondent] and the representations of his counsel,* on May 30, 2013." DCX 19 (Order Setting Conditions of Defendant's Release, dated June 3, 2013) at 2 (emphasis added).

It could not be clearer, therefore, that Respondent obtained his release from custody by representing to the court at the May 30, 2013 hearing that he intended to use the entire net proceeds of the Second Refinancing to pay the sanctions. Judge

Jackson is an experienced, knowledgeable, and very capable judge. At the time of the May 30, 2013 hearing, he had been dealing with Respondent's recalcitrance and refusal to comply with the court's orders for almost a year. It is impossible to believe that he released Respondent from custody (his second incarceration) based on nothing more than his agreement to pay $2,500 per month towards the sanctions. FF 307-08.

For these reasons, Respondent's claim that the court rejected his proposal to use the entire net proceeds of the Second Refinancing to pay the sanctions is contrary to the clear and convincing evidence.

2. Respondent's Representation to the Court Was Knowingly False

It is equally clear that, as found above (FF 316) Respondent's representation regarding his intent to use the proceeds of the Second Refinancing to pay the sanctions was knowingly false. The clear and convincing evidence compels the conclusion that Respondent had no such intent at the May 30, 2013 hearing or any later date.

As set forth in our findings of fact, after Respondent was released, he and his wife completed both of the refinancing transactions they had proposed to the court. They first refinanced their residence (in May 2013) and then in September 2013 they completed the Second Refinancing. FF 321-22. The proceeds of the Second Refinancing totaled $118,000. These proceeds were paid into a joint bank account that Respondent owned with his wife. At that point, Respondent could have

withdrawn the entire $118,000 and paid off the remaining sanctions in their entirety. FF 323. He did nothing of the sort, however.

On the day the proceeds of the Second Refinancing arrived in Respondent's joint bank account, his wife transferred $78,000 (all but $40,000) of these proceeds into a separate account in her sole name. FF 325. According to her testimony, she did this to set aside funds for her aged mother. Respondent was aware that his wife had diverted $78,000 of the total proceeds, but did nothing. As he testified, he simply "acquiesced and allowed her" to divert these funds from the payment of the outstanding sanctions. FF 329-30. His wife then used the remaining $40,000 of the proceeds from the Second Refinancing to pay various household bills. FF 327. Respondent did not use a penny of the proceeds of this refinancing to pay any amount of the sanctions.

There is no evidence that Respondent took any action to use the refinancing proceeds as he had promised, or that he objected in any way to his wife's diversion of the funds to pay other supposed obligations. Instead, by Respondent's own admission, he sat back and acquiesced in his wife's diversion of the entire $118,000 proceeds to the payment of other bills or supposed obligations. In his testimony before the Hearing Committee, he admitted that he had "acquiesced" in his wife's diversions of these funds, because he did not want to upset her. As he explained, after first referring to the saying "happy wife, happy life," "So my wife took the lead. I *wasn't going to upset her, . . .*" FF 330 (citing Tr. at 375 (Respondent) (emphasis added)).

This explanation provides no justification at all for Respondent's failures. Respondent never contended that any circumstances had changed since he made his representations to the court through counsel at the May 30 hearing. He did not claim that he was impaired, disabled, tricked, deceived, or prevented by any fact or circumstance in any way from making good on his representation to the court. Instead, by his own damning admission, he sat back, did nothing, and let his wife divert the entire proceeds to everything but the payment of the outstanding sanctions. If, in fact, he had encountered any obstacle that prevented him from carrying out his stated intention, he should have advised the court and sought reconsideration of the terms of his release from incarceration. That he never did so confirms that there were no such obstacles.

Therefore, Respondent's first argument (that he never made the representation we have found) is factually erroneous and contrary to the clear and convincing evidence. That evidence demonstrates that Respondent unequivocally represented to the court, without qualification or caveat, that, if the court released him from incarceration, he intended to use the entire net proceeds of the Second Refinancing to pay the sanctions. Respondent made that representation through counsel at the May 30, 2013 hearing and never withdrew or abandoned it at any point during the hearing or later. He simply declined to honor it.

3. Respondent's Representation Regarding His Then-Existing Intent Was a Knowingly False Statement of Fact That Violated Rule 3.3(a)(1)

Respondent's second argument fares no better. He contends, with no citation

to any authority, that his false representation regarding his intention was not even a statement of fact that could give rise to a violation of Rule 3.3(a)(1). R. Br. at 25. The reason, Respondent argues, is that "[e]xpressions of intention . . . , like opinions, are not black and white because they depend on predicting the future." *Id.* And, according to Respondent's argument, his wife's decision to divert the Second Refinancing proceeds to the payment of other parties was an "intervening" act that he could neither foresee nor prevent, because he could not "force her to do as he expressed to the Court." *Id.*

Both prongs of Respondent's argument are wrong. The law is well settled that a false statement of present intention can constitute a statement of fact upon which tort liability in fraud can be imposed. "A promissory representation, or a representation as to future events" can be "considered a misrepresentation of fact where the evidence shows that the promise was made *without the intent to perform* . . . ." *Bennett v. Kiggins*, 377 A.2d 57, 61 (D.C. 1977) (emphasis added).

Respondent's argument to the contrary has been squarely and repeatedly rejected. *Intelsat USA Sales Corp. v. Juch-Tech, Inc.*, 935 F. Supp. 2d 101, 112 (D.D.C. 2013) (rejecting argument that a fraud claim cannot be predicated on a prediction of future events) (quoting *Bennett*, *supra*); *Berlin v. Bank of America, N.A.*, 101 F. Supp. 3d 1, 21 (D.D.C. 2015) (rejecting as "plainly wrong" the argument that promises that relate to future conduct are not actionable as misrepresentations) (citing cases); *Chedick v. Nash*, 151 F.3d 1077, 1081 (D.C. Cir. 1998) (false statement of "present intent to perform an act in the future" may state a claim for

tortious misrepresentation); *Feng v. Lim*, 786 F. Supp. 2d 96, 103 (D.D.C. 2011) ("falsely stat[ing] existing intentions is sufficient to state a claim for fraudulent misrepresentation") (internal quotation marks omitted) (quoting *Barnstead Broadcasting Corp. v. Offshore Broadcasting Corp.*, 886 F. Supp. 874, 883 (D.D.C. 1995)); *Restatement (Third) of Torts* § 9 (Am. Law Inst. 2019) (liability for misrepresentation can be imposed on "one who fraudulently makes a material misrepresentation of . . . intent . . . .").

Therefore, false statements of intent are indisputably statements of fact for purposes of liability in tort. We can see no reason why such statements should not also be regarded as statements of fact for purposes of professional responsibility under Rule 3.3(a)(1). The professional obligation of lawyers to be truthful in their statements to the court should arguably be more demanding than the general requirements for tort liability, but in any event, at the very least, should be no less demanding. Respondent has certainly not provided any reasoning or authority to the contrary. Therefore, we reject Respondent's argument, and conclude that his false statements through counsel at the May 30, 2013 hearing that he intended to apply the entire proceeds of the Second Refinancing to the payment of the sanctions were false statements of fact that violated Rule 3.3(a)(1).

We also reject Respondent's argument that his wife's decision to divert the Second Refinancing proceeds was an "intervening" act that he could not prevent or control. It may be true that Respondent was unable to force his wife to consent to the Second Refinancing; it is certainly true that without her consent the refinancing

could not have occurred (because she and Respondent held the property as tenants by the entireties). But, once the refinancing was completed, Respondent's wife had no greater right or claim to the refinancing proceeds than he did. The proceeds went into a joint account, and Respondent did not need his wife's consent to withdraw the proceeds from that account to pay the sanctions. FF 330. He just never bothered to do so, and simply let her divert the proceeds without any objection or effort on his part to prevent the diversion.

We must emphasize that the basis for our finding that Respondent's representation about his intention was false is definitely *not* that Respondent ultimately did not make good on his stated intention. That failure does not make Respondent's previous representations regarding his intent false statements. We recognize that a statement of intention is not a guarantee, and that other circumstances could have arisen that might have prevented Respondent from carrying out his stated intention.

What is remarkable in this case is the complete absence of any such claim by Respondent. He points to no supervening events or circumstances, no "overtaking by events," no unexpected financial reverses, nothing at all that prevented him from devoting the entire net proceeds of the Second Refinancing to the payment of the outstanding sanctions. Respondent remained completely passive and did nothing to prevent his wife from diverting every penny of these proceeds to the payment of other parties (his mother-in-law and their household creditors), all of which alleged obligations were well known to him when he made his representation to the court.

Other compelling evidence supports our conclusion that Respondent had no such intent. We are not writing on a clean slate here. We might be inclined to give Respondent the benefit of the doubt if he had not, throughout the course of the underlying litigation, done everything he could to delay, obstruct, and avoid paying anything to First Washington and First American Title. As we recite in detail in our findings, Respondent settled a $1.2 million judgment for $10,000 payable over three years. He then asserted an extreme, wholly unsupportable interpretation of the Settlement Agreement and persisted in it, disobeying numerous court orders and generating sanctions awards against him totaling over $240,000 in three separate awards. Despite his ability to do so, he refused to pay any amount of these sanctions until he was incarcerated the first time. The court quite accurately referred to Respondent's "loathsome pattern of non-compliance," and his "demonstrated bad faith throughout the proceedings." FF 235.

Taken together, Respondent's years of unlawful avoidance of his obligations and frustration of First Washington's legitimate claims, coupled with his admitted acquiescence in his wife's diversion of the Second Refinancing proceeds, and the absence of any claim of changed circumstances or overtaking by events leave no doubt: Respondent never intended to make good on his representation to the court that he would apply the entire net proceeds of that refinancing to the payment of the sanctions, and his representation to this effect to the court was knowingly false.

4. Respondent's Claim of Duress Is Baseless

Respondent's final argument is that his statements regarding his intent must be disregarded as without "legal or ethical significance" because the statements resulted from "duress or undue influence." R. Br. at 22. The claimed duress resulted from Respondent's incarceration, which Respondent claims was unlawful because it was imprisonment for debt in violation of *Estate of Bonham.*

Respondent's argument fails as a matter of law. Respondent assumes, but provides no authority for, the dubious proposition, that the defense of duress could prevent an attorney's knowingly false statement of fact to a tribunal from constituting a violation of Rule 3.3(a)(1). And, even if Respondent were correct on that issue, there is no basis for a finding of duress here.

Although Respondent refers without elaboration or citation to "black letter law" (R. Br. at 22), he does not demonstrate any understanding of the legal elements of duress. The essence of a claim of duress is that a party was coerced into agreeing to contract terms by the other party's threat to take some *wrongful* action. *Weaver v. Bratt*, 421 F. Supp. 2d 25, 32 (D.D.C. 2006) (duress requires "wrongful threat") (quoting *Marra v. Papandreou*, 59 F. Supp. 2d 65, 70-71 (D.D.C. 1999)); *Sind v. Pollin*, 356 A.2d 653, 656 (D.C. 1976) (same) (citing *Restatement of Contracts* § 492 (1932)). The court's threat to continue Respondent's incarceration until he complied with the court's orders was not wrongful. It was an entirely proper use of the court's contempt power to force a recalcitrant and intransigent litigant to comply with the court's lawful orders.

Respondent contends that the court's order incarcerating him was unlawful because D.C. Code § 15-320(c) prohibits imprisonment for failure to pay a money judgment. R. Br. at 22 (citing *Estate of Bonham*, *supra*). Respondent heavily relies on the authority of *Estate of Bonham*, but remarkably, fails even to mention, much less address, the key distinction that the Court of Appeals drew in that case between money judgments and monetary sanctions for violating Rules 11 or 37 of the Superior Court Rules of Civil Procedure. These two rules, in general, prohibit various kinds of litigation misconduct. Rule 11 addresses improper or frivolous filings, and Rule 37 addresses misconduct in discovery. Both rules provide for monetary sanctions in the form of an award of the reasonable attorney's fees and other expenses caused by the violation. Sup. Ct. R. 11(c)(4); *id.* 37(a)(5), 37(b)(2)(C), 37(d)(3).

In its opinion in *Estate of Bonham*, the Court of Appeals drew a clear distinction between the money judgment involved in that case and monetary sanctions under Rules 11 and 37. The court stated: "This case does not involve monetary sanctions imposed by a court pursuant to [Rule 11 or 37], and *we express no opinion* as to the availability of civil contempt as a means of enforcing compliance with orders to pay money based on either of these Rules." *Estate of Bonham*, 817 A.2d at 196 n.7 (emphasis added). The court could not have been clearer in stating that its holding and interpretation of D.C. Code § 15-320(c) did not apply to monetary sanctions for litigation misconduct that violated Rules 11 or 37. This case, therefore, provides no support for Respondent's argument that

incarceration for civil contempt for failure to pay monetary sanctions for litigation misconduct was unlawful imprisonment for debt prohibited by D.C. Code 15-320(c).

But litigation misconduct is what this case is all about. The monetary sanctions that the court awarded were sanctions for Respondent's litigation misconduct, both under Rule 11 and under the court's inherent power to award a party reasonable attorney's fees incurred in prosecuting a civil contempt proceeding. The court expressly relied on this power in awarding the December 2012 Sanctions (in the amount of $123,257.50). DCX 18 (Memorandum Opinion, dated Apr. 29, 2013) at 5 (citing *Fed. Mktg. Co. v. Va. Impression Prods. Co.*, 823 A.2d 513, 529 (D.C. 2003); *Link v. District of Columbia*, 650 A.2d 929, 931 n.3 (D.C. 1994)).

This case demonstrates the compelling reason for the distinction that the Court of Appeals drew between a court's using its contempt power to enforce the payment of money judgments and using it to enforce the payment of sanctions for litigation misconduct. If the court could not use its contempt power to enforce the payment of monetary sanctions for gross litigation misconduct like Respondent's, it would be essentially powerless to prevent the harm to the opposing parties and to the administration of justice from having to deal with endless, baseless litigation. The court would have no effective way to prevent an intransigent litigant like Respondent from imposing burdensome costs on opposing parties and wasting the court's time and resources if the court's only available enforcement tool were adding the amount of the sanctions to a judgment enforceable – if at all – only at the end of the case. But by using its contempt powers to enforce payment of sanctions awarded for a

party's misconduct, the court could both compensate the innocent party for the damage the party's misconduct had caused and deter such misconduct in the future.

Perhaps the best evidence that Respondent's argument that the orders incarcerating him were lawful and not void under *Estate of Bonham* is that he filed three motions in the Court of Appeals that sought his immediate release from incarceration based on the authority of that case. All three motions were denied. FF 261-271. In its last denial, the Court of Appeals made clear in its order how Respondent could purge his contempt. FF 263. The court explained:

> In this instance, [Respondent] holds the ability to purge his contempt by payment of the sanctions imposed, or providing proof of his inability to pay, or presumably by entering into a settlement with appellees.

DCX 60 (Order dated May 10, 2013) at 1 (citations omitted). The court then cited two cases: *Baker v. United States*, 891 A.2d 208 (D.C. 2006) (compliance with court orders required until orders are reversed on appeal or later modified); and *Langley v. Kornegay*, 620 A.2d 865, 866 (D.C. 1993) (contempt order requires finding of contemnor's ability to pay). If, as Respondent contends, his incarceration had been illegal under *Estate of Bonham*, the court would have released him outright, not told him how to purge his contempt for violation of an allegedly unlawful order.

Therefore, because the court's orders incarcerating Respondent for failure to pay the sanctions were valid and proper, the law of duress or undue influence provides no excuse for Respondent's knowingly false statements in violation of Rule 3.3(a)(1). As a result, we conclude that Respondent's false representation through

counsel at the May 30, 2013 hearing that, if released from incarceration, he intended to use the entire net proceeds of the Second Refinancing to pay the sanctions was a knowingly false statement of fact that violated Rule 3.3(a)(1).

G. Respondent Violated Rule 3.4(c) by His Knowing Disobedience of Numerous Court Orders That Was Not Protected by the Rule's "Open Refusal" Defense

Rule 3.4(c) provides that a lawyer shall not "[k]nowingly disobey an obligation under the rules of a tribunal except for an open refusal based on an assertion that no valid obligation exists." Rule 3.4(c). The "knowledge" element requires proof of "actual knowledge of the fact in question," which "may be inferred from circumstances." Rule 1.0(f).

Disciplinary Counsel contends that Respondent violated Rule 3.4(c) by knowingly disobeying the court's orders (1) to sign one of the First Washington-provided promissory notes, (2) to pay the sanctions the court had ordered, and (3) to provide an affidavit disclosing all of his assets and liabilities (as required by the parties' Settlement Agreement). ODC Br. at 42-43. In response, Respondent never disputes that he knowingly and repeatedly disobeyed these court orders. Instead, he contends, first, that the orders he disobeyed were void and a nullity, and, second, that his open refusal to comply with void orders did not violate Rule 3.4(c). R. Br. at 12-26.

We find that Disciplinary Counsel has proved by clear and convincing evidence that Respondent violated Rule 3.4(c) by his knowing disobedience of the court orders that Disciplinary Counsel identifies. Since Respondent does not dispute

that he knowingly disobeyed the orders in question, we will only briefly summarize the detailed facts we have found above that demonstrate his knowing disobedience of these orders.

1. He never executed one of the First Washington-provided promissory notes as the court directed in its various orders (the "Promissory Note Orders"). FF 84, 94, 103-04, 122, 128, 164, 171, 175, 183, 187-90.

2. He refused to pay any amount of the Omnibus Order Sanctions ($30,517.35) for almost eight months, and only paid these sanctions after he was incarcerated the first time. FF 164, 184-185, 191, 209, 223, 227-28, 245, 247. He paid only $15,000 of the December 2012 Sanctions ($123,257.50), and did not begin to pay this amount until after he was released from his second incarceration. FF 248-49, 251, 259, 307, 342.

3. He never provided a complete and truthful affidavit disclosing his assets and liabilities as the court had repeatedly directed (the "Asset Affidavit Orders"). FF 84, 95, 102, 123, 142-45, 151-53, 157-59, 184-85, 196-98, 199-200, 210, 213-16.

Because Respondent's knowing disobedience of these orders is clear and undisputed, the only issues relating to the Rule 3.4(c) violation that Disciplinary Counsel alleges are whether Respondent's disobedience must be excused either because (1) the orders were void or (2) his disobedience is protected by the Rule's "open refusal" defense.

As we demonstrate below, none of the orders Respondent knowingly disobeyed was void. All were valid and proper. Further, the "open refusal" defense under Rule 3.4(c) is not available to Respondent because he did not refuse to comply "based on an assertion that no valid obligation exists." Rule 3.4(c). Instead, he simply attacked the orders as erroneous and unfair, and claimed that he was unable

to comply. And, even if he had based his initial refusals to comply on the required "no valid obligation" assertion, he lost the protection of Rule 3.4(c)'s "open refusal" defense when he continued to disobey these orders after all his challenges to the orders had been rejected, both by the trial court and the Court of Appeals. In any and all events, at that point he had to comply with the orders, but he never did.

1. None of the Orders Respondent Knowingly Disobeyed Was Void

Respondent contends he did not violate Rule 3.4(c) because a failure to comply with a void order does not violate this Rule. R. Br. at 12 *et seq.* We assume, without deciding, that disobeying a void order does not violate Rule 3.4(c) because a void order could not constitute a "valid obligation" under the language of Rule 3.4(c). This does not advance Respondent's argument, however, because none of the orders he knowingly disobeyed was void.

The legal standard for voidness is narrow and demanding. A judgment or order is void "only if the court that entered it had no jurisdiction over the parties or the subject matter, or if the court's action was otherwise so arbitrary as to violate due process of law." *Kammerman v. Kammerman*, 543 A.2d 794, 799 (D.C. 1988) (citing *Hunter v. United States*, 48 App. D.C. 19, 23 (D.C. 1918) and 7 *Moore's Federal Practice* ¶ 60.25[2])); *Eisenberg v. Swain*, 233 A.3d 13, 22 (D.C. 2020) ("an order is void for lack of jurisdiction only when the issuing court is 'powerless to enter it'") (citing *Kammerman*, 543 A.2d at 799); *see United Student Aid Funds, Inc. v. Espinosa*, 559 U.S. 260, 271 (2010) (judgment is void "only in the rare instance" in which it "is premised either on a certain type of jurisdictional error or on a

violation of due process that deprives a party of notice or the opportunity to be heard"). In its decision in *United Student Aid Funds*, the Supreme Court cited with approval a federal court of appeals' decision holding that, before a court can find a judgment void for a violation of due process, a party must demonstrate "a plain usurpation of power." *United Student Aid Funds*, 559 U.S. at 271 (quoting *United States v. Boch Oldsmobile, Inc.*, 909 F.2d 657, 661 (1st Cir. 1990)).

Further, a judgment or order is not void merely because it is or might be erroneous. *Kammerman*, 543 A.2d at 799 (citations omitted); 12 *Moore's Federal Practice* ¶ 60.44[1] (3d ed. 2020) ("A judgment is not void simply because it is wrongly decided . . . .") (citation omitted). As the court explained in *Hunter*, when the court has jurisdiction of the party and the subject matter, "however defective or erroneous the proceedings, the judgment was not void, and could, at most, be voidable." 48 App. D.C. at 23.

Respondent has never contended that the court lacked personal jurisdiction over him, and, as we demonstrate below, he misunderstands what constitutes a lack of subject matter jurisdiction that would make a judgment or order void. The court plainly had jurisdiction of the subject matter, since the Superior Court's jurisdiction includes "any civil action or other matter, at law or in equity, brought in the District of Columbia." D.C. Code § 11-921(a)(6). The court also had personal jurisdiction over Respondent, a resident of the District of Columbia who had executed his personal guaranty in connection with District of Columbia real estate transactions. D.C. Code § 13-422 (District of Columbia court has personal jurisdiction over a

person domiciled in D.C. "as to any claim for relief"); *id.* § 13-423(a)(1) (D.C. court has personal jurisdiction as to any claim for relief arising from a person's "transacting any business in the District of Columbia"). Respondent has never contended otherwise.

Respondent simply misunderstands the requirements to find a court order void for lack of subject matter jurisdiction. He contends, erroneously, that orders that allegedly violate various statutory provisions are void. In an argument heading he proclaims that "the Superior Court orders were void because they exceeded its authority." R. Br. at 14. In the same vein, he argues that, because the court's order to sign one of the First Washington-provided promissory notes allegedly "violated a clear statute [D.C. Code § 15-501(a), the D.C. homestead exemption], it was void for lack of subject-matter jurisdiction . . . ." R. Br. at 16 (citing *Kammerman*, 543 A.2d at 799). But *Kammerman* held only that an order is void if the court lacked jurisdiction of the subject matter, not that a violation of a statute would deprive the court of subject matter jurisdiction. As we demonstrate below, the orders in question were all valid and proper and did not violate any statute.

Contrary to Respondent's contention, an order entered in violation of a statute is not void. As demonstrated above, the law is clear that "[a] judgment is not void, for example, simply because it is or may have been erroneous." *United Student Aid Funds*, 559 U.S. at 270 (citations and internal quotation marks omitted); 12 *Moore's Federal Practice* ¶ 60.44[1][a] (3d ed. 2020). Further, the lack of subject matter jurisdiction that would render an order void "means a court's lack of jurisdiction

over an entire category of cases, not whether a court makes a proper or improper determination of subject-matter jurisdiction in a particular case." 12 *Moore's Federal Practice* ¶ 60-44[2][a] (3d. ed. 2020). For this reason, even if Respondent's claims of error here were well-grounded, and they are not, they can provide no basis for concluding that any of the orders he disobeyed were void for lack of subject matter jurisdiction.

Respondent does not even attempt to show that any of the orders he disobeyed were void because they were issued in violation of due process that deprived him of notice or an opportunity to be heard. Such a showing would be impossible in any event, given the court's careful consideration of Respondent's contentions at hearing after hearing. For example, Respondent was ordered to execute the required promissory note at the May 28, 2010 hearing, and in the May 31, 2012 Omnibus Order, the June 4, 2012 order, and the August 21, 2012 order denying Respondent's motions for reconsideration and stay. FF 84-85, 122, 128, 183. The court repeatedly heard and considered Respondent's arguments on this issue at hearings held on May 28, 2010 and August 17, September 19, December 5, and December 10, 2012. FF 84, 163-64, 171-73, 185-88, 224. There was plainly no denial of any opportunity for Respondent to be fully heard on this issue or any other issue.

2. The Orders Respondent Knowingly Disobeyed Were Valid and Proper

In the interests of completeness, we will next consider and reject Respondent's contentions that these orders violated any statutory or other prohibitions. Respondent claims that the Promissory Note Orders and the Sanctions

Orders violated four statutes.[36] In fact, none of the orders violated any statute: all were valid and proper.

a. The Promissory Note Orders

Respondent first claims that the Promissory Note Orders violated D.C. Code § 15-501(a). R. Br. at 15-16. This statute provides exemptions from creditor process (distraint, attachment, levy or seizure and sale) for certain types of debtor property. The "homestead exemption" in D.C. Code § 15-501(a)(14) exempts a "debtor's aggregate interest in real property used as the residence of the debtor." *Id.* Under the terms of the promissory notes that Respondent was ordered to sign, he would have "waive[d] the benefit of homestead exemption as to this debt [the $10,000 debt evidenced by the note]."[37] We assume, without deciding, that ordinarily an order to

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[36] Respondent apparently concedes that his knowing disobedience of the Asset Affidavit Orders violated Rule 3.4(c) because he makes no argument that these orders were void or illegal in any respect.

[37] The Waivers provision reads in its entirety:

> **Waivers.** I hereby: (1) waive the *benefit of homestead exemption as to this debt* and also waive presentment, demand, protest and notice of any kind respecting this Note, including, but not limited to, notice of maturity, notice of default, notice of dishonor and notice of acceleration; (2) agree that the Holder at any time or times, without notice or further consent, may grant extensions of time, without limit, for payment of this Note without affecting the liability of the undersigned; and (3) waive the benefit of any law or rule of law providing for his release or discharge hereon, in whole or in part, on account of any facts or circumstances other than full payment of all amounts due hereunder. No waiver of any payment or right under this Note shall operate as a waiver of any other payment or right.

FF 28 (italics added).

waive a statutory exemption from creditor's remedies might, without more, violate D.C. Code § 15-501(a), but this case is materially different. Here Respondent *agreed* to waive his homestead exemption. This provision was standard in D.C. promissory notes and, as found above, Respondent agreed in the Settlement Agreement to sign a promissory note that contained the standard provisions consistent with D.C. law. FF 23-26. The court correctly found that the provisions of both of the First Washington-provided promissory notes were "consistent with the Settlement Agreement." FF 29, 183.

Therefore, Respondent agreed to enter into a promissory note that contained the Waivers provision. We are aware of no authority, and Respondent has not cited any, that suggests that the homestead exemption that D.C. Code § 15-501(a)(14) provides cannot be waived. There is certainly no prohibition in the D.C. Code's homestead exemption statute itself or elsewhere forbidding such a waiver (which likely explains why such waivers are standard in promissory notes in the District of Columbia).

Because he agreed to the Waivers provision as part of the Settlement Agreement, Respondent cannot now claim that requiring him to comply with his agreement by signing a promissory note that contains such a provision makes the order void.[38]

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[38] Respondent argues in a footnote that these orders were void for another reason: the court lacked authority to order him to sign a contract (in this case, a promissory note). R. Br. at 19 n.6 (citing *Gardiner v. A.H. Robbins Co., Inc.*, 747 F.2d 1180, 1190 n.13 (8th Cir. 1984)). Respondent's reliance on this authority is misplaced. This case holds only that the district court had no authority to add the words "So Ordered" to the parties' settlement agreement, and in this way convert a

b. The Alleged Orders to Sell Jointly-Owned Property Without the Consent of Both Parties

Respondent next contends that Promissory Note Orders were void because the notes "included a waiver of [Respondent's] interest in their jointly-owned home." R. Br. at 16-17. According to Respondent, this made the order void because "[c]ourt orders to sell jointly[-]owned spousal property without consent of both spouses [are] illegal in this jurisdiction." *Id.* at 16 (bold typeface omitted).

Respondent provides no citation, however, to any language in the promissory notes that allegedly waived Respondent's interest in his jointly-owned home. The reason for this omission is clear. The court never ordered Respondent to sell jointly-owned property, and there is no such language to this effect in the Waivers provision of the promissory notes. There is no language in this or any other provision of the First Washington-provided notes that could even be distorted to suggest that, by signing the note, Respondent would be waiving anything other than the right to assert his homestead exemption as to *his* interest as a tenant by the entireties in his jointly-owned residence. Because the waiver affected only his interest, it could not have had

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settlement agreement into a court order enforceable by contempt proceedings. It provides no support for Respondent's argument that the Superior Court had no authority to enforce Respondent's agreement to sign a promissory note. In fact, the law in the District of Columbia is squarely to the contrary. Courts have ample and well-established authority to order the specific performance of contractual obligations. *Stanford Hotels Corp. v. Potomac Creek Associates, L.P.*, 18 A.3d 725, 738-39 (D.C. 2011) (in appropriate cases, the equitable remedy of specific performance is available to require party to sign a contract). In fact, at the May 28, 2010 hearing that led to the Omnibus Order, Respondent himself agreed that the court should enforce the parties' Settlement Agreement. FF 83.

any effect on his wife's interest, or on their tenancy by the entireties in their residence. By its terms, the homestead exemption statute protects only "the *debtor's* [Respondent's] *aggregate interest* in real property used as the residence of the debtor." D.C. Code § 15-501(a)(14) (emphasis added). In fact, the court specifically recognized that it lacked the power to force Respondent to sell or mortgage the properties that he held as tenant by the entireties with his wife. FF 294.

Therefore, there is no basis for Respondent's argument on this point.

c. The Alleged Order to Use Respondent's Civil Service Retirement Pension to Pay Sanctions

Respondent's next argument fares no better. Respondent contends that the court violated a statute (5 U.S.C. § 8346(a)) when it allegedly ordered Respondent to use his Civil Service retirement pension to pay the sanctions. We reject this argument, like the previous argument, because there was no such order. The court never ordered Respondent to use his substantial Civil Service retirement pension ($2,828 per month) to pay the sanctions. In fact, the court at the May 30, 2013 hearing specifically declined to require Respondent to use any source of funds to pay the sanctions. FF 306. In addition, it was Respondent himself who first proposed – and then agreed – to pay $2,500 per month from his Civil Service retirement pension. FF 284, 300, 307; DCX 44 (Tr. of May 30, 2013 Hearing) at 27 (Mr. Long represented to the court that Respondent was "willing to assign his $2,500 of his [sic] retirement income as a good faith effort in payment of the sanctions").

The court's June 3, 2013 order required Respondent to pay $2,500 per month against the outstanding sanctions. DCX 19 (Order dated June 3, 2013) at 2. That

order nowhere mentioned Respondent's Civil Service retirement pension nor did it specify that Respondent was to use his monthly retirement pension to pay the $2,500 per month or specify in any way where Respondent was to get the funds to pay this monthly amount. FF 319.

Therefore, contrary to Respondent's argument, there was no violation of 5 U.S.C. § 8346(a) here. This provision states that Civil Service retirement benefits are "[1] not assignable, either in law or equity, . . . or [2] subject to execution, levy, attachment, garnishment, or other legal process, except as otherwise may be provided by Federal laws." As we demonstrate below, there was no assignment of Respondent's pension, and no garnishment or other creditor's process or other violation of this statute.

d. The Alleged Assignment of Respondent's Civil Service Retirement Pension

Despite the imprecise language that Respondent's counsel used at the May 30, 2013 hearing, Respondent never made an assignment of his Civil Service retirement pension. Respondent never transferred to First Washington his right to receive his pension benefits and never extinguished his right to receive these benefits from the Federal government. *See Restatement (Second) of Contracts* § 317(1) (1981) (assignment requires "manifestation of the assignor's intention to transfer [a right] by virtue of which the assignor's right to performance by the obligor is extinguished

in whole or in part and the assignee acquires a right to such performance").[39] The effect of an assignment is to extinguish the obligor's obligation to the assignor, and that plainly never happened here.

e. The Alleged Garnishment of Respondent's Civil Service Retirement Pension

Similarly, there was no garnishment of Respondent's Civil Service retirement benefits. Garnishment is a "judicial proceeding in which a creditor (or potential creditor) asks the court to order a third party who is indebted to or is bailee for the debtor to turn over to the creditor any of the debtor's property (such as wages or bank accounts) held by that third party." *Garnishment*, Black's Law Dictionary (11th ed. 2019). The procedure for garnishment of a debt that a third party (the obligor) owes to a judgment debtor is spelled out in detail in D.C. Code § 16-501 *et seq.* ("Attachment and Garnishment") and D.C. Superior Court Civil Rule 69-I. To reach the property of a debtor in the hands of a third-party obligor (such as the Civil Service retirement system's pension obligation to Respondent), a judgment creditor must ask the court to issue a writ of attachment, serve the writ on the obligor (the garnishee), and move for entry of judgment against the garnishee. *See United States v. Sum of Three Hundred Nine Million Five Hundred Thousand Dollars*, 85 F. Supp. 3d 111, 116-17 (D.D.C. 2015) (describing procedural steps that D.C. law requires for valid attachment and garnishment).

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[39] In fact, any such purported assignment would be void and of no effect under the plain language of 5 U.S.C. § 8346(a) (Civil Service retirement benefits are "not assignable, either in law or in equity").

None of these required steps occurred here. No writ of attachment was ever requested, issued, or served, and no judgment was ever requested or entered against the Civil Service retirement system (the United States Office of Personnel Management). FF 319. Therefore, there was no garnishment, and no violation of 5 U.S.C. § 8346(a) as Respondent has claimed.

f. No Waiver Hearing Was Required

Respondent makes an additional and equally baseless argument that the Promissory Note Orders were invalid because the court failed to "[hold] a waiver hearing under 5 U.S.C. § 8346(a) before issuing the order. . . ." R. Br. at 20 (citing *Shannon v. U.S. Civil Service Commission*, 621 F.2d 1030, 1032 (9th Cir. 1980)). We assume that Respondent intended to refer to § 8346(b), the provision at issue in *Shannon*, not to § 8346(a), but his argument is baseless in any event.

By its terms, § 8346(b) imposes limits only upon the *Government's* "recovery of payments" previously paid to a federal annuitant. 5 U.S.C. § 8346(b) (imposing limitations upon "[r]ecovery of payments under this chapter"). By definition, only the payor can "recover" payments previously made, not a party that never made the payment. The court's decision in *Shannon* makes clear that § 8346(b) applies only to Government efforts to recoup erroneous payments that the Government made to a former federal employee. *Shannon*, 621 F.2d at 1031 (case involves challenge to the procedures "by which the [United States Civil Service Commission] recovered erroneous payments through offset against annuity payments to recipients"). For this reason, nothing in § 8346(b) required the court to hold a "waiver hearing" before it

ordered Respondent to sign one of the promissory notes.

Finally, we address Respondent's remaining, even more far-fetched arguments. Respondent contends that the court erred in basing its Promissory Note Orders "on the representations of [First Washington's] counsel regarding alleged deficiencies in the promissory note [Respondent] had edited and signed." R. Br. at 20 (citing DCX 10 (Omnibus Order, dated May 31, 2012) at 6-7). Respondent contends that representations of counsel are not evidence. *Id.*

Respondent's argument is based upon a serious mischaracterization of the record. The language on pages 6-7 of the Omnibus Order that Respondent relies upon is merely a summary of First Washington's contentions, not a recounting of all the evidence that the court considered in entering its order. And significantly, Respondent never disputed any of the factual contentions that First Washington had made regarding the deficiencies in Respondent's proposed promissory note. *Id.* at 7 (Respondent's objections as summarized by the court fail to dispute First Washington's factual contentions regarding the note's deficiencies). Instead, Respondent made the legal argument that his revisions to the note were proper because the documents prepared by First Washington were not authorized by the parties' Settlement Agreement. DCX 10 at 7. Respondent's failure to contest First Washington's factual contentions regarding the deficiencies in Respondent's revised promissory note provided a fully adequate basis for the court's order (particularly because First Washington's proposed promissory notes and Respondent's revised promissory note were contained in the motion papers before the court). FF 122.

g. The Alleged Violation of Superior Court Civil Rule 11(c)(2)'s "Safe Harbor" Provision

Respondent claims that the court violated D.C. Superior Court Civil Rule 11(c)(2) when it granted First Washington's motion for contempt and imposed sanctions without "verify[ing] that the offending party [Respondent] received safe harbor [sic] from the party moving for sanctions." R. Br. at 21. Rule 11(c)(2)'s so-called "safe harbor" provision provides that a motion for Rule 11 sanctions "must not be filed with or presented to the court if the challenged [filing] is withdrawn or appropriately corrected within 21 days after service . . . ." D.C. Super. Ct. R. Civ. P. 11(c)(2).

The flaws in Respondent's argument are many and fatal. The principal flaw is that Rule 11's requirements do not apply to the motion for contempt because, contrary to Respondent's unsupported assertion, the contempt motion was not based on, and did not rely on, Rule 11. As the court summarized in its Omnibus Order, the motion for contempt was based on Respondent's failure to comply with the parties' Settlement Agreement and with the court's oral orders at the May 28, 2010 hearing. DCX 10 (Omnibus Order, dated May 31, 2012) at 6 *et seq.* Rule 11 was not involved in any way. The attorneys' fee sanctions awarded in the Omnibus Order were awarded for Respondent's failure to comply with the parties' Settlement Agreement and his frivolous motion to vacate judgment. DCX 10 at 12. First Washington's and First American Title's requests for sanctions were not in the record before the Hearing Committee. As a result, there is no way to determine whether Rule 11 played any part in the court's award of sanctions for Respondent's frivolous motion

to vacate judgment. It clearly had no role in the sanctions for Respondent's failure to comply with the Settlement Agreement.

But even if we assume, without evidence, that the attorneys' fee sanctions for Respondent's frivolous motion to vacate judgment were based on Rule 11, we must reject Respondent's argument that the claimed violation of Rule 11(c)(2)'s "safe harbor" provision invalidated the Sanctions Orders. We reach this conclusion because Respondent waived his "safe harbor" objection and there was substantial compliance with the Rule in any event.

Respondent waived his "safe harbor" objection because, as far as the record reveals, he never raised it at any point before the Superior Court or the Court of Appeals. Although there is contrary authority, we believe that the better reasoned rule is that the 21-day "safe harbor" provision can be waived by the sanctioned party's failure to raise it. *Rector v. Approved Federal Sav. Bank*, 265 F.3d 248, 253 (4th Cir. 2001) ("safe harbor" provision "is not jurisdictional and may be waived").

In addition, there was substantial compliance here with the purpose of the "safe harbor" provision: to give the offending party at least 21 days to reconsider and withdraw a frivolous filing before sanctions can be imposed. *See* Fed. R. Civ. P. 11, Advisory Committee's Note to 1993 Amendment (purpose of "safe harbor" provision is to insure "that a party will not be subject to sanctions on the basis of another party's motion unless, after receiving the motion, it refuses to withdraw that position . . . ."). Here, First Washington and First American Title filed their oppositions to Respondent's motion to vacate judgment (in which they sought

sanctions for Respondent's frivolous filing) on March 29 and April 1, 2010. DCX 8 (Docket Sheet for -5890 Action) at 14. Almost two months later, at the May 28, 2010 hearing, the court asked Respondent if he had withdrawn his motion. Although at that point Respondent had had almost two full months to reconsider his filing, he said he had not withdrawn it, and did not take the opportunity the court was giving him to withdraw it. Instead, he pressed ahead and forced the parties and the court to address it. FF 93; DCX 30 (Tr. of May 28, 2010 Hearing) at 14-15.

The courts have found substantial compliance that excuses a violation of the 21-day "safe harbor" provision when the sanctioned party had more than 21 days after the opposing party filed its opposition and request for sanctions to consider withdrawing its challenged filing but failed to do so. *United States v. Rogers Cartage Co.*, 794 F.3d 854, 863 (7th Cir. 2015). That is exactly what happened here.

For these reasons, we reject Respondent's claim that the alleged violation of Rule 11(c)(2)'s "safe harbor" provision made the court's Sanctions Orders invalid.

We also note that Respondent never claims that the Sanctions Orders were void because of his alleged inability to pay the sanctions. Instead, he argues only (and erroneously) that the Sanctions Orders were void because they ordered him to pay the sanctions with protected assets (such as his Civil Service retirement pension or the property that he and his wife held as tenants by the entireties). As we discuss above, there is no basis for either of these arguments.

For these reasons, we must reject Respondent's arguments that any of the numerous orders he knowingly disobeyed was void or not valid and proper.

3. Rule 3.4(c)'s "Open Refusal" Defense Does Not Protect Respondent's Knowing Disobedience of These Orders

Rule 3.4(c) prohibits knowing disobedience of non-void court orders with one exception: a lawyer who disobeys a court order does not violate the Rule if he or she makes an "open refusal based on an assertion that no valid obligation exists." Rule 3.4(c).

The Rule's "open refusal" defense does not protect Respondent's knowing disobedience of these orders for two reasons. First, the defense requires that the refusal to comply must be "based on an assertion that no valid obligation exists." Rule 3.4(c). Respondent did not base his refusals on the required "no valid obligation" assertion. Second, even if he had made such an assertion, the defense would not protect his disobedience in perpetuity. After all of his challenges to the orders in the Superior Court and Court of Appeals had been rejected, Respondent was required to comply with the orders and not persist in his disobedience.

The legal framework makes clear that the only way to make an assertion of "no valid obligation" is to claim that an order is void. If an order is void, a party has no obligation to comply with it, and the party's failure or refusal to comply cannot be punished as a contempt. *Kammerman*, *supra*, 543 A.2d at 799. But if the order is not void, the party has no choice and must comply with it until the order is reversed on appeal or otherwise modified by the court. *Id.* at 798-99 ("[W]e demand compliance with court orders – subject to sanction for contempt – until they are reversed on appeal or otherwise are modified by motion . . . .") (citing *Hunter v. United States*, 48 App. D.C. 19 (D.C. Cir. 1918), and *Gompers v. Buck's Stove and*

Range Co., 221 U.S. 418, 450 (1911)). A lawyer is not free to disobey an order simply because the lawyer believes that the order is erroneous. Instead, "the proper course of action, unless and until the order is invalidated by an appellate court, is to comply and cite the order as reversible error should an adverse judgment result." *Chapman v. Pacific Tel. & Tel. Co.*, 613 F.2d 193, 197 (9th Cir. 1979) (citing *Maness v. Meyers*, 419 U.S. 449 (1975)).

By excusing only those refusals that are based upon an assertion of "no valid obligation," the "open refusal" defense mirrors and reflects the key distinction between void and non-void orders. The defense does not excuse disobedience based on a claim that an order is legally erroneous, misinterprets a statute, or will be reversed on appeal. None of those claims, if upheld, would make an order void. It is only *void* orders that a party can safely ignore; all other, non-void orders must be complied with unless and until they are modified or reversed on appeal. For this reason, the only reasonable interpretation of the "no valid obligation" requirement is that it requires the lawyer to base his open refusal on the assertion that the order is void. Nothing less will suffice.

Rule 3.4(c) does not require a lawyer to comply with all orders, regardless of possible voidness. Nor does it require the lawyer to risk an ethical violation by disobeying an order that the lawyer believes is void but is ultimately found to be valid (*i.e.,* to impose a valid obligation). Instead, it allows the lawyer to openly refuse to comply with an order if – and only if – the lawyer contends that the order is void (*i.e.*, it imposes no valid obligation). In this way, the "open refusal" defense allows

the lawyer to disobey the order in order to test the order's validity. *Gilbert v. Utah State Bar*, 379 P.3d 1247, 1255-56 (Utah 2016) (quoting 1 Geoffrey C. Hazard, Jr. *et al.*, *Law of Lawyering* § 33.11 (4th ed. 2015) (Model Rule 3.4(c) "permits good faith and open noncompliance *in order to test an order's validity*")) (emphasis added)).

It is clear, therefore, that the purpose of the "open refusal" defense is to allow the testing of an order's validity, by raising the voidness objection for resolution either by the issuing court or by an appellate court. This purpose is significant because it necessarily implies a time limit on the lawyer's protected disobedience. The lawyer can continue his or her disobedience only as long as the challenges to the order are pending and unresolved. The lawyer does not have the right to flout the order in perpetuity without violating Rule 3.4(c).[40] If the lawyer's voidness challenge is unsuccessful, then the "open refusal" must end. At that point, the "open refusal" defense has served its purpose. It has allowed the lawyer to raise the voidness challenge for resolution within the legal system without running the risk of an ethical violation if the challenge is rejected. But once all the challenges have been rejected, the lawyer has no choice but to comply with the order. The defense cannot reasonably be read to protect in perpetuity a lawyer's obstinate refusal to comply based upon a failed claim of voidness. Instead, after the voidness challenge has been considered and rejected, the lawyer must comply, period.

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[40] Of course, to avoid a violation of Rule 3.1, any claim of voidness must have a non-frivolous basis in law and fact.

Under these standards, Respondent's "open refusal" defense must fail. As we have found above based on clear and convincing evidence, Respondent never based his disobedience on the assertion that the orders were void or imposed no valid obligation. FF 367-70. Instead, he simply raised a host of specious arguments that the orders were erroneous, unfair, unlawful, violated various statutory provisions, or would be reversed on appeal. None of these claims was based on the assertion that the orders were void, as the "open refusal" defense requires.

For this reason, therefore, we must reject Respondent's attempt to rely upon the "open refusal" defense.

In addition, even if, contrary to our findings, Respondent had based his disobedience on the required "no valid obligation" assertion, he was still required to comply with these orders after he had unsuccessfully challenged them by motion for reconsideration and by appeal. All of his challenges were rejected. The Superior Court denied his motion for reconsideration of the Promissory Note Orders on August 17, 2012. FF 182-83. The Court of Appeals dismissed Respondent's appeals from the Promissory Note Orders, the Asset Affidavit Orders, and the Omnibus Order Sanctions order on October 18, 2012. FF 203. At that point, Respondent could no longer rely on the "open refusal" defense. Nonetheless, he persisted in his disobedience of these orders. He never provided the required promissory note or assets affidavit, and never paid the Omnibus Order Sanctions until after his first incarceration.

Similarly, when Respondent appealed from the order incarcerating him for his

failure to pay the December 2012 Sanctions (totaling $123,257.50), the Court of Appeals denied his motion for release from incarceration on May 10, 2013, approximately two weeks later. Respondent paid only $15,000 of these sanctions before he filed his bankruptcy petition in December 2013. FF 262-63, 342. Significantly, Respondent never sought to challenge any of the orders he disobeyed by seeking a writ of mandamus from the Court of Appeals.[41]

As a result, after all of Respondent's challenges to these various orders by motion for reconsideration and by appeal had been rejected, Respondent could no longer rely on the "open refusal" defense to excuse his disobedience. He was required to comply. In his testimony before the Hearing Committee Respondent acknowledged that, once he had exhausted all of his legal options to challenge an order, either by motion for reconsideration or appeal, as an attorney he had to comply with the order. Tr. at 320-22 (Respondent); FF 382. Nonetheless, he never did comply with the orders at issue.

Therefore, we find that Disciplinary Counsel has proved by clear and convincing evidence that Respondent knowingly disobeyed the orders as alleged, and that his disobedience is not protected by the Rule's "open refusal" defense.

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[41] Relief by mandamus would have been available only if Respondent had demonstrated that his right to relief from the challenged orders was "clear and indisputable," that he had no other adequate means to obtain relief, and the court's orders amounted to a "judicial usurpation of power." *In re M.O.R.*, 851 A.2d 503, 509 (D.C. 2004).

H. Respondent Violated Rule 8.4(a) by His Other Violations of the Rules of Professional Conduct That We Have Found

It is misconduct under Rule 8.4(a) "to violate or attempt to violate the Rules of Professional Conduct, knowingly assist another to do so, or do so through the acts of another." Whether a lawyer acted "knowingly" is a question of fact and denotes "actual knowledge of the facts in question." Rule 1.0(f), cmt. [6].

Disciplinary Counsel contends that Respondent violated Rule 8.4(a) by permitting and assisting his counsel to make false representations to the court (both at the May 30, 2013 hearing and in the proposed payment plan submitted to the court the day before) about Respondent's alleged intent, if released by the court from incarceration, to use the proceeds of the Second Refinancing to pay the sanctions. ODC Br. at 39. To the extent that Respondent attempts to blame his counsel (Mr. Long) for the false representations, Disciplinary Counsel argues that this Rule prohibits Respondent from violating the Rules of Professional Conduct "through the acts of another."

Respondent makes no specific reply to this argument. Instead, he argues in a generic footnote that no violation of Rules 8.4(a), 8.4(c), or 8.4(d) can be found unless Rules 3.1, 3.3(a), or 3.4(c) were also violated, and no such violations were proved by clear and convincing evidence. R. Br. at 8 n.4. As we have concluded above, Respondent's argument is simply a pointless theoretical exercise because we have determined that Disciplinary Counsel has proved by clear and convincing evidence that Respondent did violate Rules 3.1, 3.3(a), and 3.4(c). *See* pp. 153, 180, 194 above.

In this case, Respondent has not attempted to blame his counsel (Mr. Long) for making the false representations to the court that Disciplinary Counsel challenges. Indeed, Respondent claimed in his testimony before the Hearing Committee that it was his intent to use the entire proceeds of the Second Refinancing to pay the sanctions. FF 316. Tr. at 354-55 (his representations to court were not misleading "because [his] intent was to" pay off the sanctions with the refinancing proceeds) (Respondent). In the absence of any evidence suggesting that Respondent told Mr. Long that Respondent had no such intent, we must conclude that it was Respondent who made the false representations regarding his intent, not Mr. Long.

Rule 8.4(a) by its terms makes it professional misconduct to "violate . . . the Rules of Professional Conduct." Rule 8.4(a). Because we have found that Disciplinary Counsel has proved by clear and convincing evidence that Respondent violated other Rules of Professional Conduct, we conclude that Disciplinary Counsel has also proved by clear and convincing evidence that Respondent violated Rule 8.4(a) as well.

I. Respondent Violated Rule 8.4(c) by His False Representations to the Court Regarding His Intent to Use the Second Refinancing Proceeds to Pay Sanctions

Disciplinary Counsel contends that Respondent's false representations to the court regarding his intent to use the entire net proceeds of the Second Refinancing to pay the outstanding sanctions also violated Rule 8.4(c). According to Disciplinary Counsel, in making these false representations, Respondent engaged in conduct involving dishonesty, fraud, deceit, and misrepresentation that violated Rule 8.4(c).

ODC Br. at 39 *et seq.*

Respondent makes no specific response to Disciplinary Counsel's argument regarding the Rule 8.4(c) violation. Instead, as noted above, because he contends the "alleged misconduct is identical" for both the "specific" violations charged (Rules 3.1, 3.3(a), and 3.4(c)) and what he calls the "general" violations (referring to Rules 8.4(a), 8.4(c), and 8.4(d)), he chose to rely on his arguments in opposition to the "specific" Rules violations. R. Br. at 8 n. 4. As a result, he makes no independent argument regarding the Rule 8.4(c) violation other than his argument in response to the charged Rule 3.3(a)(1) violation.

We conclude that Disciplinary Counsel has proved by clear and convincing evidence that Respondent's false representations regarding his intent to devote the entire net proceeds of the Second Refinancing to the payment of the sanctions violated Rule 8.4(c).

Rule 8.4(c) provides that 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).

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." *Romansky*, 825 A.2d at 315. Conversely, "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.* 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 have found by clear and convincing evidence that Respondent violated Rule 3.3(a)(1) by his knowingly false representations to the court regarding his intent to use the entire net proceeds of the Second Refinancing to pay the sanctions. *See* pp. 181-94. These knowingly false statements of fact also necessarily violated Rule 8.4(c)'s prohibitions on "conduct involving dishonesty, fraud, deceit, and misrepresentation." As noted above, the Court of Appeals has repeatedly upheld finding a violation of both Rule 3.3(a)(1) and Rule 8.4(c) based upon the same conduct. See p. 152 above.

For these reasons we find that Disciplinary Counsel has proved by clear and convincing evidence that Respondent violated Rule 8.4(c).

J. Respondent Violated Rule 8.4(d) by His Frivolous Filings, His Misrepresentations to the Court, and His Repeated Contemptuous Violation of the Court's Orders

Disciplinary Counsel contends that Respondent violated Rule 8.4(d) by (1) filing frivolous and unfounded motions, (2) his misrepresentations to the court about how the Second Refinancing proceeds would be used, and (3) his contemptuous conduct. ODC Br. at 43 *et seq.* As noted above, Respondent's only argument in response, in a generic footnote, is that no violation of Rule 8.4(d) can be found unless we also determine that Respondent violated Rules 3.1, 3.3(a), or 3.4(c), and that no such violations can be found because Disciplinary Counsel failed to prove any violations of these other rules by clear and convincing evidence. *See* pp. 150, 216 above. We can again easily dispose of this argument because we have concluded that Disciplinary Counsel has proved by clear and convincing evidence that the same conduct by Respondent violated Rules 3.1, 3.3(a), and 3.4(c).

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 demonstrate by clear and convincing evidence that: (i) Respondent's conduct was improper, *i.e*., that he either acted or failed to act when he should have; (ii) his conduct bore directly upon the judicial process with respect to an identifiable case or tribunal; and (iii) his conduct tainted the judicial process in more than a *de minimis* way, *i.e.*, it must have at least potentially impacted upon the process to a serious and adverse degree. *In re Hopkins*, 677 A.2d 55, 60-61 (D.C. 1996).

Rule 8.4(d) is violated if the attorney's conduct causes the unnecessary expenditure of time and resources in a judicial proceeding. *See In re Cole*, 967 A.2d 1264, 1266 (D.C. 2009). Failure to respond to orders of the Court constitutes a violation of Rule 8.4(d). Rule 8.4, cmt. [2]; *see, e.g.*, *In re Askew*, Bar Docket No. 2011-D393 at 28-29 (Hearing Committee Report May 22, 2013) (finding a violation of Rule 8.4(d) where the respondent failed to comply with court orders requiring her to file a brief and to turn over client files), *aff'd in relevant part*, 96 A.3d 52 (D.C. 2014) (per curiam). The purpose of the Rule is to "protect both litigants and the courts from unnecessary legal entanglement." *Pearson*, 228 A.3d at 426 (quoting *Yelverton*, 105 A.3d at 427) (internal quotation marks omitted)).

The evidence of Respondent's violation of Rule 8.4(d) is beyond clear and convincing; it is compelling. We have found above that Disciplinary Counsel proved by clear and convincing evidence that Respondent violated Rule 3.1 by filing two frivolous motions. *See* pp. 153-168 above. These frivolous filings satisfy all the elements required for a violation of Rule 8.4(d).

First, because these frivolous filings violated Rule 3.1, they were improper. Second, they bore directly on the judicial process with respect to an identifiable judicial tribunal because both of these filings were made in the -5890 Action in the Superior Court. Finally, they tainted the judicial process because they had not just a potential, but an actual, significant and adverse effect on the judicial process.

Each of these frivolous filings imposed on opposing parties the burden of preparing briefs and presenting arguments in response. Then the court was required

to consider Respondent's frivolous arguments and prepare opinions and orders marshaling the arguments for rejecting the filings.

These frivolous filings also delayed and prolonged these proceedings, because they diverted scarce judicial resources from the consideration and resolution of other non-frivolous claims in this and other cases. As the Court of Appeals has noted, "frivolous actions waste the time and resources of th[e] court, delay the hearing of cases with merit and cause [opposing parties] unwarranted delay and added expense." *Yelverton*, 105 A.3d at 427 (quoting from *Spikes*, 881 A.2d. at 1127 (D.C. 2005) (internal quotation marks omitted)). Respondent's frivolous filings improperly tainted the judicial process by imposing these same identified harms.

Respondent's false representations to the court, through counsel, regarding Respondent's allegedly then-existing intent to use the entire net proceeds of the Second Refinancing to pay the sanctions also violated Rule 8.4(d). These misrepresentations were improper because they violated Rule 3.3(a)(1). They bore directly on the judicial process because they were made directly to Judge Jackson in a hearing in the Superior Court. Finally, they had a significant and adverse effect on the judicial process. The court determined to release Respondent from incarceration based upon Respondent's false representations. FF 287-88, 303-05, 307, 309-11.

Respondent's false representations tainted the judicial process by tricking the court into granting Respondent release from custody, a release to which Respondent was not entitled and which the record makes clear the court never would have granted if Respondent had not misrepresented his intent. As the court stated at the

December 12, 2013 hearing, Respondent lied to him. FF 345. We agree. Therefore, his misrepresentations violated Rule 8.4(d) as well as Rule 3.3(a)(1).

Respondent's contemptuous violations of court orders also violated Rule 8.4(d). As Disciplinary Counsel points out, Comment 2 to Rule 8.4(d) specifically identifies "failure to obey court orders" as one of the violations of this Rule. As catalogued at length in the findings of fact, Respondent stubbornly refused to comply with numerous court orders, including:

> (1) The orders to provide detailed financial information regarding all of his assets and liabilities (including the May 28, 2010 oral order, the May 31, 2012 Omnibus Order, the June 4, 2012 order, the August 21, 2012 order, the November 5, 2012 order, and the November 27, 2012 order).
>
> (2) The orders to execute one of the First Washington-provided promissory notes (including the May 28, 2010 oral order, the May 31, 2012 Omnibus Order, the June 4, 2012 order, and the August 21, 2012 order).
>
> (3) The orders to pay sanctions (including the May 31, 2012 Omnibus Order Sanctions (totaling $30,517.35),[42] the June 4, 2012 order, the August 21, 2012 order, the December 2012 Sanctions, (totaling $123,257.50),[43] the April 29, 2013 order, and the June 3, 2013 order).

Respondent's contemptuous conduct required the court to hold no fewer than 17 hearings (totaling at least 556 pages of transcript) in its effort to enforce its orders.

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[42] Respondent ultimately paid these sanctions, but only after he had been incarcerated the first time for his noncompliance. FF 245, 247.

[43] Respondent paid only $15,000 of these sanctions. FF 342.

See Appendix A: Court Proceedings Required to Address Respondent's Recalcitrance (attached). Therefore, Respondent's persistent, extensive, and pervasive failures to comply with court orders also violated Rule 8.4(d).

IV. RECOMMENDED SANCTION

Disciplinary Counsel has asked the Hearing Committee to recommend that Respondent be suspended from the practice of law for six months, with reinstatement conditioned upon a showing of fitness, payment of any outstanding sanctions, and compliance with any pending court orders. ODC Br. at 45 (sanctions), 48-49 (fitness and other requirements for reinstatement). Respondent contends that no sanction is warranted.

We believe that the scope and seriousness of Respondent's misconduct (particularly his false statements and related dishonesty to the court) could easily justify recommending a more severe sanction than the sanction that Disciplinary Counsel recommends. We are loath to recommend a harsher sanction than that proposed by Disciplinary Counsel, however. *See Cleaver-Bascombe*, 892 A.2d at 412 n.14 ("Our disciplinary system is adversarial – [Disciplinary Counsel] prosecutes and Respondent's attorney defends – and although the court is not precluded from imposing a more severe sanction than that proposed by the prosecuting authority, that is and surely should be the exception, not the norm, in a jurisdiction, like ours, in which [Disciplinary Counsel] conscientiously and vigorously enforces the Rules of Professional Conduct.").

Therefore, we agree with Disciplinary Counsel's recommendation, and recommend that the Court suspend Respondent for six months, with reinstatement conditioned upon the conditions that Disciplinary Counsel recommends.

A. The Standard of Review

The sanction imposed in an attorney disciplinary matter must be 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.*, *Martin*, 67 A.3d at 1053 (citing *In re Elgin*, 918 A.2d 362, 376 (D.C. 2007)). The Court also considers "'the moral fitness of the attorney' and 'the need to protect the public, the courts, and the legal profession . . . .'" *In re Rodriguez-Quesada*, 122 A.3d 913, 921 (D.C. 2015) (per curiam) (quoting *In re Howes*, 52 A.3d 1, 15 (D.C. 2012)).

1. The Seriousness of the Misconduct

Respondent's misconduct is serious, aggravated, wide-ranging, pervasive, and protracted. As we have set forth in our findings, Respondent first defied the authority of the court and then deceived the court to escape the lawful and proper consequences of his continuing defiance. In this way, he prevented the court from providing the remedies the law provides to vindicate the court's authority and to protect the rights of the other parties to the case.

Respondent's misconduct involved three types of violations: (1) Respondent's knowingly false statements to the court (violations of Rules 3.3(a)(1) and 8.4(c)); (2) his defiance of numerous court orders over the period from May 2010 to December 2013 (a total of eight separate orders requiring the execution of one of the First Washington-provided promissory notes, the disclosure of financial information, and the payment of sanctions) (violations of Rules 3.4(c) and 8.4(d))); and (3) his frivolous court filings (violations of Rules 3.1 and 8.4(d))). *See* p. 195 above (listing of orders violated). Due to the seriousness of Respondent's misconduct, a substantial sanction is warranted.

2. Prejudice to Clients

This factor does not apply in this case, because Respondent was appearing *pro se* in these various matters. Any prejudice to his own personal interest was a self-inflicted wound that had no impact on any client. The only prejudice that Respondent's misconduct caused was not to any client but to the court and opposing parties.

3. Violations of Other Disciplinary Rules

Respondent violated six separate disciplinary Rules in this case.

4. Whether the Conduct Involved Dishonesty and Misrepresentation

Respondent's misconduct that violated Rules 3.3(a)(1) and 8.4(c) involved serious dishonesty and misrepresentation in his statements and representations to the court.

5. Previous Disciplinary History

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

6. Acknowledgment of Wrongful Conduct

Respondent has never acknowledged that any of his conduct was wrong in any respect. To the contrary, in his testimony before the Hearing Committee, he denied that he had committed any violations of the Rules of Professional Conduct or any wrongdoing whatsoever in the underlying litigation. FF 373. In fact, he testified that it would be a "national scandal" if the national media and his college classmates

(including judges) had become aware of his alleged mistreatment and his incarceration by the court. FF 374. This is a lawyer with an invincible sense of his own rectitude and propriety in everything that he did in this case. As a result, he has not acknowledged any wrongful conduct.

7. Other Circumstances in Aggravation or Mitigation

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

We have found in our findings above that Respondent engaged in serious misconduct that Disciplinary Counsel did not charge as independent violations of the Rules. The facts relating to this uncharged misconduct should be considered as aggravating factors in our analysis of the appropriate sanction in this case.

We describe below the uncharged misconduct at issue, and then address the legal requirements that must be met for us to properly consider this misconduct, requirements that we find are met in this case. Finally, we summarize the facts regarding this uncharged misconduct and its serious impact upon the opposing parties and the court in the administration of justice in this case.

a. The Uncharged Misconduct

We find that there are two categories of uncharged misconduct that should be considered in our sanctions analysis: (1) Respondent's numerous frivolous appeals to the Court of Appeals and his frivolous filing of the forum-shopping action (the -6309 Action); and (2) his false statements to the court in his June 2012 Supplemental Affidavit, at the August 17, 2012 hearing and the September 19, 2012

status conference, and in his November 2012 Praecipe that successfully concealed his ownership interest in the Hurtsboro Property from the court and opposing counsel.

b. The Legal Standard for the Consideration of Uncharged Misconduct

The Board and the Court of Appeals have provided clear guidance on the due process requirements of fair notice and the opportunity to be heard. We will apply these requirements to the consideration of uncharged misconduct as an aggravating factor in our sanction analysis. There are two requirements that must be met in order to consider uncharged misconduct in our sanction analysis. First, as the Board emphasized in *In re Schwartz,* Board Docket No. 13-BD-052, at 8-9 (July 31, 2017), the evidence of the uncharged misconduct must be clear and convincing. Second, Respondent must have had adequate notice that the conduct in question was challenged and a fair opportunity to defend against or rebut the evidence of the uncharged misconduct. *In re Morten*, Board Docket No. 18-BD-027, at 94-95 (May 7, 2021). The required notice can be provided either in the Specification of Charges, or later, during the hearing itself or even in Disciplinary Counsel's post-hearing briefing, especially where, as here, Respondent did not object to the later submissions. *Id.* at 94 (citing *In re Kanu*, 5 A.3d 1, 7 (D.C. 2010); *In re Austin*, 858 A.2d 969, 976 (D.C. 2004); and *In re Winstead*, 69 A.3d 390, 396-97 (D.C. 2013)); see also *In re Fay*, 111 A.3d 1025, 1031 (D.C. 2015) (due process is "satisfied by adequate notice of the charges and a meaningful opportunity to be heard") (citations omitted).

Both of these requirements are satisfied here. We have found above that the evidence of Respondent's uncharged misconduct is clear and convincing. Further, as we demonstrate below, during the course of the hearing and in post-hearing briefing, Respondent was given more than adequate notice of this uncharged misconduct and a fair opportunity to defend against these allegations.

c. Notice to Respondent Regarding Disciplinary Counsel's Challenge to His Frivolous Appeals

Respondent's filing of frivolous appeals was first referred to in Disciplinary Counsel's opening statement at the hearing (Tr. at 37-38). Respondent in his opening statement responded, claiming that he was surprised at this charge because no court had found the appeals to be frivolous. *Id.* at 41. Respondent did not make any claim of unfair surprise, however.

In his testimony at the hearing, Mr. Neal specifically referred to Respondent's frivolous appeals. Tr. at 57 ("[Respondent] just kept throwing up these crazy motions and every single time he lost. And then he would file frivolous appeals, I guess six to date.") (Neal). In response, Respondent testified that no court had ever found any of his appeals frivolous (*id.* at 251) (Respondent), but confirmed that he had filed "six or seven" appeals to the Court of Appeals, and the Court of Appeals had never sustained any of his appeals (*id.* at 310, 319).

In its post-hearing brief, Disciplinary Counsel stated the facts regarding Respondent's six unsuccessful appeals, and referred to Respondent's "consistent use of frivolous motions and appeals." ODC Br. at 22 (proposed FF 76). In his responsive brief Respondent chose not to defend any of his frivolous appeals.

d. Notice to Respondent Regarding Disciplinary Counsel's Challenge to His Frivolous Forum-Shopping Lawsuit (the -6309 Action)

At the hearing, Mr. Neal also testified about Respondent's filing his frivolous forum-shopping lawsuit (the -6309 Action). Tr. at 57 ("And then [Respondent] filed a motion to vacate the judgment, which was perfectly frivolous, and then he filed a whole new lawsuit against us, which was perfectly frivolous.") (Neal). In his testimony, Respondent's only defense of his frivolous lawsuit was an admission of his intent to forum-shop. Tr. at 241 (he filed the -6309 Action because he wanted "another judge to take a look at this, take a fresh look at it," and agree with Respondent's claim of fraud) (Respondent).

In closing argument, Disciplinary Counsel specifically referred to the filing of the -6309 Action as a "bad faith" filing: "Respondent also filed his own complaint against [First Washington] *in bad faith* because he did not like how the case was going against him." Tr. at 497 (emphasis added). In his closing argument, Respondent chose not to attempt to respond in any way about the -6309 Action.

In its post-hearing brief, Disciplinary Counsel referred in its proposed findings to the frivolous -6309 Action (ODC Br. at 9-10 (proposed FF 23, 24)), and to Respondent's improper purpose to "re-litigate issues already decided against him by Judge Holeman" (*id.* at 29 (proposed FF 103)). Respondent never specifically

challenged Disciplinary Counsel's proposed findings of fact,[44] nor did he mention the -6309 Action in his responsive brief.

e. Notice to Respondent Regarding Disciplinary Counsel's Challenge to His False Statements to the Court to Conceal His Ownership Interest in the Hurtsboro Property

In its opening statement, Disciplinary Counsel specifically mentioned Respondent's concealment of his ownership interest in the Hurtsboro Property. Tr. at 39 (in the bankruptcy proceeding "[i]t was also revealed that Respondent owned an interest in a whole different property in Alabama that he never revealed to the [S]uperior [C]ourt"). In his testimony at the hearing, Mr. Neal referred to the "fourth property" in Alabama (*i.e.*, the Hurtsboro Property) that Respondent never revealed in his affidavits in the Superior Court, but, instead, only disclosed when he testified under oath in his bankruptcy proceeding in 2014. *Id.* at 139-40 (Neal) (Respondent still did not disclose everything about his assets as Judge Jackson had ordered, "because in the bankruptcy court, under oath before Judge Teel, he admitted to other assets that he had never disclosed"). In closing argument, Disciplinary Counsel referred again to Respondent's concealment of his ownership interest in the

[44] As previously noted (note 5 above), despite our order to do so, Respondent never made a specific response to any of Disciplinary Counsel's proposed findings of fact. Instead, he complained about the alleged burden in retyping Disciplinary Counsel's proposed findings and asked the Hearing Committee to order Disciplinary Counsel to provide him an electronic copy of the word processing file that Disciplinary Counsel had used to prepare its brief. Even though we granted Respondent's request and ordered Disciplinary Counsel to provide him the requested word processing file (Order, dated September 16, 2016), and Disciplinary Counsel provided the file, Respondent never complied with our order to provide specific responses to Disciplinary Counsel's proposed findings of fact.

Hurtsboro Property. Tr. at 505 ("Plus, during the bankruptcy proceedings it became clear that [Respondent] had an interest [in] not just one Alabama property, but two [properties] in two different counties"). In Section V of its post-hearing brief (which contained its proposed findings of fact that were "Relevant to the Sanction Recommendation"), Disciplinary Counsel proposed a specific finding of fact that "Respondent failed to disclose a second property in Alabama, in which he had an interest, until the Bankruptcy proceeding deposition." ODC Br. at 28 (proposed FF 102). Respondent never responded about his concealment of the Hurtsboro Property either in his testimony or in his post-hearing responsive brief.

In light of these many references to the uncharged misconduct in opening statements, witness testimony, closing arguments, and post-hearing briefs, we conclude that Respondent had adequate notice and a fair opportunity to contest all of the allegations of uncharged misconduct.

f. The Facts Relating to Respondent's Frivolous Appeals

Respondent filed numerous frivolous appeals to the D.C. Court of Appeals. He appealed from orders that were plainly not appealable because no final judgment had been entered and the orders did not dispose of all claims and all parties. These frivolous appeals include Nos. 09-CV-1593, 12-CV-1550, 12-CV-1956, 12-CV-1957, 13-CV-0711, and 13-CV-0431. FF 12, 201, 225, 230, 262, 320; *see also* Appendix B: Respondent's Unsuccessful Appeals to the District of Columbia Court of Appeals (attached). At the September 19, 2012 status conference, First Washington's counsel warned Respondent that there was no appealable order

because no final judgment had been entered, and the court agreed. DCX 33 (Tr. of Sept. 19, 2012 Hearing) at 70-71. And, in its October 18, 2012 order, the Court of Appeals specifically reminded Respondent of the requirement for a final judgment disposing of all claims as to all parties when it made clear that its dismissal of his appeal was "without prejudice to [Respondent's] noting a new notice of appeal after the trial court disposes of all issues." DCX 50 at 3. Respondent was undeterred, however, and proceeded to file four more appeals of non-final orders (Nos. 12-CV-1956, 12-CV-1957, 13-CV-0711, and 13-CV-0431).

Respondent was similarly cavalier about D.C. Court of Appeals Rule 4(a)(1)'s jurisdictional time limit requiring that a notice of appeal must be filed within 30 days after entry of the order appealed from. He repeatedly ignored this requirement and sought to appeal orders after the 30-day appeal period had expired: (1) No. 12-CV-1550 (untimely as to 2 of 4 orders appealed from); (2) No. 12-CV-1956 (untimely as to 5 of 7 orders appealed from); and (3) No. 13-CV-0431 (untimely as to 1 of 2 orders appealed from). FF 201, 225, 262.

Finally, in No. 13-CV-0711, Respondent appealed from the court's June 3, 2013 Order Setting Conditions of Defendant's Release (DCX 19). In this appeal, Respondent challenged the terms upon which he had obtained his release from incarceration, even though he had specifically agreed to them in court. FF 320. That, too, was a plainly frivolous appeal.

These frivolous appeals needlessly burdened the Court of Appeals and the other parties. First Washington and First American Title were required to file motion

after motion to dismiss these frivolous appeals, and the Court of Appeals was required to consider all of them.[45] The combined total of 14 pages of docket entries in these various appeals leaves no doubt that Respondent's frivolous appeals imposed significant burdens on the Court of Appeals and opposing parties. FF 378; DCX 48, 49, 50, 51, 52, and 53.

g. The Facts Relating to Respondent's Frivolous Forum-Shopping Lawsuit (the -6309 Action)

In the -6309 Action, Respondent asserted the same claims of fraud against First Washington and the other defendants that he had previously asserted against the same parties in his motion to vacate the $1.2 million judgment in the original action (the -5890 Action). FF 114. The court had previously rejected these claims in the -5890 Action on May 28, 2010, when it orally denied Respondent's motion to vacate judgment. FF 87. Less than three months later, Respondent filed his new civil action asserting the same, already rejected fraud claims.

In his testimony before the Hearing Committee, Respondent admitted that he had filed the new action in order to relitigate before another judge the same claims

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[45] Respondent's other appeals challenging the court's finding him in contempt and incarcerating him also violated the settled rule that a party cannot appeal from a civil contempt order and resulting incarceration except as part of an appeal from a final judgment. *Fox v. Capital Co.* 299 U.S. 105, 107 (1936) (settled rule that "except in connection with an appeal from a final judgment or decree, a party to a suit may not review upon appeal an order fining or imprisoning him for the commission of a civil contempt"); *Byrd v. Reno*, 180 F.3d 298, 302 (D.C. Cir. 1999) (per curiam) ("[A] civil contempt order against a party in a pending proceeding is not appealable as a final order under 28 U.S.C. § 1291."). Because it appears that the Court of Appeals rejected Respondent's various contempt appeals on the merits without reaching this procedural objection, we do not find that these appeals were frivolous for violating this rule.

that the court had rejected in the -5890 Action. He testified that he "wanted . . . another judge to look at this, [to] take a fresh look at it and see that I had been defrauded into signing that promissory note." Tr. at 241 (Respondent). FF 115.

Respondent's new action was frivolous. It did not have even a "faint hope of success on the legal merits." *Pearson*, 228 A.3d at 424 (quoting *Spikes*, 881 A.2d at 1125). The court correctly dismissed Respondent's new action for two independent and equally compelling reasons. DCX 6 (Order dated Aug. 27, 2012).

First, as the court found, the doctrine of collateral estoppel barred Respondent's attempt to relitigate in his new action (the -6309 Action) the same claims that he had litigated and lost when he had asserted them in the original action (the -5890 Action). DCX 6 (Order dated Aug. 27, 2012) at 3-4 (citing *Elwell v. Elwell*, 947 A.2d 1136, 1140 (D.C. 2008)); FF 118.

Second, in the alternative, the court found that Respondent was required to raise the claims he had made in his new action as compulsory counterclaims in the original action. Because Respondent had failed to assert these claims as a compulsory counterclaim in the original action, the claims were "lost forever." DCX 6 at 4 (quoting *Bronson v. Borst*, 404 A.2d 960, 963 (D.C. 1979)).

The -6309 Action was assigned to a different judge (Judge Christian). He was required to conduct at least eight scheduling or status conferences before the action was transferred to Judge Jackson. FF 116. Five pages of docket entries confirm the court's lengthy and extensive involvement in this frivolous case before the case was transferred to Judge Jackson. *Id.*

h. The Facts Relating to Respondent's False Statements to the Court to Conceal His Ownership Interest in the Hurtsboro Property

In June 2012, Respondent submitted a false and misleading Supplemental Affidavit in which he concealed from the court and opposing counsel his ownership interest in the Hurtsboro Property. In this Affidavit, he identified his two D.C. properties (his residence and his Lincoln Road rental property) as the only real properties that he owned, and said nothing about his ownership interest in the Hurtsboro Property. This was a knowingly false statement under oath. FF 157-59. Then, in response to the court's specific question at the August 17, 2012 hearing about the location of the property that Respondent had inherited from his father, Respondent again concealed his ownership of the Hurtsboro Property that he had inherited from his father. FF 179. At the September 19, 2012 status conference, Respondent falsely claimed that his June 2010 Affidavit and his Supplemental Affidavit were accurate and complete, and that everything he owned individually was spelled out in those affidavits. FF 196.

In November 2012, Respondent submitted an unsworn Praecipe that was again knowingly false. He falsely claimed that he owned no real property other than his residence and his Lincoln Road rental property, in order to continue to conceal his ownership interest in the Hurtsboro Property. FF 213-15.

By these knowingly false and misleading statements, Respondent was able to conceal from his creditors (First Washington and First American Title) his ownership of an asset in his own name (his 25% interest in the Hurtsboro Property,

a property that had a tax-assessed value of $80,000). In this way he prevented lawful and proper efforts by First Washington and First American Title to use this property to collect some of the sanctions that Respondent owed, and frustrated the court's ability to administer justice fairly and enforce its lawful orders.

B. Sanctions Imposed for Comparable Misconduct

We recognize that "imposition of a sanction is not an exact science, . . . and it is impossible to 'match' all factors in different disciplinary cases." *Yelverton*, 105 A.3d at 429 (D.C. 2014) (internal citation and quotation marks omitted). We have found no case in which the misconduct is directly comparable to Respondent's misconduct in the aggregate. We therefore look to the sanctions imposed for each of the three types of Respondent's misconduct (dishonesty to the court, noncompliance with court orders, and frivolous legal filings) to inform our analysis. We address each of these categories of misconduct separately, bearing in mind the Court of Appeals' admonition that, when multiple disciplinary violations are involved, the appropriate sanction should be selected "in light of the respondent's behavior." *In re Wright*, 885 A.2d 315, 316 (D.C. 2005) (per curiam).

1. Respondent's Knowingly False Statements and Misrepresentations to the Court (Violations of Rules 3.3(a)(1) and 8.4(c))

As noted above, Respondent's knowingly false statements and misrepresentations to the court are the most serious and most troubling category of his misconduct, for several reasons. First, the falsehoods related to core issues in the case. By his fraud on the court regarding his claimed intent, if released from

incarceration, to use the entire net proceeds of the Second Refinancing to pay the sanctions, Respondent tricked the court, improperly secured his release, and ultimately avoided paying all but $15,000 of the December 2012 Sanctions totaling $123,237.50.

Every knowingly false statement or instance of dishonest conduct by an attorney is a serious matter. What distinguishes Respondent's knowingly false statements and dishonest conduct here is that (1) they were made directly to the court (not to a client, opposing counsel, or a third party), (2) they related to core issues in the litigation that bore directly upon the court's ability to administer justice fairly, effectively, and efficiently, and upon its ability to enforce its lawful orders, and (3) they were made for Respondent's own personal financial benefit (not in a misguided effort to benefit his client).

It is hard to find cases that have these three elements only (and not combined with other additional, also serious misconduct). One somewhat similar case is *In re Parshall*, 878 A.2d 1253 (D.C. 2005) (per curiam). In that case, the attorney was suspended for 18 months for intentionally filing with the court a false status report with fabricated documents attached. *Id.* at 1254-55. In its decision, the Court of Appeals "reiterate[d] the strongest possible disapproval of dishonesty by members of our bar," and referred to a number of mitigating factors that justified no more than an 18-month suspension in that case and not a longer one (including factors not present here, such as the attorney's remorse and voluntary provision of *pro bono* services and representation of indigent clients). *Id.* at 1254 n.4. *Parshall* involved a

direct falsehood to the court and the falsification of documents, but did not appear to involve a falsehood on a core issue in the case made for the attorney's personal benefit.

In other cases, the court has found that the attorney's dishonesty to the court and others was so serious as to warrant disbarment. For example, in *In re Baber*, 106 A.3d 1072 (D.C. 2015) (per curiam), the court disbarred an attorney in large part because of "the repeated and protracted nature" of his "flagrant" dishonesty that was "driven by a desire for personal gain." *Id.* at 1077-78. In that case, the attorney knowingly made false statements to his client in order to persuade her to pay an excessive fee, and when she refused, knowingly made false accusations against her. He then repeated the same false accusations to the court both orally and in pleadings (and even in his response to Disciplinary Counsel's investigation).

Respondent's false statements and dishonesty in his dealings with the court here were not as pervasive as the attorney's dishonesty in *Baber*, and did not prejudice Respondent's client, but they definitely related to a central issue in the case (whether the court could enforce its lawful orders to require Respondent to comply with the Settlement Agreement and pay sanctions for Respondent's litigation misconduct) and were intended for Respondent's own personal benefit (to avoid complying with the Settlement Agreement and paying these sanctions).

The extent of Respondent's dishonesty is clearly a material consideration. The Court of Appeals has held that disbarment was the appropriate sanction for dishonesty "of a flagrant kind." *In re Cleaver-Bascombe*, 986 A.2d 1191, 1199-1200

(D.C. 2010) (per curiam). In that case, the attorney's dishonesty was extensive. It involved the attorney's submitting a false and fraudulent Criminal Justice Act voucher under oath (seeking compensation for a non-existent meeting with an incarcerated client). The attorney then compounded her misconduct by presenting false testimony under oath to the Hearing Committee in support of her fraudulent voucher. *Id.* at 1197, 1199-1200.

Respondent's dishonesty here was very serious, because it involved knowingly false statements to the court, made for Respondent's own personal financial benefit, about matters critical to the court's ability to perform its core function of providing a fair and just resolution of the case before it. But his dishonesty was not so "repeated and protracted" to constitute "flagrant dishonesty" of the kind involved in *Baber* and *Cleaver-Bascombe*. He made (and never corrected) a knowingly false statement to the court about his alleged intent, if released from incarceration, to use the Second Refinancing proceeds to pay sanctions. But this case does not involve the repeated falsehoods to the court both orally and in writing to the client's substantial prejudice (falsehoods that the attorney repeated in the course of the disciplinary process) that were involved in *Baber*.

Thus, although Respondent's dishonesty arguably came close to "flagrant" dishonesty, it never reached that level. Consequently, the appropriate sanction for Respondent's dishonesty would not be disbarment, but a somewhat lesser sanction. Respondent's dishonesty is clearly more serious than the kind of dishonesty (false statements to the court to obtain a continuance or to explain the failure to appear

when required) that has previously warranted a suspension of less than six months. *See, e.g.*, *In re Rosen*, 481 A.2d 451 (D.C. 1984) (30-day suspension for false statements in motions for continuance of trial and in opposition to motion for relief from attorney's fee award).

In its decision in *Baber*, the court reiterated the importance of an attorney's honesty. The court wrote that "honesty is basic to the practice of law, . . ." and "[T]here is nothing more antithetical to the practice of law than dishonesty . . . ." *Id.* at 1077 (citations and internal quotation marks omitted, alteration in original). Despite the differences between the extent of the attorney's misconduct in *Baber* and Respondent's here, *Baber* unmistakably suggests that significant dishonesty warrants a significant sanction. In our view, Respondent's dishonesty alone, without regard to any of his other misconduct, would warrant a suspension of at least six months.

2. Respondent's Defiance of Court Orders (Violations of Rules 3.4(c) and 8.4(d))

The next category of misconduct is Respondent's contemptuous and sustained refusal to comply with the court's lawful orders. As we summarize above, Respondent was ordered four separate times to execute one of the First Washington-provided promissory notes, and never did so. He was ordered four times to pay the Omnibus Order Sanctions (totaling $30,517.35), but never did so until after he was incarcerated the first time. He was ordered twice to pay the December 2012 Sanctions (totaling $123,257.50), but never paid a penny until after he was released from his second incarceration, and then only paid a total of $15,000 against these

sanctions. Finally, he was ordered six times to provide detailed financial information regarding his assets and liabilities, and never complied with these orders. *See* pp. 194-95 above. Respondent's wholesale defiance of the court's orders in this case is simply remarkable.

The most directly comparable sanctions are those in cases in which discipline was imposed principally because the attorney had violated court orders. One such case is *In re Untalan*, 174 A.3d 259 (D.C. 2017) (per curiam). That case involved an attorney who had failed to file appellate briefs in seven cases in which he had been appointed to represent indigent defendants under the Criminal Justice Act, and had then failed to comply with numerous court orders to file the overdue briefs. *Id.* at 259. The Court of Appeals imposed a six-month suspension, but stayed all but 60 days in favor of a year's probation, because of extensive factors in mitigation, including the attorney's taking full responsibility for his actions and taking steps to mitigate the effects of his misconduct by promptly transferring case files to successor counsel and closing his practice. *Id.* at 260; *see In re Untalan*, Board Docket No. 15-BD-024, at 3-4 (BPR Feb. 6, 2017) (discussing mitigating factors).

Another similar case resulted in the same sanction (six-month suspension, with all but 60 days suspended in favor of a one-year probation) for an attorney who failed to file briefs in five CJA appeals and ignored the Court of Appeals' repeated orders to file the briefs. *In re Murdter*, 131 A.3d 355 (D.C. 2016) (per curiam). The attorney had also pleaded guilty to contempt of court for his violations of the court's orders and had received a suspended sentence. *Id.* at 359 (appended Board Report).

As in *Untalan*, it appeared that the partial stay of the six-month suspension was driven by "compelling mitigation evidence," including the attorney's genuine remorse, cooperation with successor counsel, and credible testimony explaining his misconduct. *Id.* at 360-61 (appended Board Report).

Respondent's violations of Rule 3.4(c) and Rule 8.4(d) here are more serious than the violations in *Untalan* and *Murdter*, and Respondent can point to none of the mitigating factors that arguably led the court to stay the six-month suspensions that it imposed in those cases. The attorneys' failures to file briefs in those cases undoubtedly caused significant procedural delays and disruption to the administration of justice, but they did not wholly obstruct the court's ability to grant the relief that the law provides. Here, by his contemptuous refusal to comply with the court's lawful orders, Respondent wholly defeated the court's efforts to compel him to honor his obligations under the Settlement Agreement and to impose consequences upon him in the form of sanctions for his failure to comply and other litigation misconduct. And, as noted, Respondent defied the court's orders solely for his own personal financial benefit.

For these reasons, Respondent's Rule 3.4(c) and Rule 8.4(d) violations more closely resemble some of the attorney's misconduct in *In re McClure*, 144 A.3d 570 (D.C. 2016) (per curiam). In that case the attorney was disbarred for wide-ranging misconduct including incompetent handling of a medical malpractice action, and, after he was discharged by the client, the submission of, and reliance upon, a false and fraudulent billing statement in support of his fee demand. *Id.*; *see In re McClure*,

Board Docket No. 13-BD-018, at 33-34 (BPR Dec. 31, 2015) (describing misconduct). In the course of his efforts to obtain his fraudulent fee award, he knowingly violated the court's orders in two respects. First, he violated the court's order requiring that a confidential transcript be kept under seal by attaching the transcript to two motions that he filed in the Court of Appeals on the public record (not under seal). Second, he failed to comply with three separate orders to pay sanctions for filing "ill-founded motions" in pursuit of his fee claims. *McClure*, Board Docket No. 13-BD-018, at 28-29. The trial court held him in civil contempt for his knowing violations of the transcript sealing order and the sanctions orders. *Id.* at 17.

In *McClure*, the Court of Appeals accepted the Board's recommended sanction of disbarment based on the totality of Respondent's misconduct, including his knowing refusal to comply with the court's orders, and specifically noted the attorney's lack of remorse, his motivation (to gain personal financial benefit), and the absence of any "countervailing considerations weighing significantly against disbarment." 144 A.3d at 572 (internal quotations and citation omitted).

We discuss *McClure* not to suggest the appropriateness of disbarment in this case, but to highlight the seriousness of Respondent's knowing refusal to comply with numerous court orders, and to note the many similarities between Respondent's conduct here and the misconduct in that case (the complete absence of remorse, the attorney's intent to benefit his personal financial interest, and his contemptuous refusal to pay sanctions awarded for frivolous filings).

Therefore, we conclude that, wholly apart from Respondent's other misconduct, his knowing and protracted defiance of numerous court orders would warrant a six-month suspension.

3. Respondent's Frivolous Motions (Violations of Rules 3.1 and 8.4(d))

The final category of Respondent's misconduct is his motions that violated Rules 3.1 and 8.4(d). We concluded above that two of his motions were frivolous (his motion to vacate judgment and his motion for Rule 11 sanctions against First Washington and its counsel).

This misconduct also warrants a sanction. The most recent case considering the appropriate sanction for violations of Rules 3.1 and 8.4(d) is *Pearson*, 228 A.3d 417. In that case, the attorney violated these two rules by pursuing frivolous liability and damages claims totaling $67 million against dry cleaners who had allegedly lost a pair of his trousers. His violations involved the assertion of plainly frivolous claims, excessive discovery and motions practice in support of his claims, as well as a frivolous appeal to the Court of Appeals after his frivolous claims were rejected in the trial court (including a petition for rehearing and rehearing *en banc*). The Court of Appeals imposed a 90-day suspension on the attorney for his misconduct.

In light of *Pearson*, a 90-day suspension would be excessive for Respondent's violations of Rules 3.1 and 8.4(d). The attorney's pursuit of frivolous claims in *Pearson* was considerably more extensive and protracted and imposed greater burdens on the court and opposing parties than Respondent's two frivolous motions here. We recognize that the court ordered Respondent to pay attorneys' fee sanctions

totaling $242,891.18 (FF 340), which is more than twice as much as the innocent parties had sought in *Pearson*. 228 A.3d at 427 n.11 (defendants sought Rule 11 sanctions of "almost $100,000" in attorneys' fees). There is a critical difference, however. The attorney's fee sanctions awarded against Respondent here were awarded for the totality of Respondent's misconduct, not solely to compensate for the fees and costs incurred in opposing his two frivolous motions.

Respondent's violations of Rule 3.1 and Rule 8.4(d) are similar to the violations in *Spikes*, 881 A.2d 1118. In that case, a 30-day suspension was ordered for an attorney who filed a frivolous defamation action against opposing counsel and others who had made ethical complaints to the Office of Disciplinary Counsel about the attorney's conduct. The court granted defendants' motion to dismiss the defamation action (because complaints to Disciplinary Counsel are absolutely privileged), and the Court of Appeals summarily affirmed the dismissal. The attorney received a 30-day suspension for his frivolous filings. That case involved a single frivolous action that was vigorously pursued but dismissed on motion with a summary affirmance on appeal.

In *Yelverton*, 105 A.3d 413, the Court of Appeals ordered a 30-day suspension plus fitness for an attorney who had made numerous frivolous filings, including a motion for a mistrial in a criminal case made on behalf of a witness, numerous repetitive additional filings, and two baseless recusal motions. 105 A.3d at 425-26, 431. On appeal the respondent made so many filings after his appeal, petition for rehearing, and rehearing *en banc* had been denied, that the Court of Appeals issued

an order *sua sponte* referring the matter to the Office of Disciplinary Counsel for investigation. *Id.* at 418. Despite the "sheer volume" of the attorney's frivolous filings and his lack of remorse, the court rejected the 90-day suspension the Board had recommended, primarily because the attorney acted for his client's benefit and not for personal gain, and the court did not think his conduct was worse than the conduct in *Spikes* that had warranted only a 30-day suspension. *Id.* at 429.

Respondent's frivolous filings in this case are certainly no worse than the frivolous filings involved in *Yelverton* and *Spikes*. Given the 30-day suspensions ordered in those cases, Respondent's frivolous filings here would warrant at most a 30-day suspension.

C. Respondent Should be Required to Demonstrate Fitness Prior to Reinstatement

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

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

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

Cater, 887 A.2d at 22.

In addition, the Court found that the five factors for reinstatement set forth in *In re Roundtree*, 503 A.2d 1215, 1217 (D.C. 1985), should be used in applying the *Cater* fitness standard. These factors 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, 887 A.2d at 21, 25.

We recommend that, as permitted by D.C. Bar Rule XI, § 3(a)(2), Respondent be required to demonstrate his fitness to practice law prior to being reinstated to the Bar. Our consideration of the five *Roundtree* factors leads us to this conclusion.

Given Respondent's serious, wide-ranging, and pervasive misconduct we have summarized above, we have serious doubts regarding his continuing fitness to

practice law (the first *Roundtree* factor). Our consideration of the remaining *Roundtree* factors also raises – and reinforces – the same concerns about Respondent's continuing fitness.

Respondent has never recognized the seriousness of his misconduct (the second *Roundtree* factor). As noted above, at one point during the hearing, he even contended that it would be a "national scandal" if his college classmates and national media were to learn that he had been jailed for his misconduct. Tr. 277-78; *see* FF 374. He plainly does not think that he has done anything wrong, and, even if the Board and the Court of Appeals were to tell him otherwise by sanctioning him, we have no confidence that he would take that to heart and change his future behavior. An attorney who believes that he has done nothing wrong in knowingly making false and dishonest statements to the court, in stubbornly disobeying numerous court orders (that resulted in a total of 56 days of incarceration), and in making repeated frivolous court filings for his own personal benefit cannot reasonably be relied upon not to engage in the same or similar misconduct in the future.

Respondent has also done nothing to remedy his past wrongs or prevent future ones (the third *Roundtree* factor). He has never set the record straight regarding his false statements and misrepresentations to the court. Even in his bankruptcy proceeding he continued to misrepresent to a different judge exactly what he had told Judge Jackson in order to fraudulently procure his release from incarceration. FF 360.

Finally, the only evidence of his present character or his qualifications or competence to practice law is the evidence of his violations (the fourth and fifth *Roundtree* factors). This gives us no comfort. He took plainly frivolous and unreasonable positions and persisted in them despite repeated rejections by the Superior Court and the Court of Appeals and even despite a total of 56 days of incarceration. He then lied to the court to wrongfully obtain his release. Consideration of these last two *Roundtree* factors only strengthens the substantial doubts that we have about his fitness based on the first three *Roundtree* factors.

For these reasons, Respondent should be required to demonstrate his fitness to practice law prior to reinstatement. *See Yelverton*, 105 A.3d at 430 (fitness requirement appropriate where, among other things, respondent filed frivolous motions in the underlying matter but "[t]here [was] no indication that [he] recognize[d] the seriousness of the misconduct or even that he recognize[d] it as misconduct at all . . . [giving the Court] pause as to respondent's likely future performance.").

D. Prior to Reinstatement, Respondent Should Also Be Required to Comply with Pending Court Orders and Pay Any Outstanding Sanctions

Under D.C. Bar R. XI, § 3(b), the Court, when imposing discipline, "may require an attorney to make restitution . . . to persons financially injured by the attorney's conduct . . . as a condition of probation or of reinstatement." *In re Ray*, 675 A.2d 1381, 1389 (D.C. 1996); *see also In re Travers*, 764 A.2d 242, 251 (D.C. 2000) (reinstatement conditioned upon payment of judgment). The Hearing

Committee recommends that, to the extent that Respondent has not already done so, as a condition of reinstatement, Respondent be required to comply with any pending court orders and to pay any outstanding sanctions awards.

V. CONCLUSION

For the foregoing reasons, the Committee finds that Respondent violated Rules 3.1, 3.3(a)(1), 3.4(c), 8.4(a), 8.4(c), and 8.4(d). We recommend that he should receive the sanction of a six-month suspension, with reinstatement conditioned upon (i) his demonstrating his fitness to practice law, (ii) his compliance with any pending court orders, and (iii) his payment of any outstanding sanctions awards. 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

C. Coleman Bird

C. Coleman Bird, Chair

Mary C. Larkin

Mary C. Larkin, Public Member

Dianne J Smith

Dianne J. Smith, Attorney Member

Appendix A:
Court Proceedings Required to
Address Respondent's Recalcitrance

	Date	Event	Transcript Pages
Civil Action No. 2007 CA 5890			
1	May 28, 2010	Hearing on First Washington and First American Title's motions to enforce settlement and Respondent's motion to vacate judgment (Holeman, J.) [FF 82-86]	61
2	June 1, 2012	Status hearing (Jackson, J.) [FF 128]	
3	August 17, 2012	Hearing on First Washington's renewed motion for contempt and Respondent's motion for stay of Omnibus Order dated May 31, 2012 (Jackson, J.) [FF 163-82]	48
4	September 19, 2012	Status conference on Respondent's failure to comply with court's May 31, 2012, June 4, 2012, and August 21, 2012 orders (Jackson, J.) [FF 185-98]	72
5	December 5, 2012	Show cause hearing on Respondent's failure to comply with the court's Reissued Order of October 3, 2012, dated November 5, 2012, requiring Respondent to provide financial information and documents (Jackson, J.) [FF 217-24]	71
6	December 10, 2012	Hearing on Respondent's failure to comply with the court's orders to pay the Omnibus Order Sanctions ($30,517.35); Respondent incarcerated for the first time (Jackson, J.) [FF 226-29]	17
7	December 14, 2012	Hearing on whether Respondent had purged his contempt and should be	40

		released from incarceration (Jackson, J.) [FF 236-39]	
8	December 19, 2012	Hearing to consider Respondent's proposal to purge his contempt and obtain his release from incarceration (Jackson, J.) [FF 241-44]	32
9	December 21, 2012	Hearing on terms of payment plan for Respondent's release from incarceration; Respondent released from incarceration (Jackson, J.) [FF 245]	14
10	January 17, 2013	Hearing on Respondent's compliance with payment plan for payment of Omnibus Order Sanctions (Jackson, J.) [FF 247]	18
11	March 18, 2013	Hearing on Respondent's failure to pay the December 2012 Sanctions (totaling $123,257.50) (Jackson, J.) [FF 248-50]	29
12	April 15, 2013	Hearing on Respondent's continued failure to pay the December 2012 Sanctions; Respondent incarcerated for the second time (Jackson, J.) [FF 253-60]	30
13	April 30, 2013	Hearing on conditions for Respondent's possible release from incarceration (Jackson, J.) [FF 274-76]	35
14	May 28, 2013	Hearing on conditions for Respondent's possible release from incarceration (Jackson, J.) [FF 277-80]	30
15	May 30, 2013	Hearing on conditions for Respondent's possible release from incarceration; Respondent released from incarceration (Jackson, J.) [FF 286-309]	33
16	December 12, 2013	Hearing on Respondent's failure to pay the December 2012 Sanctions as agreed at May 30, 2013 hearing and the effect of Respondent's bankruptcy	26

		filing the previous day (Jackson, J.) [FF 344-49]	
17	October 1, 2014	Status hearing held on developments in Respondent's bankruptcy proceeding (Jackson, J.) [FF 354]	
		Total Transcript Pages	556
Civil Action No. 2010 CA 6309			
1	December 10, 2010	Status conference hearing (Christian, J.) [FF 116, DCX 5 at 5]	
2	January 14, 2011	Scheduling conference hearing (Christian, J.) [FF 116; DCX 5 at 5]	
3	February 18, 2011	Scheduling conference hearing (Christian, J.) [FF 116; DCX 5 at 5]	
4	August 26, 2011	Status hearing (Christian, J.) [FF 116; DCX 5 at 3]	
5	December 9, 2011	Status hearing (Christian, J.) [FF 116; DCX 5 at 3]	
6	April 6, 2012	Status hearing (Christian, J.) [FF 116; DCX 5 at 2]	
7	June 1, 2012	Status hearing (Christian, J.) [FF 116; DCX 5 at 2]	

Appendix B:
Respondent's Unsuccessful Appeals to the
District of Columbia Court of Appeals

DCCA Appeal No.	Notice of Appeal Date	Order(s) Appealed From	Disposition by Court
09-CV-1593	12.28.2009	• Order dated 12.1.2009 (directing entry of $1.2 million judgment against Respondent)	• Appeal dismissed by order dated 6.28.2010 [FF 12]
12-CV-1550	9.19.2012	• Order dated 5.31.2012 • Order dated 6.4.2012 • Order dated 8.21.2012 • Order dated 8.27.2012 • Respondent also sought stay of his appeal	• Appeal dismissed and stay denied by order dated 10.18.2012 (DCX 50) [FF 201-03]
12-CV-1956	12.8.2012	• Order dated 5.31.2012 • Order dated 6.4.2012 • Order dated 6.18.2012 • Order dated 8.21.2012 • Order dated 8.27.2012 • Order dated 11.5.2012 • Order dated 11.27.2012	• Appeal dismissed as moot by order dated 11.13.2014 (DCX 54) • Motion for stay denied by order dated 4.11.2013 • Motion for release denied by order dated 4.17.2013 [FF 225, 252, 267]

		• Respondent filed motion to stay imprisonment on 4.2.2013, and motion for release on 4.15.2013	
12-CV-1957	12.11.2012	• Order dated 12.10.2012 (incarcerating Respondent) • Respondent filed emergency motion for stay and release from civil contempt on 12.11.2012	• Motion for stay and release denied by order dated 12.13.2012 • Appeal dismissed by orders dated 3.5.2013 denying Respondent's motion to stay appeal and granting appellees' motions to dismiss [FF 230]
13-CV-0431	4.25.2013	• Order dated 12.14.2012 and order dated 4.15.2013 (incarcerating Respondent) • Respondent also filed on 4.25.2013 an emergency motion for release from incarceration	• Motion for release from incarceration denied by order dated 5.10.2013 • Appeal dismissed as moot by opinion dated July 23, 2015 (DCX 54) [FF 262-64]
13-CV-0711	7.1.2013	• Order entered 6.3.2013 (releasing Respondent from incarceration)	• Appeal dismissed as moot by order dated 11.13.2014 (DCX 54) [FF 320]